

# Objectives and Models of a Transnational Criminal Law Using the European Union as an Example

**Lecture at the BKA Autumn Conference 2009  
“Global Crime Hotspots – Impact on Germany”  
Wiesbaden, November 25, 2009**

## Overview

**I. Objectives of European Criminal Law**

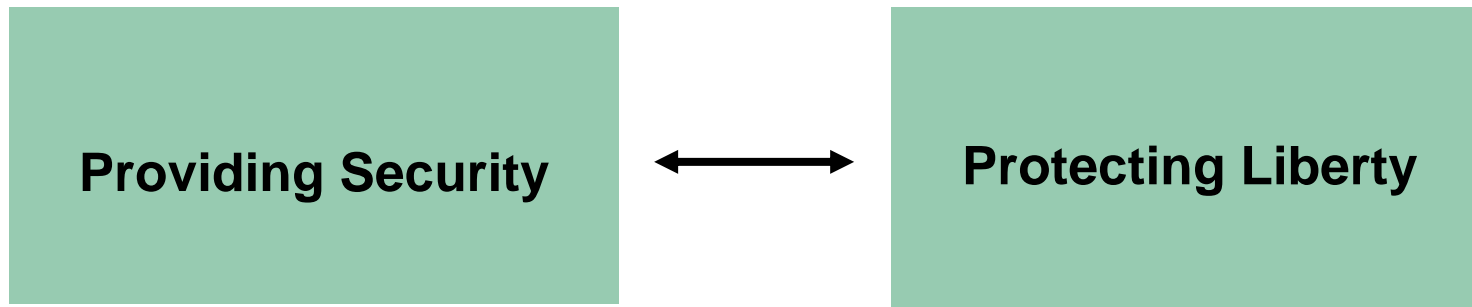
**II. Models of Transnational Criminal Law**

**III. Solutions**

**IV. Summary**

- **I. Objectives of European Criminal Law**
- II. Models of Transnational Criminal Law
- III. Solutions
- IV. Summary

## A. General Objectives of Criminal Law



### 1. Special Objectives in Providing Security

- **Prosecution of cross-border crime**
  - Globalization
  - Transnational crimes
  - Territorial limits of traditional criminal law
  - New forms of transnational criminal law
  
- **Protection of European institutions and values**
  - European institutions
  - Common interests of European society

### 2. Special Objectives in Protecting Liberties

- **Protection of individual rights and liberties**
  - Application of foreign law
  - Multiple jurisdiction
- **Preserving the principle of democracy and other basic values**
  - Parliamentary responsibility for the European integration
  - Special democratic legitimation of criminal law  
(*nullum crimen sine lege parlamentaria*)
  - Legal certainty
  - Subsidiarity and sovereignty

### Central Question:

How can we build an ***europawide effective criminal law system***,

- which does not only protect national and supranational security interests in an efficient way, but also
- the individual liberties of citizens as well as principles of democracy and the rule of law?



**Asking for the models of a transnationally effective criminal law and their evaluation**

I. Objectives of European Criminal Law

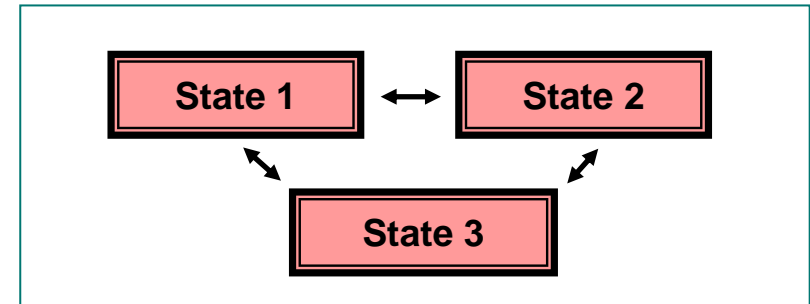
→ **II. Models of Transnational Criminal Law**

III. Solutions

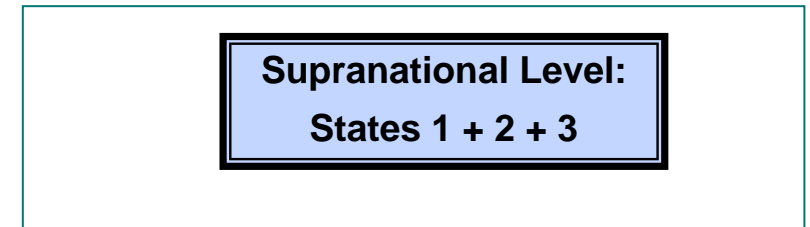
IV. Summary



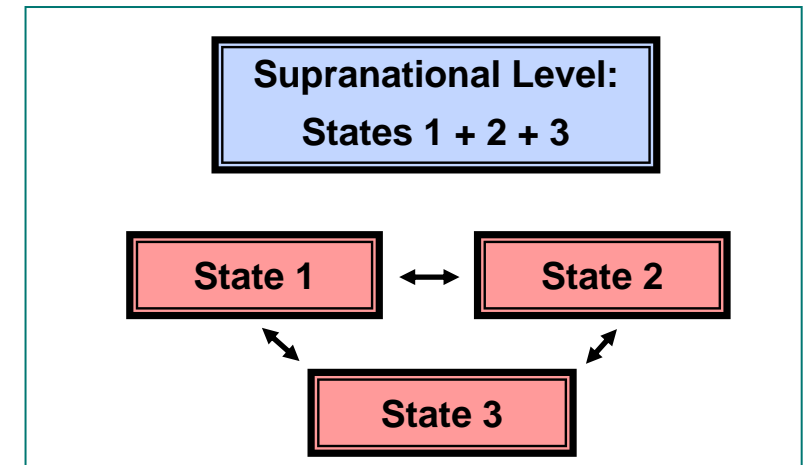
- **Cooperation Models**



- **Supranational Models**



- **Mixed Forms**



## A. Models of Transnational Criminal Law

**Difficulties of system building in multi-level systems  
(particularly the fragmentation of criminal law):**

United Nations

OECD

Council of Europe

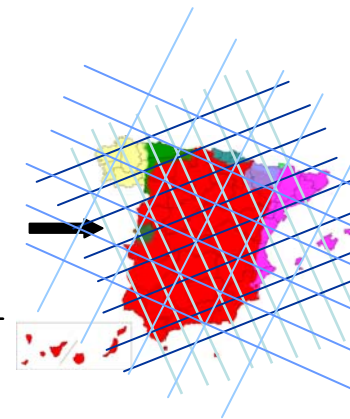
European Union

State 1

State 2

State 3

State 4



**Consequences: double competences, competing legal norms**

## A. Models of Transnational Criminal Law

### Question:

- **Advantages and disadvantages of the two models?**
- **Chances of mixed models?**

## B. Cooperation Models

### 1. Advantages for national sovereignty and subsidiarity

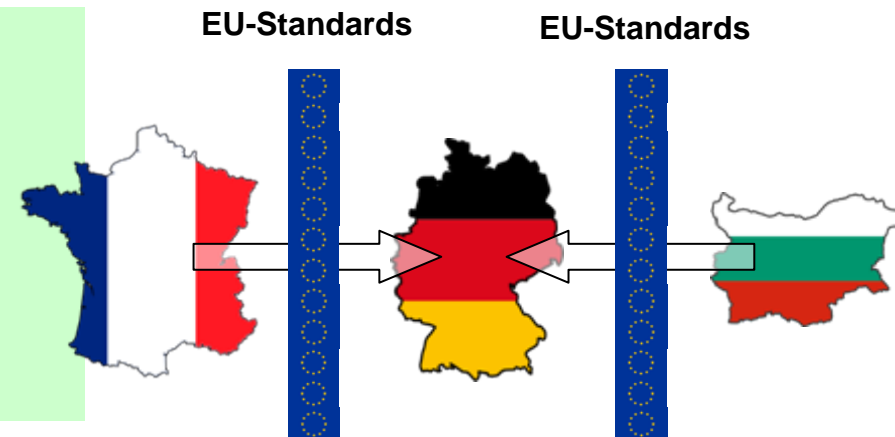
### 2. Conflicts between security and civil liberties

= Consequences of legal differences

⇒ reservations of double criminality,  
*ordre public*, etc.

#### Possible Solutions

- ⇒ Legal harmonization
- ⇒ Mutual recognition
- ⇒ Common definitions of cooperations



### 3. Difficulties in System Building

- Competing legal norms
- Double competences and conflicts of jurisdiction

### 4. Lack of Efficiency

- Protection of supranational values
- Prosecution of transnational crimes

## C. Supranational Models

### 1. Advantages of Unity

- Effective Protection of security *and* liberty
- Clear system building
- Legal certainty
- Justice and legality

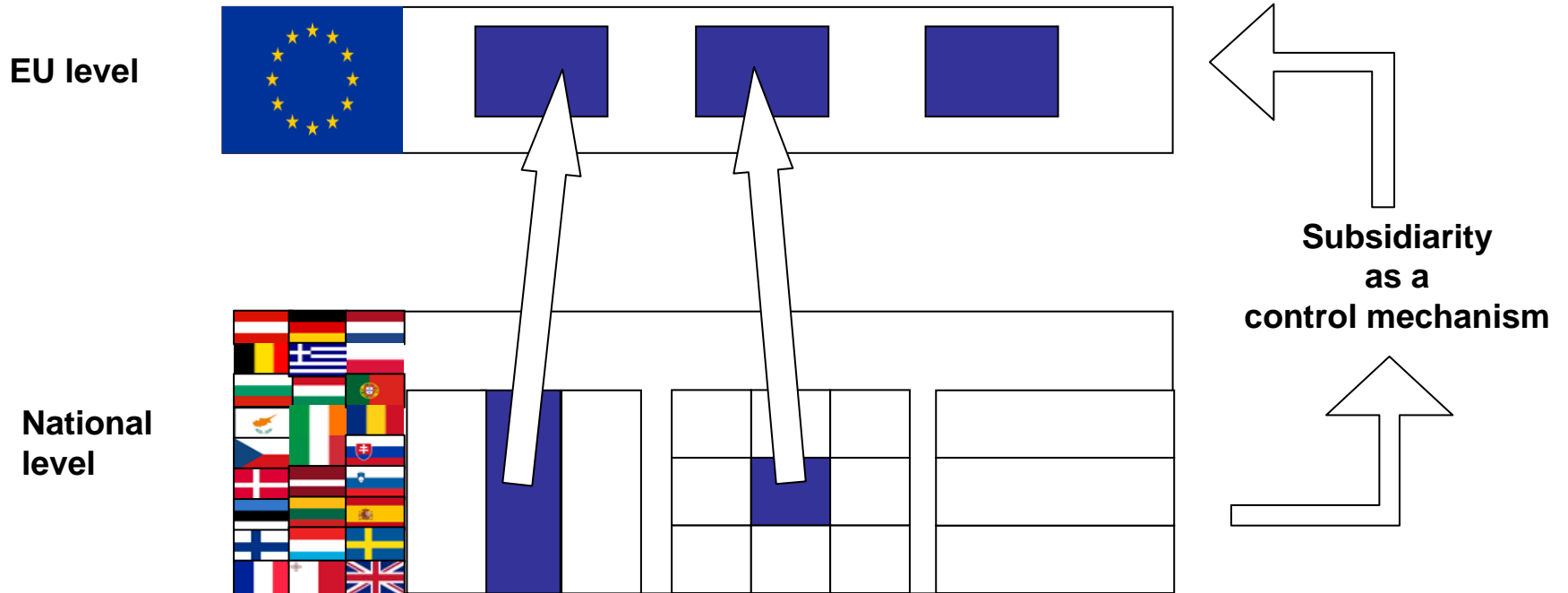
### 2. Problems for cultural identity

### 3. Problems for subsidiarity and national sovereignty

#### Suggested Solutions

- Limited Europeisation of criminal justice subsystems
- Differentiating:
  - Specific crimes and areas of regulation
  - Types of sanctions
  - State functions  
(legislation vs. application of law)
  - Demanding law and enacting law
  - Hybrid agencies with limited powers

# C. Supranational Models





### 4. Problems of democratic legitimacy and control

- Parliamentary responsibility for the European integration
- Nullum crimen sine lege parlamentaria

#### **Legitimation in the Treaty of Lisbon by**

- Ratification of the Treaty by the national parliaments
- Implementation of the directives by national parliaments
- Participation of democratically-legitimated executive in the Council
- Participation of national parliaments in European proceedings
- Approbation by the European Parliament

#### **Decisive factors for evaluation of criminal law norms**

- Clear competences in most areas
- Dominance of directives
- Directives and regulations based on co-decision procedures

## D. Comparative Analysis

### Cooperative Models

- Advantages with respect to national sovereignty and subsidiarity
- Problems with respect to effectiveness (both for security and liberty)

### Supranational Models

- Advantages for effective prosecution and legal certainty
- Problems for national sovereignty and subsidiarity
- ~~Problems of democratic legitimacy and control~~  
→ **Lisbon**

### Mixed Systems

Combination of advantages and avoiding disadvantages

## E. European Standard

<b>Criminal law competences of the EU under the Treaty of Lisbon</b>	<b>Directives</b>	<b>Regulations</b>
Minimum rules for offences concerning <ul style="list-style-type: none"> <li>- particularly serious crime</li> <li>- harmonized policy areas</li> <li>- unanimous extension</li> </ul>	X	
Minimum rules for judicial cooperation and mutual recognition (particularly admissibility of evidence, individual rights, victims' rights)	X	
Recognition of judicial decisions, jurisdictional conflicts, cooperation	X	X
Justice system (Eurojust, European Public Prosecutor, Europol, police cooperation)		X
Protection of the financial interests of the EU	X	?

### **Clear parameters for a cooperation-based hybrid model:**

- National criminal justice system
- with specific supranational elements



### **Building blocks of cooperation-founded hybrid models:**

- Conceptual theoretical basics
- General legal harmonisation
- Law of cooperation
- Supranational institutions
- Supranational sanction law

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# A. Solutions for the European Union

Building blocks of cooperation-founded hybrid models :	Competences of the EU under the Treaty of Lisbon		
	Directives	Regulations	
<ul style="list-style-type: none"> <li>▪ <b>Conceptional theoretical basics</b></li> </ul>	X		
<ul style="list-style-type: none"> <li>▪ <b>General legal harmonisation</b></li> </ul>			
<ul style="list-style-type: none"> <li>▪ <b>Law of cooperation</b></li> </ul>	X	X	
<ul style="list-style-type: none"> <li>▪ <b>Supranational institutions</b></li> </ul>		X	
<ul style="list-style-type: none"> <li>▪ <b>Supranational sanction law</b></li> </ul>	X	?	

### 1. Conceptual Theoretical Basics

- System Building
- Comparative stock-take  
(functional legal comparison and data-base with expert system)
- “Best Practices” and model rules

### 2. General Legal Harmonisation

- Materielles Strafrecht  
(insb. schwere transnationale Kriminalität)
- Prozessuale Eingriffsbefugnisse
- Prozessuale Garantien
- Sonstige Bereiche

#### **Measures of transformation**

- Legal comparison
- Directives (or framework decisions)
- Peer Review procedure
- Hard and soft sanctionss  
(esp. relating to mutual recognition)



### 3. Law of cooperation

#### ▪ Law of transformation

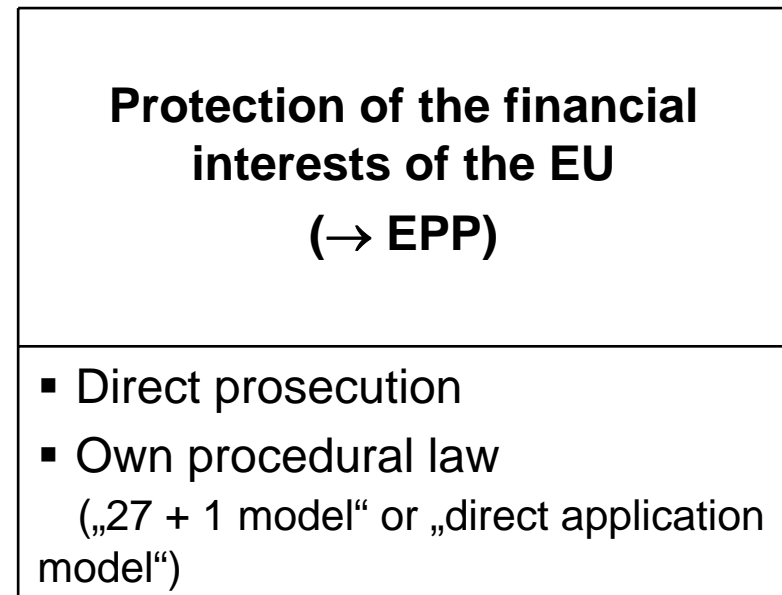
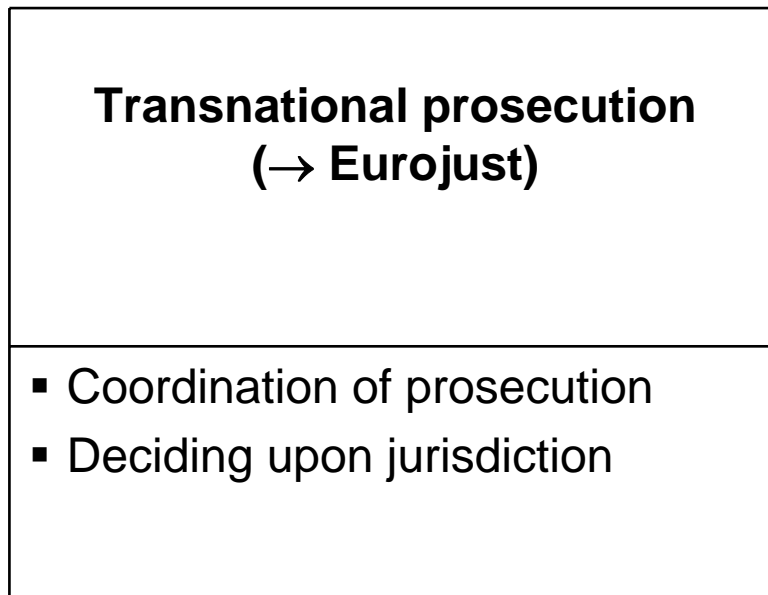
- Mutual recognition or direct effect of judicial decisions
- Systematic comprehensive regulation in a directive or regulation
- Improved transformation on the national level
- More precise supranational requirements

#### ▪ Jurisdictional rules and law to resolve conflicts

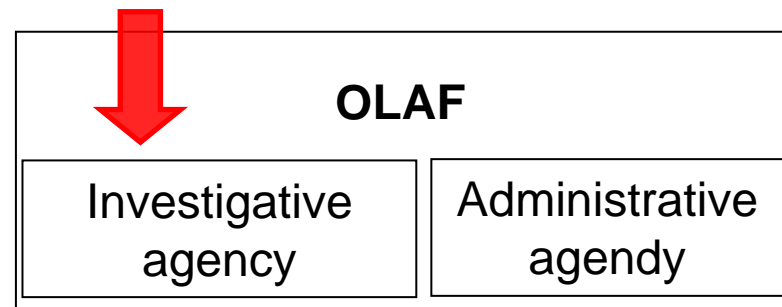
- Substantive regulation of jurisdiction
- European Public Prosecutor given power to decide with appeal possibility to the European Court of Justice

## 4. Supranational Hybrid Institution

- **European Public Prosecutor**



- **Anti-Fraud Office  
(OLAF)**



- **Europol etc.**
  - Systematic Organisation of European police institutions
  - Improved cooperation amongst themselves and with OLAF
  - Statutory protection against coercive measures (data processing)
  - Careful extension of competences
  
- **European Criminal Court**
  
- **Procedural rights and European Criminal Defence**
  - Procedural minimum rules
  - Accountable assignment of cases to national criminal justice agencies
  - European defence network
  - Mandatory defence with legal aid

### 5. Supranational Sanction Law

- **Europäisches Verwaltungssanktionsrecht**

- Examples: EU Cartel Law; protection of EU-financial interests
- Need for a clear aim
- Especially ultima ratio concept and decriminalisation of petty cases
- Especially economic criminal law
- Procedural guarantees and court rights protection

- **Criminal Law**

Problems:

- Principle of subsidiarity
- Competences

## B. Lösungsvorschläge für “failed states”

### 1. Supranationale Lösungsmodelle:

#### Resolutionen des Sicherheitsrates nach Kap. 7 der UN-Charta,

d.h. “Maßnahmen bei Bedrohung oder Bruch des Friedens oder bei Angriffshandlungen”

Beispiele:



- Jugoslawien



- Irak



- Kosovo



- Libanon



- Ruanda



- Piraterie im Golf von Aden

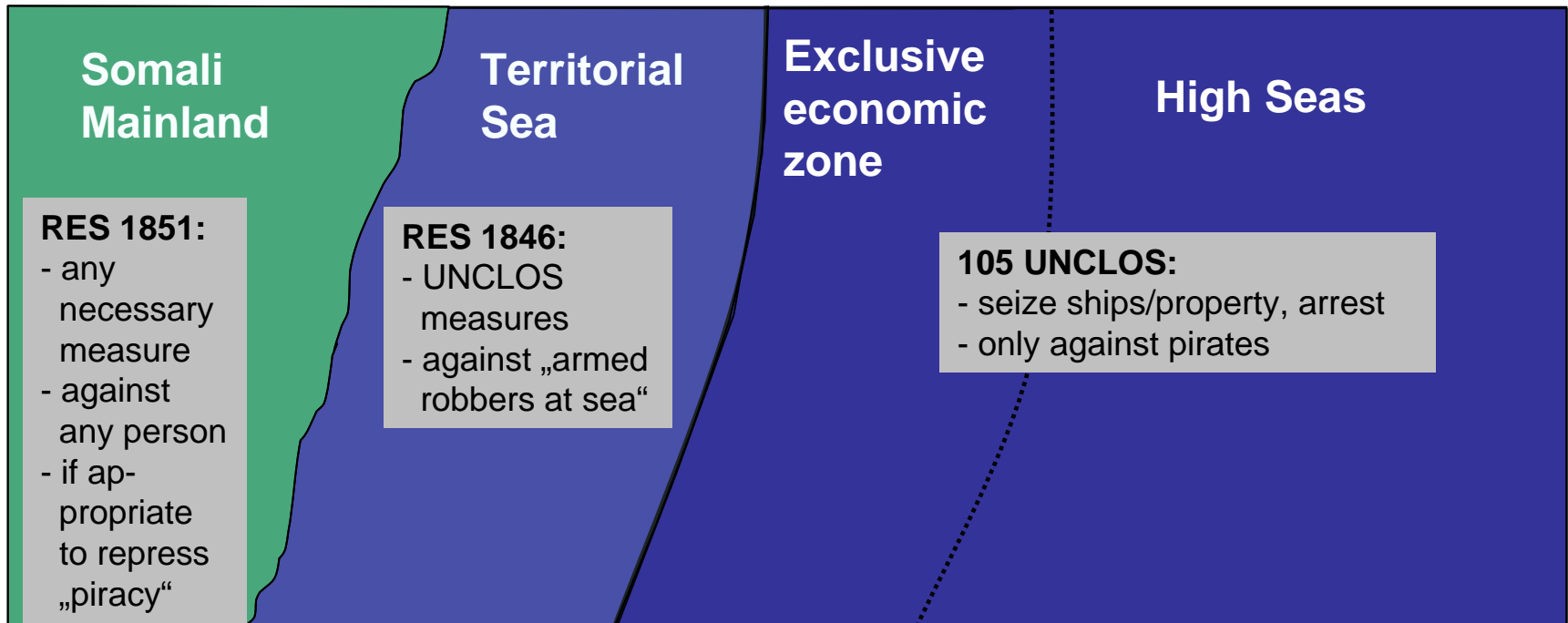


- Afghanistan

Inhalte:

- Internationale Strafgerichte
- Spezielle Unterstützung und Intervention
- Internationale Verwaltung

## B. Lösungsvorschläge für “failed states” (Forts.)



### 2. Kooperative Lösungsmodelle:

#### Verträge mit den betroffenen Staaten

Beispiele:  - Kambodscha

 - Sierra Leone

 - Guatemala

Inhalte: - Gemischte Gerichtshöfe  
- Spezielle Unterstützung



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## 1. Allgemein:



Klarer Mehrwert einer Systembildung mit Zielen, Modellen und Bausteinen des Europäischen Strafrechts

## 2. Europ. Union:




Erweiterung des “gemischten Kooperationsmodells” durch spezifische supranationale Elemente (im Rahmen von Subsidiarität und Verhältnismäßigkeit)

## 3. Int. Krisenherde:



Lösungen für “failed states” durch  
a) kooperative Modelle mit Konventionen und vertraglichen Lösungen sowie  
b) supranationale Modelle mit UN-Sicherheitsratsresolutionen



**Thank you for your attention!**

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