## "Breakfast meeting" on cybercrime / *Réunion « petit-déjeuner » sur la cybercriminalité*

Thursday / *jeudi*, 21 November / novembre 2024, 8h30 – 9h30, Restaurant Bleu, Palais de l'Europe

### Update on the framework of the Convention on Cybercrime

- The impact so far and continued relevance of the Budapest Convention (ETS 185) and its First Protocol on xenophobia and racism (ETS 189)
- The added value of the Second Protocol on electronic evidence (CETS 224)
- The achievements of the Cybercrime Convention Committee (T-CY)
- The Council of Europe's worldwide capacity building work through its Cybercrime Programme Office (C-PROC)

### Information on the draft "United Nations Convention against Cybercrime"

- Implications for the Budapest Convention ?

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www.coe.int/cybercrime

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## Cybercrime …


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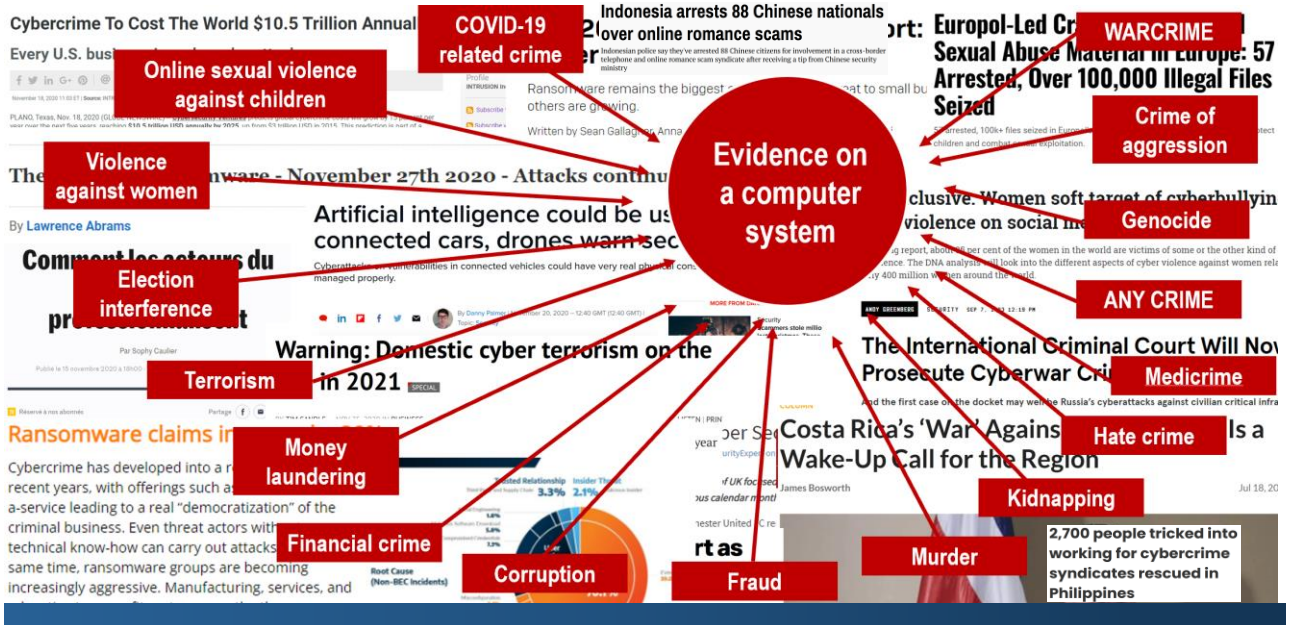
## … and e-evidence re all types of crime

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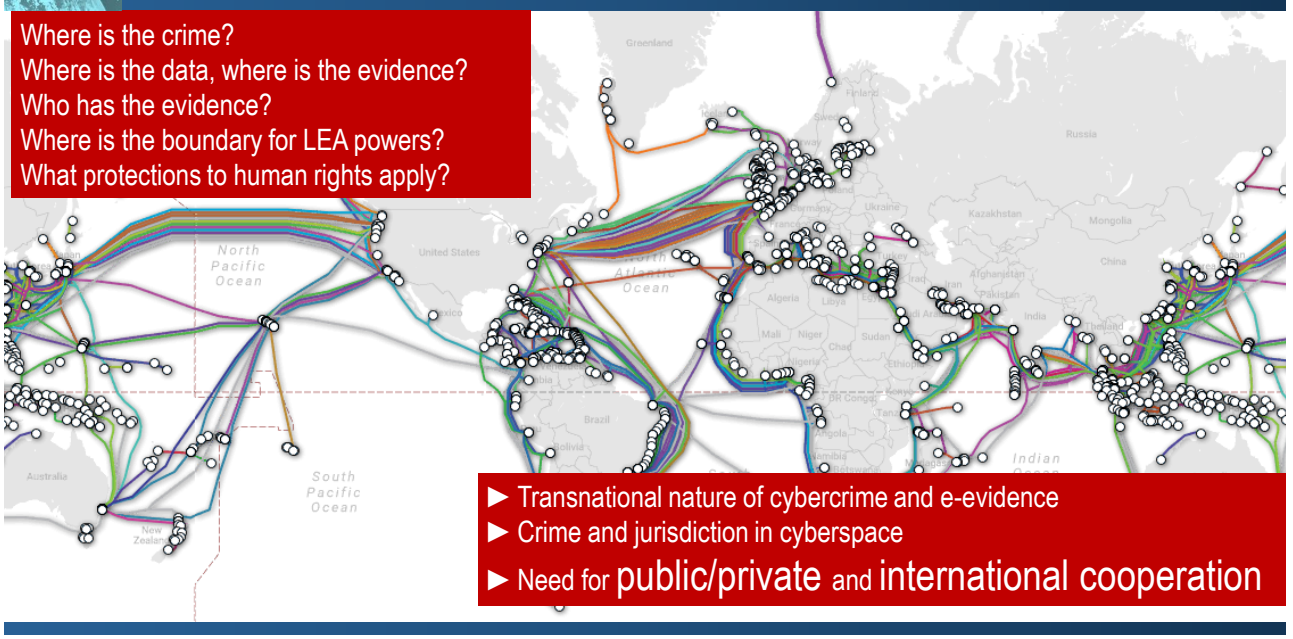
## Cybercrime and e-evidence: the problem of territoriality and jurisdiction

Where is the crime?
Where is the data, where is the evidence?
Who has the evidence?
Where is the boundary for LEA powers?
What protections to human rights apply?




- Transnational nature of cybercrime and e-evidence
- Crime and jurisdiction in cyberspace
- Need for public/private and international cooperation

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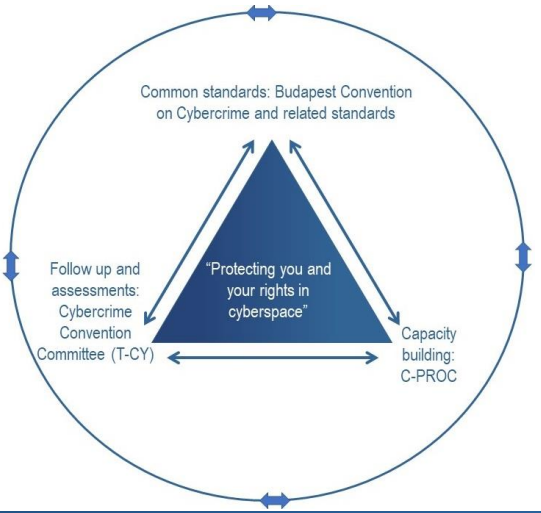
## The framework of the Convention on Cybercrime (Budapest Convention)

- Budapest Convention on Cybercrime (2001)
  1. Specific offences
  2. Procedural powers
  3. International cooperation
- 1st Protocol on Xenophobia and Racism via Computer Systems (2003)
- 2nd Protocol on enhanced cooperation and disclosure of electronic evidence (2022)
- Guidance Notes

By October 2024: **76 Parties and 20 "Observer States"**

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## The first Protocol on Xenophobia and Racism (ETS 189)

**Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems**

Opening for signature 28 January 2003

Entry into force 1 March 2006

Currently 36 Parties + 10 Signatories

Key provisions

- Dissemination of racist and xenophobic material through computer systems (Article 3)
- Racist and xenophobic-motivated threat (Article 4) and insults (Article 5)
- Denial, gross minimisation, approval or justification of genocide or crimes against humanity (Article 6)
- Relation between the Convention and this Protocol (Article 8)

**Need to counter increasing hate speech and hate crime online ► XR Protocol**

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## The first Protocol on Xenophobia and Racism: implementation

| Parties | | Signatories |
|---|---|---|
| Albania | Monaco | Austria |
| Andorra | Morocco | Belgium |
| Armenia | Montenegro | Canada |
| Benin | Netherlands | Estonia |
| Bosnia and Herzegovina | North Macedonia | Italy |
| Croatia | Norway | Liechtenstein |
| Cyprus | Paraguay | Malta |
| Czech Republic | Poland | Switzerland |
| Denmark | Portugal | South Africa |
| Finland | Romania | Türkiye |
| France | San Marino | |
| Germany | Senegal | |
| Greece | Serbia | |
| Iceland | Slovakia | |
| Latvia | Slovenia | |
| Lithuania | Spain | |
| Luxembourg | Sweden | |
| Moldova | Ukraine | |

Status as at 18 Nov 2024
- 36 Parties + 10 Signatories

Octopus Project


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## Second Protocol on electronic evidence (CETS 224)

### Second Protocol on enhanced cooperation and disclosure of e-evidence (2022):

- Scope: criminal investigations and proceedings related to computer systems and data and collection of e-evidence re **any** criminal offence
- **Direct cooperation** with service providers and registrars in other Parties
- Giving effect to production orders from other Parties
- Expedited **cooperation in emergencies**
- Video conferencing
- Joint investigation teams and joint investigations
- **Data protection and other safeguards**

### More effective tools to obtain electronic evidence re any crime

- Crucial for criminal justice practitioners
- Relevance of Budapest Convention

**Priority in 2025!**

**Status**:

- 45 signatories + 2 ratifications (Japan and Serbia)
- 5 ratifications to enter into force
- Slow progress in (most) COE member States

- **More determination re signature and ratification required**
- **EU m/s to implement alongside EU E-evidence Regulation**

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## Cybercrime Convention Committee (T-CY)

**Composition**:
- 76 members (= Parties)
- 20 observers (= signatories and States invited to accede)
- International organisations as observers
- [co-funded by voluntary contributions to capacity building projects]

**Tasks**:
- Assessment of implementation ►4th round: Article 19 on search and seizure of stored computer data
- Guidance Notes ► terrorism, election interference, ransomware, scope of procedural powers, etc.
- Preparation of Second Protocol

**Coming up**:
- Working group on artificial intelligence (mapping study)
- Work on virtual assets
- Guidance Note on Article 26 – Spontaneous information

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## The Convention on Cybercrime: Backed up by capacity building

GLACY-e: Training of Trainers for justice and law enforcement officials

10-12 SEPTEMBER 2024 | BOGOTA, COLOMBIA

A three-day training activity on cybercrime and electronic evide Colombia, between 10-12 September. With the support of GLACY-e, the event was jointly orgar Foreign Affairs, Superior Council of the Judiciary, and the Office of the Attorney General. ...

Philippines showcased a self-developed electronic evidence course for prosecutors and frontline police officers

23 - 26 SEPTEMBER 2024 | PANGASINAN, PHILIPPINES

The Department of Justice (DOJ) and the Philippine National Police (PNP) organised the Electronic Evidence First Responder's Training course from 23 to 26 September, in Pangasinan, Philippines for 30 police officers, 16 prosecutors, and 4 investigative agents of the National Bureau of...

CyberSPEX: Online Workshop on international co-operation tools (Art 9 and 10) provided by the Second Additional Protocol to the Convention on Cybercrime (Budapest Convention)

23 SEPTEMBER 2024 | ONLINE

On 23 of September 2024, the CyberSPEX project, a joint initiative of the European Commission and the Council of Europe, held an online workshop aimed at enriching the knowledge of the representatives of the EU Member States on the tools for enhanced co-operation on cybercrime and electronic...

Underground Economy Conference 2024

2-5 SEPTEMBER | STRASBOURG, FRANCE

From 2 to 5 September 2024, the Council of Europe, alongside the fourth time the Underground Economy Conference at the Palais de l'Europe, in Strasbourg, France. This year's event gathered around 500 experts repres

Panama updates its cybercrime legislation to align with the Convention on Cybercrime

10 OCTOBER 2024 | PANAMA CITY, PANAMA

On 10 October 2024, the National Assembly of Panama approved several provisions on cybercrime and electronic evidence, including for amending the Criminal Code, the Code of Criminal Procedure and Law 11 of 2015 on international legal assistance in criminal matters. The Council of Europe...

Octopus project – CYBERKOP action: Domestic workshop on public-private cooperation on assessing and mitigating security risks and incidents in the 5G era

17 SEPTEMBER 2024 | PRISTINA, KOSOVO

The CYBERKOP Action of the Octopus Project is supporting the National Cyber Security Unit (KOS-CERT) to organise a workshop in Pristina, Kosovo* aimed at strengthening the public-private cooperation in managing 5G security risks and incidents. The workshop brings together 20 representatives from...

GLACY-e & ID4D projects lead a legislative workshop in Nigeria

4-5 SEPTEMBER 2024 | LAGOS, NIGERIA

On 4-5 September, GLACY-e project, a joint initiative of the Eur Europe partnered with ID4D project in facilitating the organisation of a legislative drafting work representatives of the national task force in charge of drafting the...

Eurojust – Council of Europe workshop sparks thriving discussions on spontaneous information sharing

25-26 SEPTEMBER 2024 | THE HAGUE, NETHERLANDS

Eurojust and the Cybercrime Programme Office of the Council of Europe (C-PROC) brought together more than 70 participants from some 40 countries to discuss key aspects related to the spontaneous sharing of information obtained in criminal investigations. The relevance of spontaneous information...

CyberSouth+: Regional training exercise on live data forensics and cryptocurrency for law enforcement agencies

16-19 SEPTEMBER 2024 | ISTANBUL, TÜRKIYE

The joint European Union and Council of Europe project CyberSouth+ organised together with all its partners – Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestine[1] and Tunisia a regional training exercise on live data forensics and cryptocurrency for law enforcement agencies, between...

Guatemala working on national legislation on cybercrime, in view of acceding to the Budapest Convention

GLACY-e: First pool of national trainers set up in Brazil

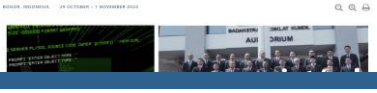
26-27 AUGUST 2024 | ONLINE

19 prosecutors have finalised the Training of Trainers Programme supported by project, a joint initiative of the European Union – Council of Europe , with the last concluded online, between 26-27 August 2024, on training skills – adult training methodology. The aim of the...

The eighth Annual Meeting of the 24/7 Network of Contact Points

On 18 October 2024, the Cybercrime Programme Office of the Council of Europe (C-PROC) organised...

Octopus Project: Judicial Training Programme on cybercrime and e-evidence kick starts in Indonesia



CyberSEE: Judges, Prosecutors and Judicial Trainers from South-East Europe, Türkiye and Kazakhstan attended the Regional workshop on strategies and practices of judicial training on cybercrime and electronic evidence

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## C-PROC (2014 – 2024): 2300+ activities for 130+ countries

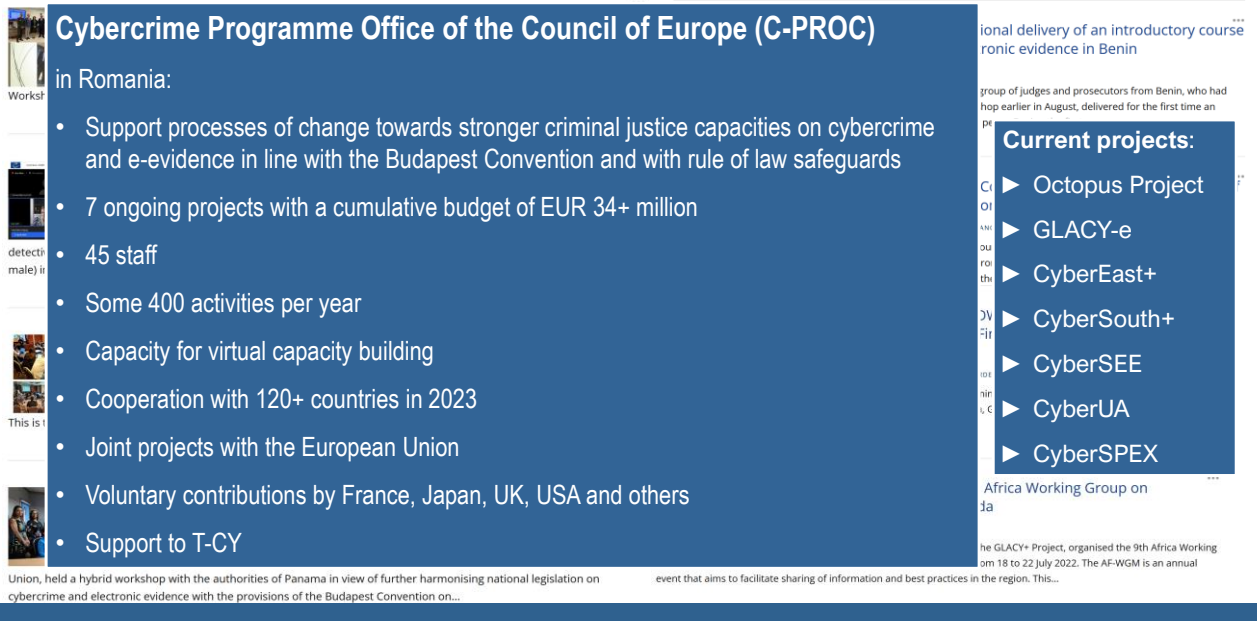
**Cybercrime Programme Office of the Council of Europe (C-PROC)**

in Romania:

- Support processes of change towards stronger criminal justice capacities on cybercrime and e-evidence in line with the Budapest Convention and with rule of law safeguards
- 7 ongoing projects with a cumulative budget of EUR 34+ million
- 45 staff
- Some 400 activities per year
- Capacity for virtual capacity building
- Cooperation with 120+ countries in 2023
- Joint projects with the European Union
- Voluntary contributions by France, Japan, UK, USA and others
- Support to T-CY

**Current projects:**

- Octopus Project
- GLACY-e
- CyberEast+
- CyberSouth+
- CyberSEE
- CyberUA
- CyberSPEX

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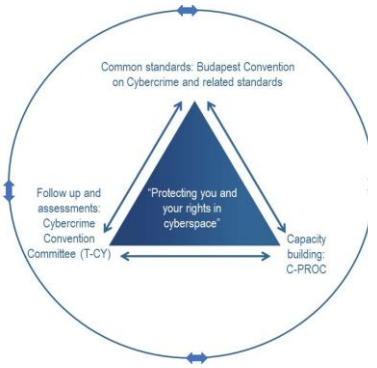
## Framework of Budapest Convention: IMPACT

- Membership in Convention on Cybercrime:
  - By 2013: 53 states were parties (41) or had signed it (2) or been invited to accede (10)
  - By 2024: 96 states were parties (76), or had signed it (2) or been invited to accede (18)
- Legislation:
  - 2013: 70 States with offences in line with Budapest Convention
  - 2023: 130 States
- T-CY:
  - Maintained relevance of the Convention (2nd Protocol, Guidance Notes)
  - Increased quality of implementation (assessments)
- C-PROC
  - Legislation
  - Partnerships, synergies, trusted cooperation
  - Thousands of criminal justice practitioners trained + capacities for training




= Successful investigations, prosecutions and international operations all over the world

= Contribution to human rights and rule of law in cyberspace

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## Draft UN treaty against cybercrime: background

**Background:**

- UNGA initiative by Russia ► Dec 2019: UNGA Resolution 74/247 ► Decision to establish an Ad Hoc Committee (AHC) to elaborate "a comprehensive international convention on countering the use of information and communications technologies for criminal purposes".
- Feb 2022 – Aug 2024: 7+1 formal sessions and numerous informal and intersessional meetings of the AHC
- 8 Aug 2024: Agreement by AHC on the draft text of a UN treaty and a draft resolution for submission to and adoption by UNGA
- 11 Nov 2024: Agreed by 3rd Committee of UNGA

**Next:**

- Adoption by UNGA [December 2024 TBC]
- Opening for signature in [Vietnam in 2025 TBC]

Draft "United Nations convention against cybercrime; strengthening international cooperation for combating certain crimes committed by means of information and communications technology systems and for the sharing of evidence in electronic form of serious crimes"

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## Draft UN treaty: Core concepts adapted from Budapest Convention

Core concepts and measures of the draft treaty

- are drawn from the BC on Cybercrime (2001)
- complemented by provisions adapted from the UN Conventions on Transnational Organised Crime (UNTOC, 2000) and Corruption (UNCAC, 2003)

► **confirms the timeless quality and relevance of the BC**

Example:

| Art. | Budapest Convention | | Draft UN treaty |
|---|---|---|---|
| 2 | Illegal access | 7 | Illegal access |
| 3 | Illegal interception | 8 | Illegal interception |
| 4 | Data interference | 9 | Interference with electronic data |
| 5 | System interference | 10 | Interference with an information and communications technology system |
| 6 | Misuse of devices | 11 | Misuse of devices |
| 7 | Computer-related forgery | 12 | Information and communications technology system-related forgery |
| 8 | Computer-related fraud | 13 | Information and communications technology system-related theft or fraud |
| 9 | Child pornography | 14 | Offences related to online child sexual abuse or child sexual exploitation material |

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## In and not in the draft UN treaty

### **New** in draft UN treaty:

- Solicitation or grooming of children for sexual offences (Article 15)
- Non-consensual dissemination of intimate images (Article 16)
- Adapted from UNTOC and UNCAC: measures on money laundering and crime proceeds

### **NOT** in draft UN treaty:

None of the measures of the Second Protocol to the BC on enhanced cooperation and disclosure of electronic evidence (2022):

- Direct cooperation with service providers and registrars in other Parties (articles 6 and 7)
- Expedited cooperation in emergency situations (articles 9 and 10)

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## Outcome of the UN AHC process

### UN AHC agreement on draft UN treaty:

- Major political success considering history and current international context.
- Largely consistent with BC.
- With minimum safeguards necessary for international cooperation.
- Maximum achievable and agreeable result.
- Will benefit cooperation between and with States that are not Parties to the BC.
- Will take some years until it be in force and operational.
- Protocol negotiations to commence two years after adoption by UNGA.
- Treaty process increased interest in Budapest Convention (more Parties, more requests for accession.

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## Risks/concerns

### Risks/concerns:

- Risk that some States will not respect human rights and rule of law conditions. Conference of States Parties (COSP) unlikely to review compliance.
- Risk of targeting assets of individuals, private sector organisations, media or civil society organisations through combination of provisions on fraud, money laundering, corporate liability, participation and attempt, and crime proceeds.
- Risk of supplementary criminalisation through a protocol (negotiations to commence two years after adoption of the convention as per draft UNGA resolution).

- Concerns raised by governments, civil society and industry stakeholders during the AHC and UNGA processes remain valid.
- Governments to decide on signature and ratification.

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## Implications for BC

### Implications for Convention on Cybercrime (Budapest Convention):

- BC with its Protocols will remain the more relevant framework in the foreseeable future.
- Synergies between both treaties feasible: capacity building, including on safeguards.
- More States will seek accession to the BC (based on experience during AHC process).
- However, a clear commitment to meeting human rights and rule of law conditions will be necessary when governments are seeking accession to the Budapest Convention on Cybercrime.

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# Discussion

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