



CyberSouth

Cooperation on cybercrime
in the Southern Neighbourhood

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Restricted

Competent authorities and the functioning of international cooperation in Hashemite Kingdom of Jordan and Lebanon

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1 Introduction

CyberSouth is a joint project of the European Union (European Neighbourhood Instrument) and the Council of Europe. CyberSouth aims to strengthen legislation and institutional capacities on cybercrime and electronic evidence in the region of the Southern Neighbourhood in line with human rights and rule of law requirements.

In this framework, five objectives have been defined. Under the fourth objective, international cooperation, the project will provide support to strengthen 24/7 contact point and international cooperation capabilities.

In this context, CyberSouth has arranged for this study on the competent authorities for, and the functioning of, international cooperation in the Southern Neighbourhood region for the Hashemite Kingdom of Jordan and for Lebanon.

This study was written on the basis of limited information and is subject to correction by Jordan and Lebanon. Based on available information and the lack of statutory authority in each country to address cybercrime and electronic evidence, recommendations for improving international cooperation are offered below.

2 Current status: authorities' responsibilities and functioning of international cooperation

2.1 Jordan

Jordan does not have specific legislation enabling international legal cooperation in general. It therefore does not have most of the specific powers required by the Budapest Convention. It is working on a draft international cooperation law.

The Ministry of Justice is the central authority in Jordan that deals with the requests for mutual legal assistance between Jordan and other countries. This process is also facilitated by the Ministry of Foreign Affairs and Expatriates. The Ministry of Justice sends the requests for legal assistance to the competent judicial authorities for their execution and then send their responses to the Ministry of Justice, who will further send them to the Ministry of Foreign Affairs and Expatriates.

At the same time, the Ministry of Justice is authorised to receive foreign requests via the Ministry of Foreign Affairs and to have them executed, assuming that the legal requirements are fulfilled, by the competent authorities. The competent authorities will initiate an investigation and collect the necessary evidence, which is then returned via the Ministry of Foreign Affairs. Law enforcement is empowered to obtain court orders to obtain evidence from certain providers inside and outside Jordan. Thus, Jordan can apparently cooperate in the absence of a treaty on the basis of general international law principles and perhaps on the basis of informal cooperation.

The incoming legal assistance requests to Jordan are implemented through bilateral or multilateral agreements or Reciprocity rules in case there is no agreement with the other country. Jordan is a signatory and a Party to the Arab Convention on Combatting information Technology Offences. Jordan currently has signed many legal assistance agreements - multi- and bilateral treaties - with a number of countries regarding criminal matters.

Jordan is a member of Interpol and police-to-police cooperation is mostly done via the Interpol channel. Jordan does not seem to take part in any cyber-related 24/7 network.

2.2 Lebanon

Lebanon does not appear to have any specific legislation enabling international legal cooperation in general and therefore does not have most of the specific powers required by Budapest.

Lebanon states that it does not have a central authority in charge of mutual assistance. It handles requests on the basis of letters rogatory or comity in the absence of a treaty. As a member of Interpol, it uses Interpol contacts to give or receive assistance in cybercrime cases, particularly via the Interpol National Central Bureau, which is in the Internal Security Forces. Lebanon has not yet used these channels for physical-world cases involving electronic evidence but would expect to use them for such cases when they occur. It is not clear whether Lebanon takes part in Interpol's cyber-related 24/7 network.

According to the 30 October 2015 report of the United Nations Implementation Review Group for the Convention against Corruption ("UN report"), <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/3-4November2015/V1507554e.pdf>, at page 10, the Ministry of Justice will transmit requests to the Public Prosecutor or to the relevant national authority for execution. Requests are transmitted through diplomatic channels. In urgent cases, requests may be submitted orally or through any other means provided that these are followed up by a formal request.

Lebanon has signed several bilateral agreements (especially with France and with the Arab countries) and multilateral agreements aimed at strengthening cooperation in the field of cybercrime, cyber

security, children's rights, and transnational organized crimes. It has not signed any international conventions against cybercrime such as the Budapest Convention and the Arab Convention on Combatting Information Technology Offences.

Articles 30 through 36 of the Lebanese Penal Code govern extradition law, incorporating by reference certain other articles of the code.

Lebanese extradition law is compatible with the requirements of Article 24 of Budapest to the extent that Lebanese substantive criminal law meets the requirements of Articles 2 through 11 of Budapest and makes the relevant Lebanese crimes punishable by deprivation of liberty for a maximum of at least one year. At least some of the Lebanese statutory penalties may fulfil this requirement.

Lebanese law does not permit the extradition of nationals. It has no requirement that persons who are not extradited for that reason be prosecuted instead in Lebanon.

3 Recommendations

Jordanian and Lebanese authorities may wish to consider the following recommendations:

1. Enacting and implementing the provisions of the Budapest Convention.

Both Jordan and Lebanon lack most of the mutual legal assistance provisions to comply with the Budapest Convention and that would enable them to cooperate actively for their own benefit and for collaboration with other countries. For this reason, the primary recommendation is for Jordan and Lebanon to enact and implement the substantive, procedural and international cooperation provisions of the Budapest Convention and to become Parties to it. This recommendation obviously entails a very significant task. If it is not undertaken, it will be increasingly difficult or impossible for Jordan and Lebanon to investigate crimes against their countries and to participate fully with other countries in protecting public safety globally.

There are two reasons in particular that meeting Budapest's international cooperation requirements are important.

First, becoming a Party to Budapest facilitates assistance from other countries. To paraphrase a comment by one of the Budapest Parties, "My country is small and poor. We would never have the money or the people to negotiate bilateral cyber agreements with all the countries from which we might need assistance. Even if we did, it would take forever. But when we joined Budapest, dozens of countries were instantly bound to consider assisting us. That was what decided it for our legislature."

Second, joining Budapest may ease obtaining data that is subject to US law. Cyber investigators around the world understand that the data they seek is very often controlled by US law and a handful of major US providers. Many investigators are aware that, under US law, these providers have discretion to disclose non-content data, without a formal mutual legal assistance request, to any country other than the US. Major US providers state publicly that, when they choose whether or not to make such a disclosure, they take into account whether a country is a Party to the Budapest Convention. They consider membership in Budapest to be a marker of a country's seriousness about cybercrime and its adherence to the rule of law.

The Council of Europe has recently issued a new publication, "The Budapest Convention on Cybercrime: benefits and impact in practice." [<https://www.coe.int/en/web/cybercrime/-/the-budapest-convention-on-cybercrime-in-operation-new-t-cy-report>] This report includes extended sections on specific Convention-related case histories provided by Parties as well as data about Budapest acceptance around the world and training sessions available to Parties.

2. Creating or adapting international cooperation agencies.

A country's domestic agencies are integral to its capabilities for international cooperation. The international cooperation provisions of Budapest require, or imply the need for, structures to implement its requirements. Central authorities are thus required by Budapest. To implement all the requirements, the central authority or another office must ensure that incoming requests are kept confidential; someone must have the responsibility of preserving electronic data pursuant to another country's requests; someone must understand when a remote transborder search is permissible; and so on.

Currently, both countries apparently accept requests via the ministries of justice but do not have per se central authorities for mutual legal assistance. Offices with Budapest-required responsibilities would therefore need to be created or current offices would need to adapt accordingly.

3. Updating mutual legal assistance practices.

Some of the mutual legal assistance practices used by the offices currently handling requests could be updated. For example, delivering requests via diplomatic channels is not adapted to modern needs for either the sending or the receiving country. Similarly, countries increasingly dispense with a requirement to follow relatively informal requests for assistance with formal requests. Such deliberate channels and formal procedures not only slow mutual assistance, but also tend to keep countries isolated and “out of the conversation” of faster-moving countries. In the era of electronic evidence for all crimes, even physical-world crimes, countries need to be known on the international stage and in international cooperation networks.

4. Evaluating the benefits of joining the 24/7 assistance network.

Which raises the next point: it would be important for Jordan and Lebanon to join Budapest not only for the legal advances that this would bring but also for the international connections that would result.

Article 35 of Budapest establishes a 24-hour-a-day, 7-days-a-week network for receiving requests for assistance. The existence of this network means that requests can be rapidly considered (not necessarily granted, but intelligently considered) even outside of working hours in the receiving country. In addition, the existence of this network means that countries no longer have to struggle to determine whom to contact when they need assistance, especially if they need assistance urgently. Instead of using diplomatic channels and hoping that the request will land in several months on the correct desk, a sending country can expect the 24/7 network to direct requests to the correct authority within the receiving country. It appears that this kind of direction would be a great improvement for both Jordan and Lebanon, since they do not seem to be connected to any of the mechanisms for rapid consideration of requests. Further, this non-connection means that they have not had the chance to make friends within the network. The network is a system; it does not depend on personal relationships. Nevertheless, being known in the network often smooths the way to obtaining assistance.¹

Moreover, becoming a Party to Budapest and participation in the 24/7 network would open doors for investigators, prosecutors and even judges in both countries to appropriate training. The Council of Europe’s cybercrime training arm and the 24/7 network may themselves provide such training. But, in a larger sense, these memberships mean hearing about and being invited to educational opportunities (which are often subsidised).

The 24/7 network may also facilitate potential participation in transnational operations against crime. If six countries are working to infiltrate a child exploitation ring, they may look via the network for collaborators in a seventh/eighth/ninth country. If Jordan or Lebanon is investigating the same ring, it would be unfortunate for them to be unaware of the transnational effort simply because they are not connected to global cyber law enforcement.

¹ In the meantime, Lebanon could consider joining the former “G7” 24/7 network, administered by the US. Jordan could do the same if it is not already a member.

4 Conclusion

For the reasons above, the Council of Europe recommends that Jordan and Lebanon enact and implement the substantive, procedural and international cooperation provisions of the Budapest Convention and become Parties to it.