

African Forum on Cybercrime, Addis Ababa, 16 – 18 October 2018

Workshop 2: International cooperation



EUROPEAN UNION



CONSEIL DE L'EUROPE



Foreign &
Commonwealth
Office



Home Office



UNODC
United Nations Office on Drugs and Crime



INTERPOL



The Commonwealth

Bases for international cooperation on cybercrime and e-evidence

Alexander Seger
Council of Europe
alexander.seger@coe.int

www.coe.int/cybercrime

Crime and jurisdiction in cyberspace



- ▶ Transnational cybercrime
- ▶ Transnational evidence



Assessment of international cooperation under the Budapest Convention (2014)

International requests for data

Types of data requested:

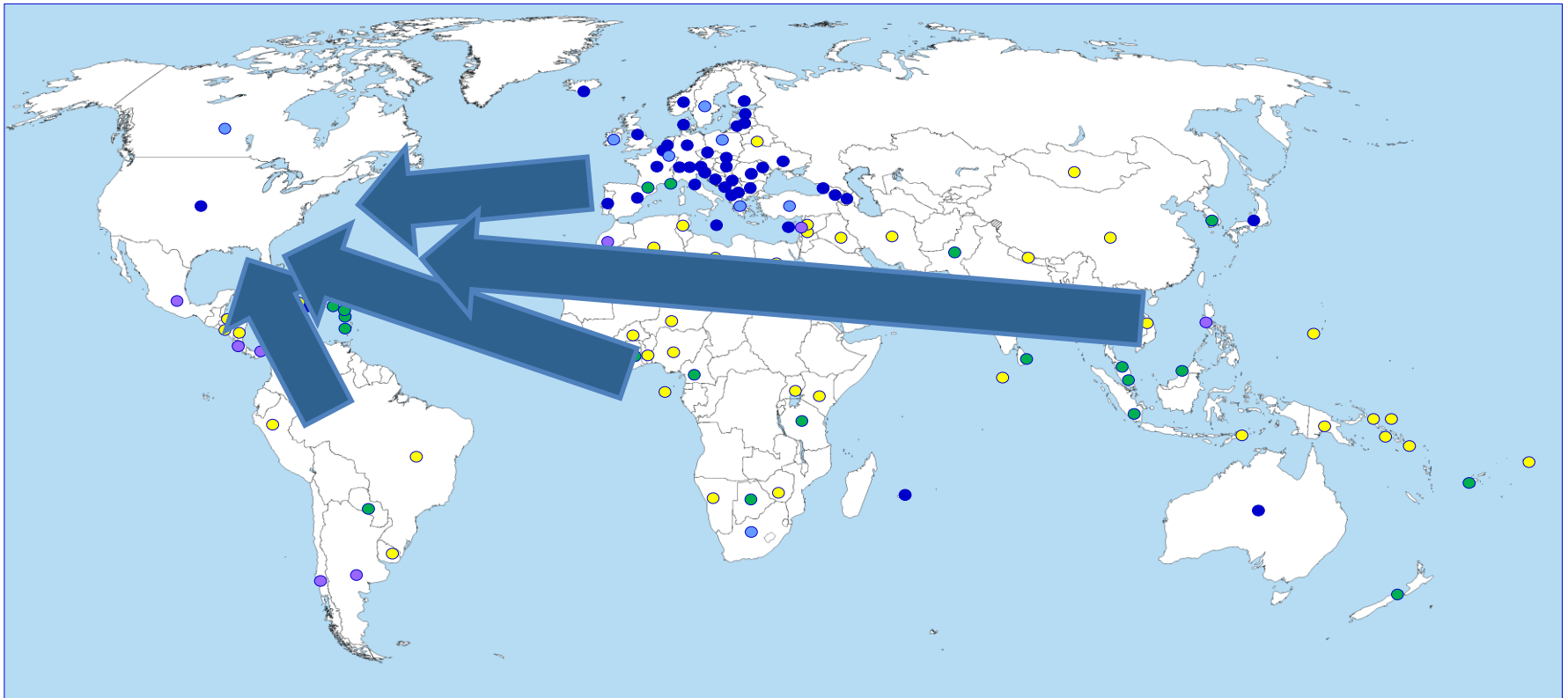
- 1. Subscriber information (80+%?)**
- 2. Traffic data**
- 3. Content data**

Underlying offences

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

Assessment of international cooperation under the Budapest Convention (2014)

Mapping requests sent/received



Somewhat more diverse today



Budapest Convention: International cooperation provisions


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



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



Assessment of international cooperation under the Budapest Convention

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



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



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**



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)

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 ►
Workshop 7**

The background of the image is a composite. On the left, there is a curved horizon of the Earth as seen from space, showing blue oceans and white clouds. On the right, there is a dark green background with glowing green lines of digital code, similar to the 'Matrix' effect, slanted diagonally. A solid blue horizontal bar spans the width of the image, containing white text.

www.coe.int/cybercrime