



Cybercrime Forum for the criminal justice sector
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International cooperation on cybercrime and e-evidence under the Budapest Convention: opportunities for Ghana

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1



Cybercrime and e-evidence: international challenges

Cybercrime and other offences involving evidence on computer systems (e-evidence):

WHO DID IT?

No data, no evidence, no justice

- Billions of users and devices
- Trillions of attacks
- Millions of offences
- Is there any type of crime without e-evidence?
- Investigations % ?
- Convictions % ?

2

Cybercrime and e-evidence: international challenges

Where is the crime?
Where is the data, where is the evidence?
Who has the evidence?
Where is the boundary for LEA powers?

▶ Transnational nature of cybercrime and e-evidence
▶ Crime and jurisdiction in cyberspace

3

Assessment of international cooperation under the Budapest Convention (2014)

International requests for data

Types of data requested:

1. Subscriber information (80+%?)
2. Traffic data
3. Content data

Underlying offences

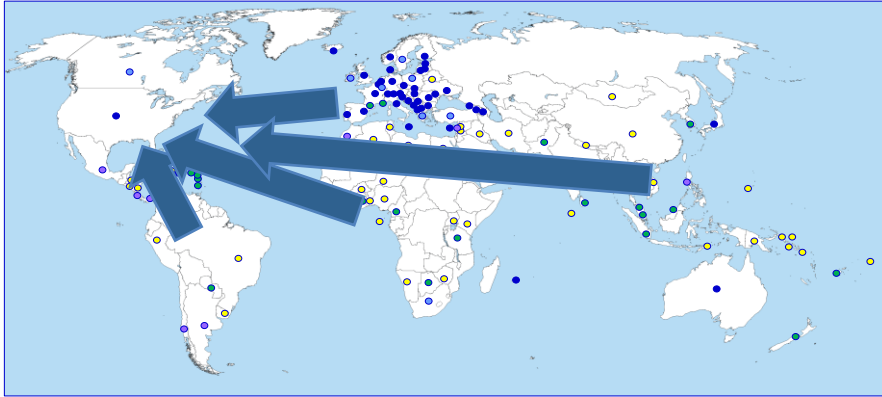
1. Fraud and other financial crimes
2. Violent and serious crime (murder, assault, trafficking, child abuse etc.)
3. Offences against computer systems

4



Assessment of international cooperation under the Budapest Convention (2014)

Mapping requests sent/received



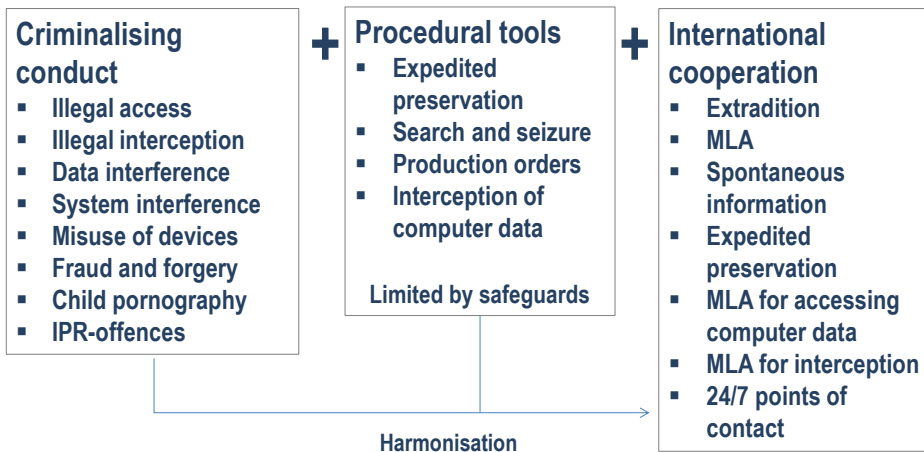
Somewhat more diverse today

5

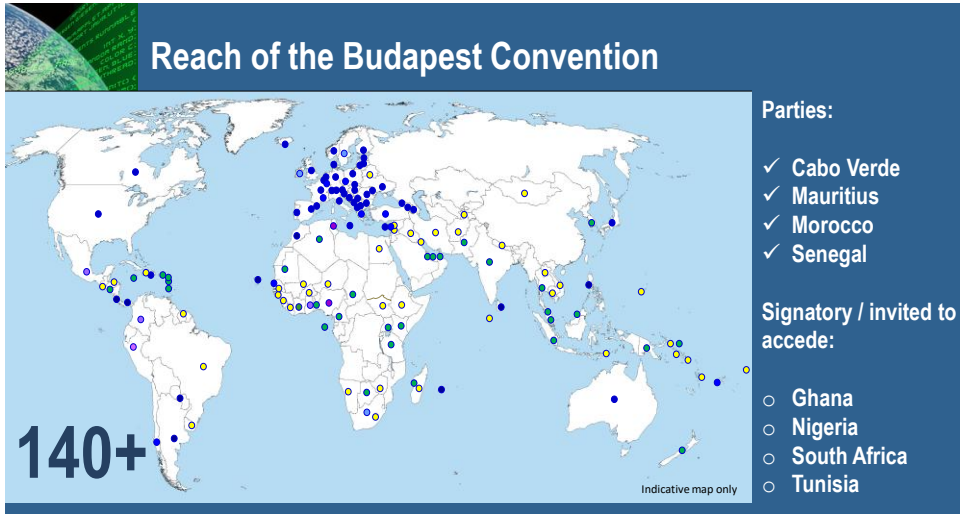


Budapest Convention as framework for international cooperation

Scope



6



- Ratified/acceded: 61 ● Other States with laws/draft laws largely in line with Budapest Convention = 20+ ●
- Signed: 4 ● Further States drawing on Budapest Convention for legislation = 50+ ●
- Invited to accede: 6 = 71 ●

7

Budapest Convention as framework for international cooperation

International cooperation under Budapest Convention ►
Combination: regular MLA + expedited and provisional measures

Article	Budapest Convention
Art. 23	General princip. (subsidiarity)
Art. 24	Extradition
Art. 25	General rules
Art. 26	Spontaneous information
Art. 27	MLA in absence of treaty
Art. 28	Confidentiality

8



Budapest Convention as framework for international cooperation

International cooperation under Budapest Convention ►
Combination: regular MLA + expedited and provisional measures

Article	Budapest Convention
Art. 29	Expedited preservation
Art. 30	Partial disclosure traffic data
Art. 31	MLA accessing data
Art. 32	Transborder access
Art. 33	MLA collection traffic data
Art. 34	MLA interception content
Art. 35	24/7 point of contact

9



Need to make MLA on cybercrime and e-evidence more efficient

- Implement provisions of Budapest Convention
- Statistics or other measures to monitor efficiency of the MLA process
- More technology-literate staff for MLA
- More training
- Strengthen 24/7 contact points
- Streamline procedures and reduce the number of steps required for MLA at domestic levels
- Make use of all available channels for international cooperation
- Establish emergency procedures
- Confirm receipts of MLA requests
- Open domestic investigations upon a foreign request or spontaneous information
- Electronic transmission of requests
- Make sure requests are specific and complete
- Consult foreign authorities before sending MLA requests

► **Domestic responsibility supported by capacity building**

10



Budapest Convention as framework for international cooperation

Article 35 – 24/7 Network

1 Each Party shall designate a point of contact available on a 24/7 basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:

- a the provision of technical advice;
- b the preservation of data pursuant to Articles 29 and 30;
- c the collection of evidence, the provision of legal information, and locating of suspects.

2 a. A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.

b. If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.

3 Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.

11

11



T-CY assessment (2014): recommendations

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that **trained and equipped personnel is available** to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
- b. Encouraging **contact points to pro-actively promote their role** among domestic and foreign counterpart authorities;
- c. Conducting **regular meetings and training of the 24/7 network** among the Parties;
- d. Encouraging competent authorities and 24/7 points of contact to consider **procedures to follow up to and provide feedback** to the requesting State on Article 31 requests;
- e. Considering to establish, where feasible, **contact points in prosecution offices to permit a more direct role in mutual legal assistance** and a quicker response to requests;
- f. Facilitating 24/7 points of contact to **play a supportive role in "Article 31" requests.**

12

12

Limitations to MLA

- **Cloud computing, territoriality and jurisdiction**
 - Cloud computing: distributed systems ► distributed data ► distributed evidence
 - Unclear where data is stored and/or which legal regime applies ► Loss of (knowledge of) location
 - Service provider under different layers of jurisdiction
 - Unclear which provider for which services controls which data
 - Is data stored or in transit ► production orders, search/seizure or interception?

Additional solutions required ►
Additional Protocol to the Budapest Convention

13

Direct cooperation with providers across jurisdictions

<i>Parties and Observers (70 States)</i>	Requests for data directly sent to Apple, Facebook, Google, Microsoft, Twitter and Oath in 2017		
	Received	Disclosure	%
Albania	27	14	53%
Belgium	2 521	2 301	91%
Cabo Verde	40	20	50%
France	29 400	18 466	63%
Ghana	0	0	0%
Germany	35 596	20 172	57%
Mauritius	2	0	0%
Morocco	30	18	59%
Nigeria	7	5	71%
Portugal	3 569	2 394	67%
Senegal	2	0	0%
Turkey	8 618	4 739	55%
United Kingdom	31 954	23 073	72%
Total (excluding USA)	170 680	109 093	64%

14



Cybercrime and e-evidence: Towards a Protocol to the Budapest Convention

A. Provisions for more efficient MLA

- Emergency MLA
- Joint investigations
- Video conferencing
- Language of requests
- Etc.

Terms of reference approved in June 2017.

Negotiations: Sep 2017 – Dec 2019.

B. Provisions for direct cooperation with providers in other jurisdictions

C. Framework and safeguards for existing practices of extending searches transborder

D. Safeguards/data protection

15



Legal framework, institutional capacities and cooperation

Question:

Ghana about to become a Party to the Budapest Convention

- ▶ How to permit Ghana to engage in intensive international cooperation on cybercrime and electronic evidence with currently 61 other Parties?

16



17