

SURVEILLANCE OF COMPUTERIZED DEVICES

*And how Volatile and All-
embracing Surveillance
Measures Necessitate
Restructuring of the Law*

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**Preventive Use of Surveillance Measures for
the Protection of National Security**

A normative and comparative study of Dutch, Norwegian and
Swedish law

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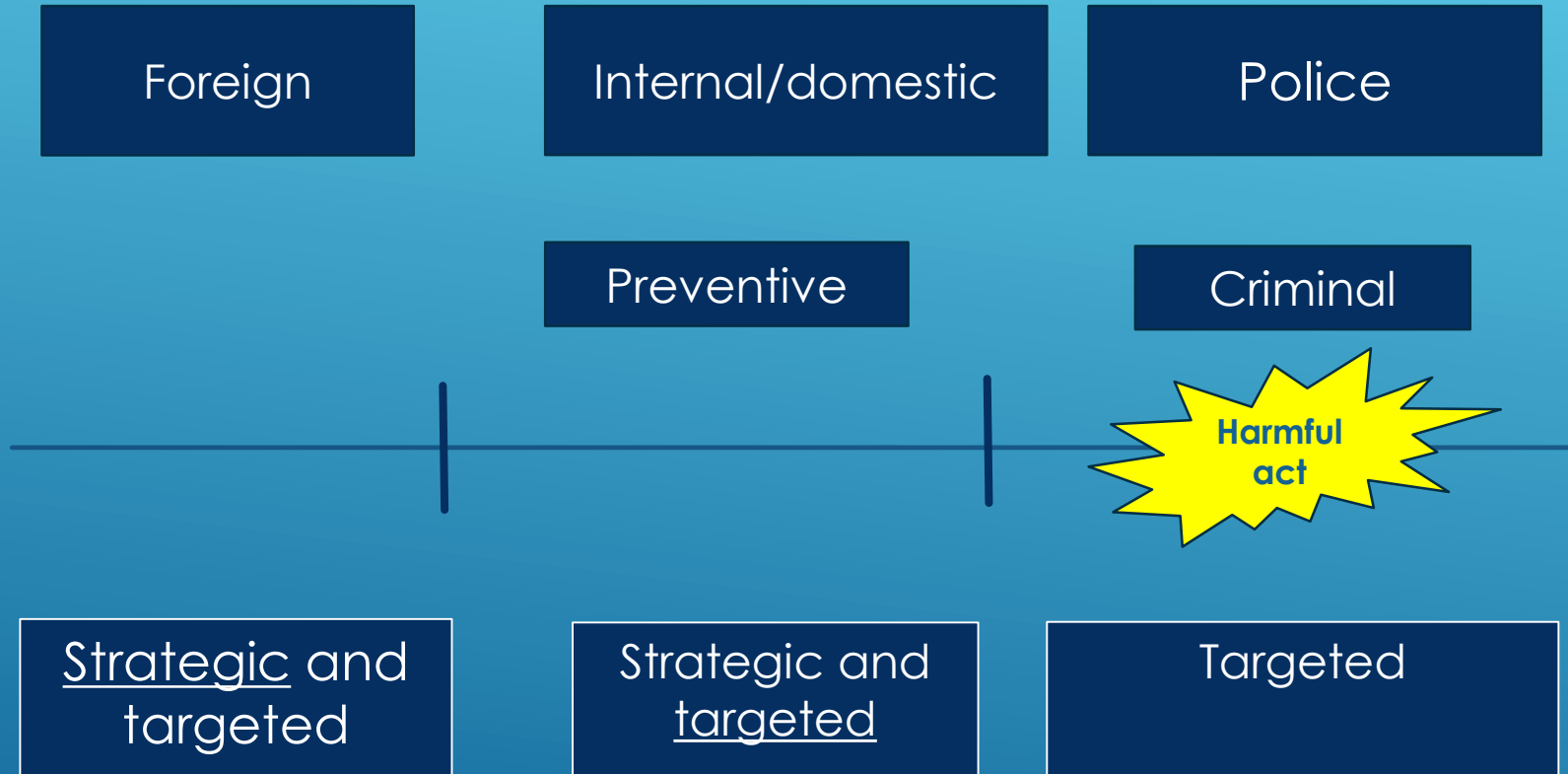
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- Explores the legitimacy of *preventive* use of surveillance measures in the protection of national security.
- A normative framework based on principles of democracy and rule of law.
- A comparative study of Dutch, Norwegian and Swedish law in this area.
- Provides normative guidelines for the regulation of such measures.

PURPOSE OF THIS PRESENTATION

- ▶ Demonstrate the technology dependent and static structure of traditional surveillance legislation.
- ▶ Demonstrate how the more recent legislation on surveillance of computerized devices fails to solve these problems.
- ▶ Suggest how these problems can be solved by restructuring the law.

SURVEILLANCE: ACTORS & PHASES



SURVEILLANCE: LEGAL REGULATION

- ▶ Surveillance of electronic communication
- ▶ Geographical surveillance
- ▶ Camera surveillance
- ▶ Audio surveillance
- ▶ Searches, seizures and disclosure orders

SURVEILLANCE: LEGAL REGULATION CONT.

- ▶ Surveillance of electronic communication
 - ▶ Monitoring of communications content
 - ▶ Collection of communications data
 - ▶ IMSI-catchers
 - ▶ Silent SMS
- ▶ Geographical surveillance:
 - ▶ Of cars
 - ▶ Of items
 - ▶ Of persons
- ▶ Camera surveillance
 - ▶ Of public places
 - ▶ Of private places
 - ▶ Of private homes
 - ▶ Of persons
- ▶ Audio surveillance
 - ▶ Closed networks
 - ▶ Public places
 - ▶ Private places
 - ▶ Of persons

SURVEILLANCE OF COMPUTERIZED DEVICES

«reading of not publicly accessible information in a computer system... using technical devices, software or other means»

- ▶ The Norwegian Criminal Procedure Act § 216o og § 216p

| | 6 months prison | 5 years prison | 10 years prison | Specific crimes |
|--|-----------------|----------------|-----------------|-----------------|
| Communications surveillance | | X | | |
| Communications monitoring | | | X | |
| Geographical surveillance – cars and objects | | X | | |
| Geographical surveillance – persons | | | X | |
| Camera surveillance – public places | X | | | |
| Camera surveillance – private places | | | X | |
| Audio surveillance | | | | X |
| Surveillance of computerized devices | | | X | |

SURVEILLANCE: THE PROBLEMS OF THE LEGAL REGULATION

- ▶ The technology dependent typology
- ▶ The volatility of the interferences
- ▶ The static structures of regulation

| | Non-invasive | Invasive | Highly invasive |
|----------------------------|--------------|----------|-----------------|
| Geographical surveillance | X | | |
| Behavioural surveillance | X | | |
| Communication surveillance | | X | |
| Personal surveillance | | | X |
| Proprietary surveillance | | X | |
| Physical interference | | | X |
| Collectively | | | X |