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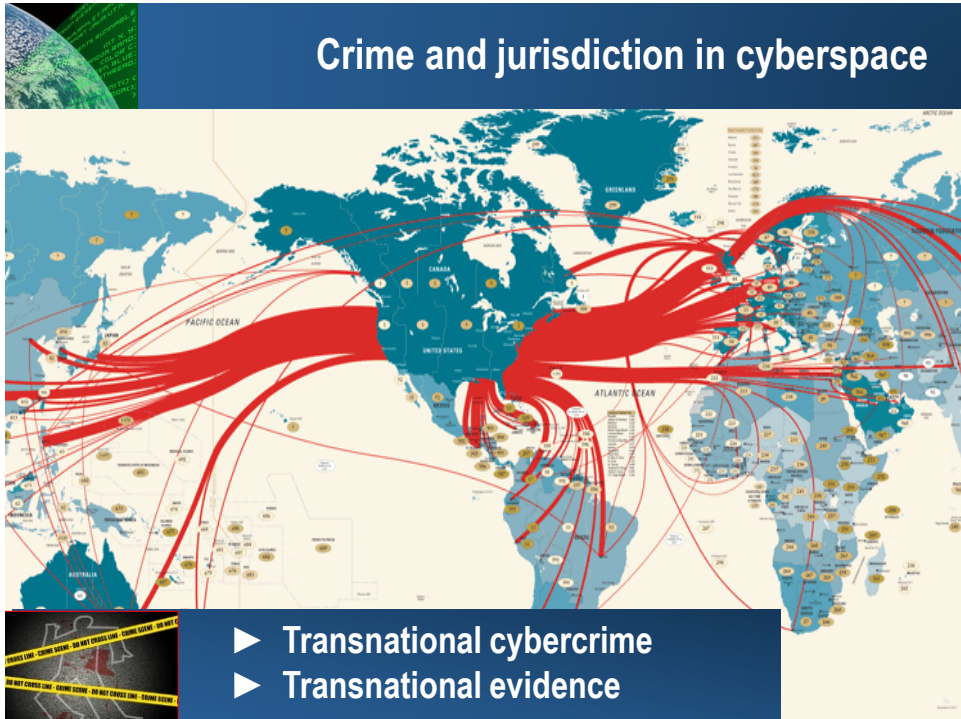


Treaties as basis for international cooperation: lessons learnt under the Budapest Convention

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Crime and jurisdiction in cyberspace

- ▶ Transnational cybercrime
- ▶ Transnational evidence

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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**

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Budapest Convention: International cooperation provisions

Combination: regular MLA + expedited and provisional measures

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

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Budapest Convention: International cooperation provisions

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

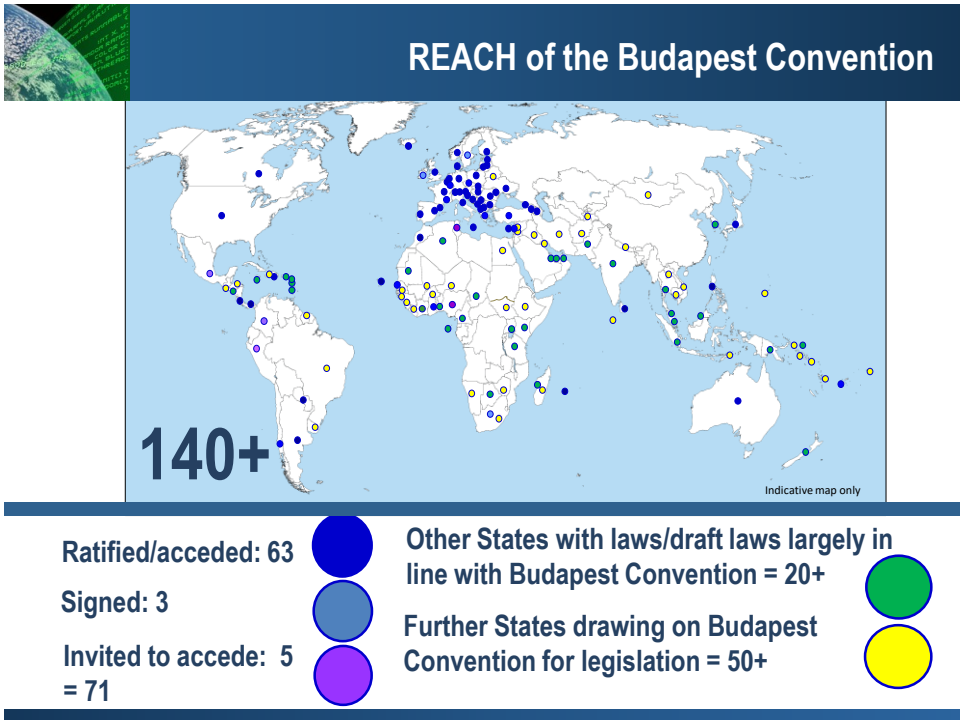
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Assessment of international cooperation under the Budapest Convention (T-CY 2014)

- ▶ Increasing use of Budapest Convention for cooperation among increasing number of Parties

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Joining the Budapest Convention

Treaty open for accession (article 37)

Phase 1:

- A country with legislation in place or advanced stage
- Letter from Government to CoE expressing interest in accession
- Consultations (CoE/Parties) in view of decision to invite
- Invitation to accede

Phase 2:

- Domestic procedure (e.g. decision by national Parliament)
- Deposit of the instrument of accession

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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

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

Example:

- Template: [Mutual Legal Assistance Request for subscriber information](#) (Art. 31 Budapest Convention)
- Template: [Data Preservation Request](#) (Articles 29 and 30 Budapest Convention)

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Limitations to MLA

Cloud computing raises issues re territoriality and jurisdiction to enforce

- 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

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Protocol to the Budapest Convention on Cybercrime

A. Provisions for more efficient MLA

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

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

Negotiations:

Start - Sep 2017

End - 2020?

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