

The global state of cybercrime legislation

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WHY LEGISLATION on CYBERCRIME & ELECTRONIC EVIDENCE?



Massive increase in cybercrime - Offences against & by means of computers



Cybercrime related to COVID-19 an illustration



Any crime may involve evidence on computer systems



Crime in cyberspace a threat to human rights, democracy and the rule of law



Effective criminal justice needed to ensure the rule of law in cyberspace



Response must be based on law and meet rule of law requirements



Establish offences in substantive criminal law



Provide law enforcement with powers to secure evidence on computer systems

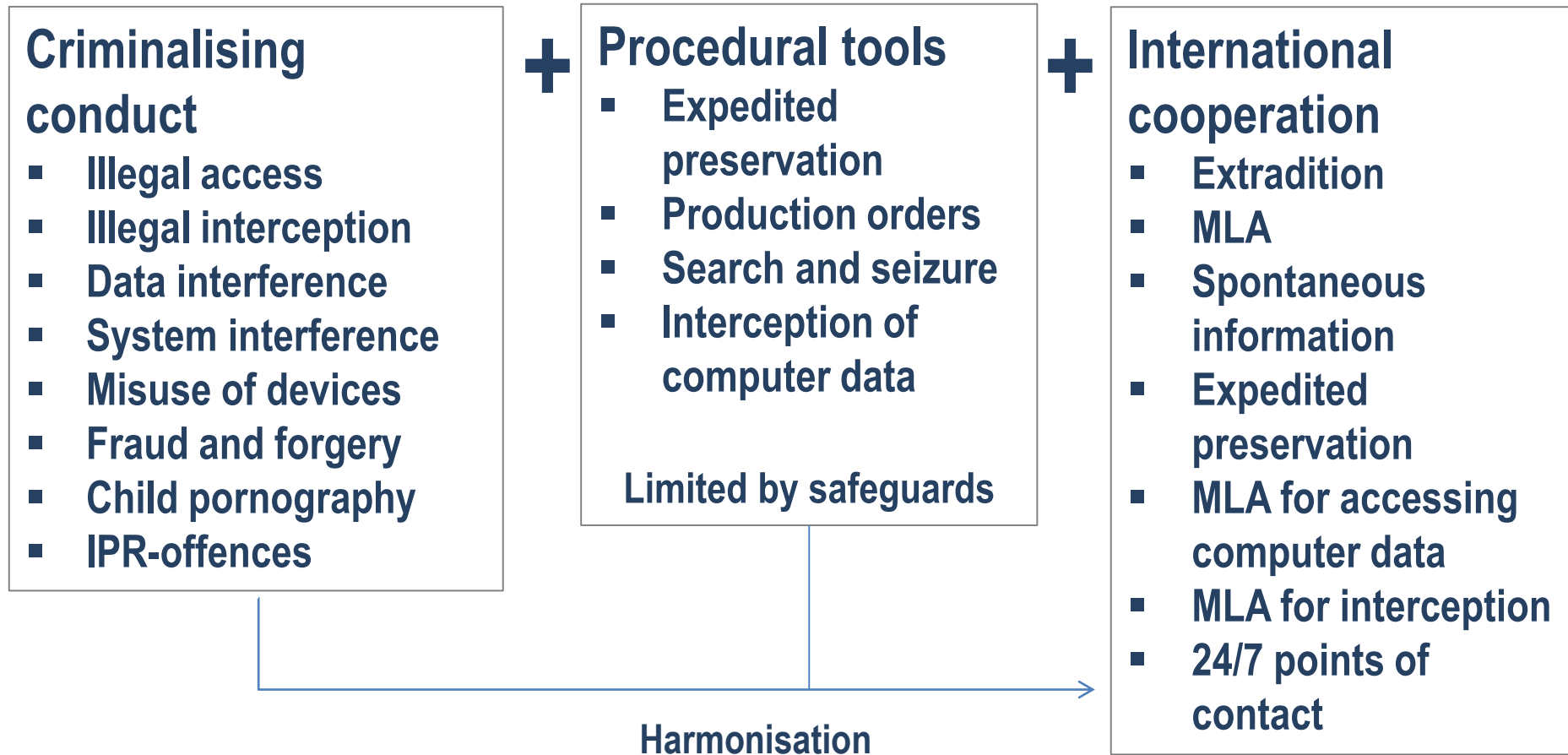


Limit such powers by safeguards



Enable effective international cooperation

BUDAPEST CONVENTION: GLOBAL BENCHMARK for CYBERCRIME LEGISLATION



Procedural powers and international cooperation for any criminal offence involving evidence on a computer system!

EXAMPLE: COVID 19 & CYBERCRIME

COVID-19 related crime in cyberspace

- ▶ Phishing campaigns and malware distribution through seemingly genuine information or advice on COVID-19 .
- ▶ Ransomware shutting down medical, scientific or other health-related facilities testing for COVID-19 or developing vaccines
- ▶ Ransomware targeting individuals through apps claiming to provide genuine information on COVID-19
- ▶ Attacks against critical infrastructures or international organizations
- ▶ Offenders targeting employees who are teleworking
- ▶ Fraud schemes offering personal protective equipment or fake medicines claiming to prevent or cure SARS-CoV-2
- ▶ Misinformation or fake news to create panic, social instability, xenophobia, racism or distrust in measures taken health authorities

Budapest Convention

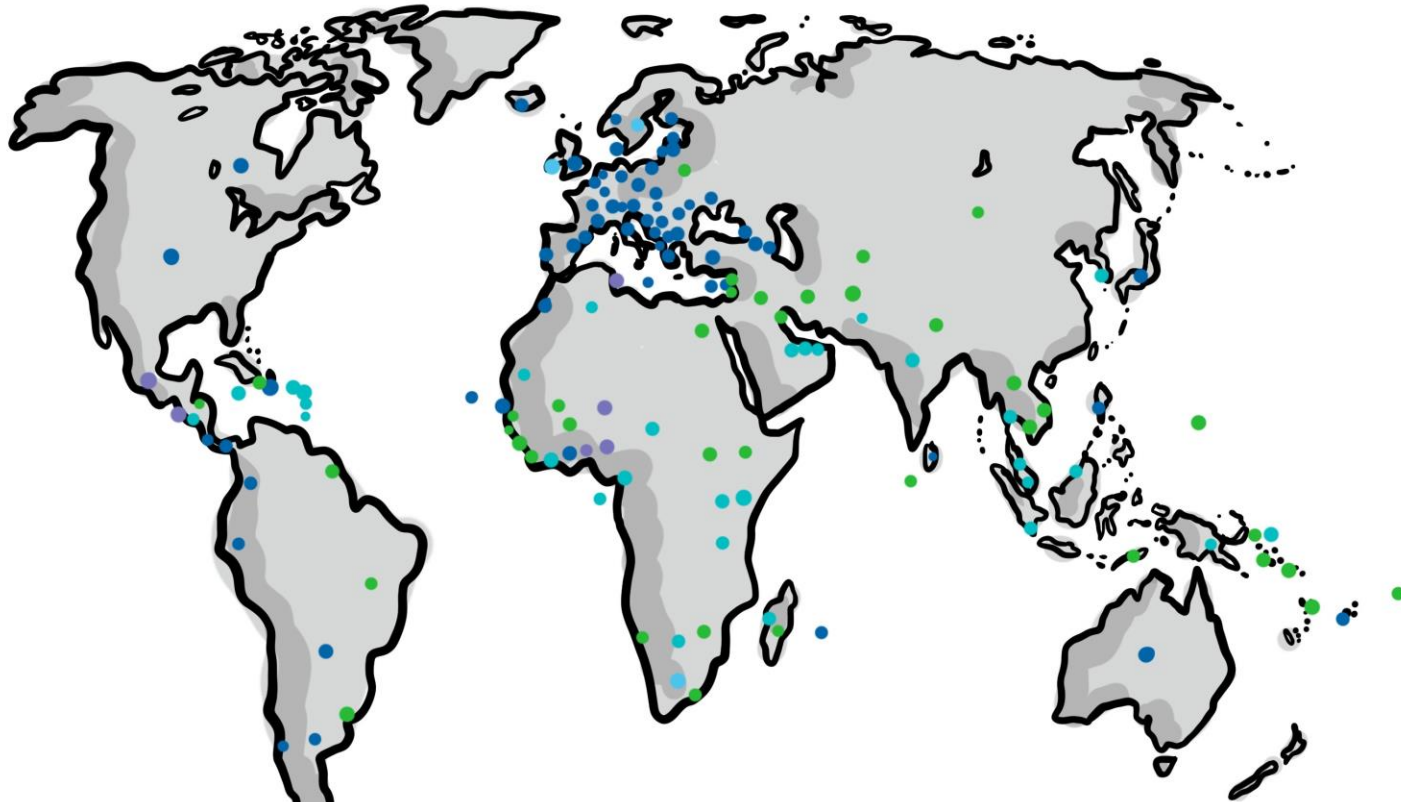
- Substantive criminal law (articles 2 to 10)
- Procedural powers to secure e-evidence
- International cooperation

Protocol on Xenophobia and Racism

Guidance Notes on

- Botnets
- DDOS attacks
- Critical information infrastructure attacks
- Malware
- Spam
- ID theft

REACH of the BUDAPEST CONVENTION



- Parties: 65
 - Signed: 3
 - Invited to accede: 8
- = 76+

- Other States with laws largely in line with Budapest Convention = 20+
- Further States drawing on Budapest Convention for legislation = 50+

GLOBAL STATE of CYBERCRIME LEGISLATION

The Council of Europe (through C-PROC) follows developments on legislation worldwide since 2013.

The latest update covers the Global State of Legislation as at February 2020

▶ Here is a summary of results!

GLOBAL STATE of CYBERCRIME LEGISLATION

Reforms of legislation on cybercrime and electronic evidence

	States	Underway or undertaken in recent years					
		By January 2013		By January 2018		By February 2020	
All Africa	54	25	46%	45	83%	46	85%
All Americas	35	25	71%	31	89%	32	91%
All Asia	42	34	81%	37	88%	38	90%
All Europe	48	47	98%	48	100%	48	100%
All Oceania	14	12	86%	12	86%	13	93%
All	193	143	74%	173	90%	177	92%

- By February 2020, 177 UN Member States (or 92%) were in the process of undertaking reforms of legislation on cybercrime and electronic evidence or had undertaken such reforms in recent years.

GLOBAL STATE of CYBERCRIME LEGISLATION

Substantive criminal (offences against and by means of computer systems corresponding to Articles 2 to 10 Budapest Convention)

	States	Largely in place by January 2013		Largely in place by February 2020	
All Africa	54	6	11%	22	41%
All Americas	35	10	29%	17	49%
All Asia	42	13	31%	18	43%
All Europe	48	38	79%	44	92%
All Oceania	14	3	21%	5	36%
All	193	70	36%	106	55%

- By February 2020, 106 UN Member States (or 55%) had legislation in place with provisions criminalising offences against and by means of computers similar to those of the Budapest Convention.

GLOBAL STATE of CYBERCRIME LEGISLATION

Links to the Budapest Convention

		Use of Budapest Convention as guideline or source					
States		By January 2013		By January 2018		By February 2020	
All Africa	54	21	39%	33	61%	38	70%
All Americas	35	22	63%	24	69%	26	74%
All Asia	42	25	60%	27	64%	28	67%
All Europe	48	46	96%	47	98%	47	98%
All Oceania	14	10	71%	11	79%	14	100%
All	193	124	64%	142	74%	153	79%

- Global impact of the Budapest Convention in terms of legislation
 - ▶ a guideline or source of inspiration for domestic legislation in 153 States (or 79%)

GLOBAL STATE of CYBERCRIME LEGISLATION : CONCLUSIONS

- ▶ Almost all countries worldwide have undertaken or are undertaking reforms of their domestic legislation on cybercrime and e-evidence.
- ▶ Budapest Convention on Cybercrime as a guideline or source by the majority of countries.
- ▶ Capacity building needed to enable criminal justice authorities to apply legislation in practice.
- ▶ Protocol to the Budapest Convention will address additional needs of countries for more efficient international cooperation, cooperation in emergency situations and cooperation with service providers.
- ▶ Any future international agreement needs to take into account reforms already undertaken and be consistent with the Budapest Convention.