

Session 4 – Criminal Justice in cyberspace: Solutions

Towards a Protocol to the Budapest Convention

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Challenges for criminal justice

- The scale and quantity of cybercrime, devices, users and victims
- Technical challenges (VPN, anonymisers, encryption, VOIP, NATs etc.)
- Cloud computing, territoriality and jurisdiction
 - Cloud computing: distributed systems ► distributed data ► distributed evidence
 - Unclear where data is stored and/or which legal regime applies
 - 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?
- The challenge of mutual legal assistance
- No data ► no evidence ► no justice ► what rule of law?

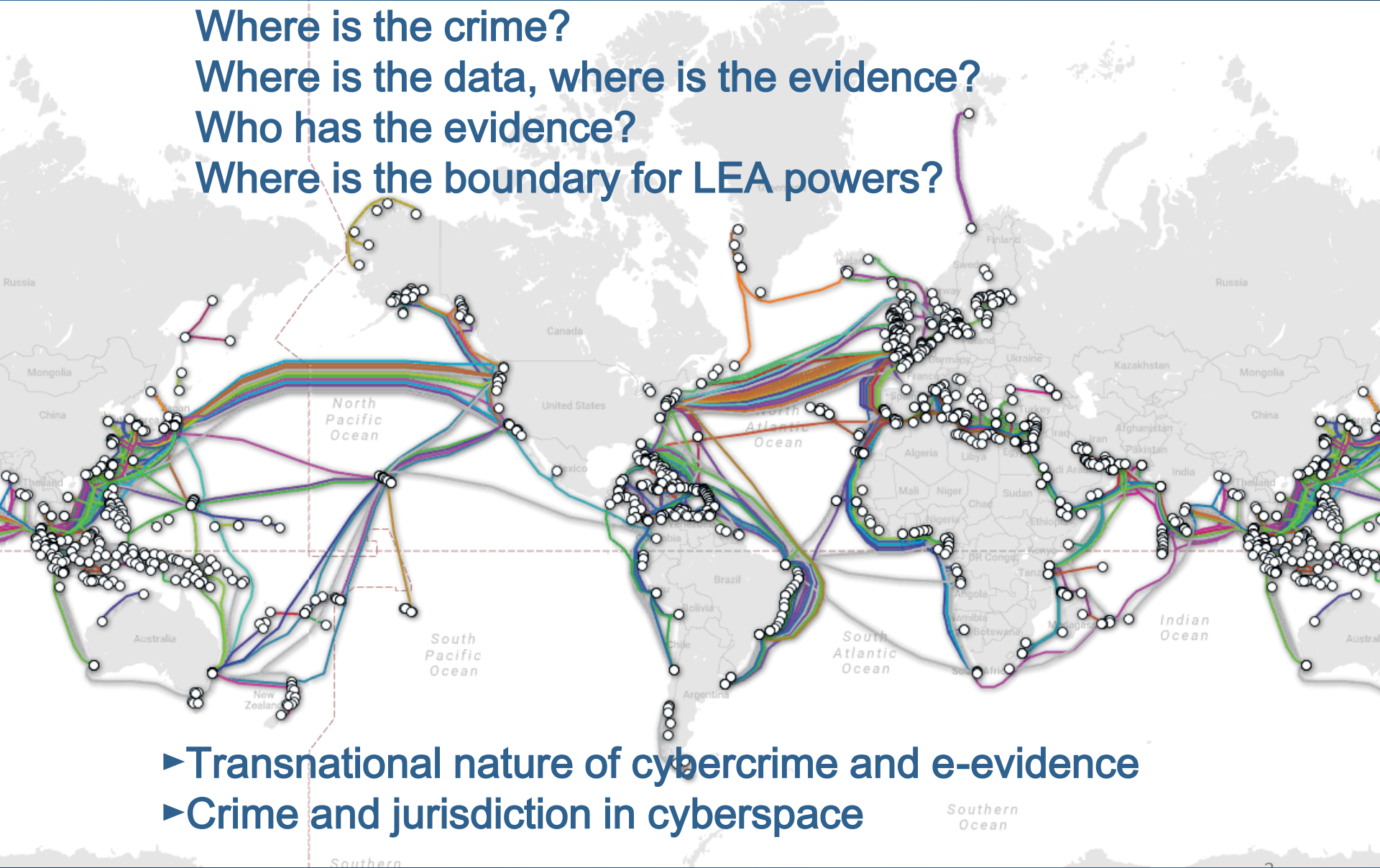
Example: Crime and evidence in the cloud

Where is the crime?

Where is the data, where is the evidence?

Who has the evidence?

Where is the boundary for LEA powers?





Towards a Protocol: Issues to be addressed

- Differentiating subscriber versus traffic versus content data
- Limited effectiveness of MLA
- Loss of location and transborder access jungle
- Provider present or offering a service in the territory of a Party
- Voluntary disclosure by US-providers
- Emergency procedures
- Data protection

Current system of direct requests to providers

	Requests for data directly sent to Apple, Facebook, Google, Microsoft, Twitter and Oath in 2017		
<i>Parties and Observers (70 States)</i>	Received	Disclosure	%
Albania	27	14	53%
Belgium	2 521	2 301	91%
Cabo Verde	40	20	50%
Croatia	196	166	85%
France	29 400	18 466	63%
Germany	35 596	20 172	57%
Mauritius	2	0	0%
Morocco	30	18	59%
Nigeria	7	5	71%
Portugal	3 569	2 394	67%
Senegal	2	0	0%
Turkey	8 618	4 739	55%
United Kingdom	31 954	23 073	72%
Total (excluding USA)	170 680	109 093	64%



Towards a Protocol: Provisions under negotiation

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



Towards a Protocol: Working methods

- **Protocol Drafting Plenary (extension of regular T-CY plenary sessions). E.g.**
 - 2019 Plenaries in July and November

- **Protocol Drafting Group (composed of experts appointed by Parties)**
 - Subgroups working on specific draft provisions between sessions
 - 2019 meetings scheduled for February, March, May, September, October

For discussion:

- **Currently 62 Parties: Solutions need to work and provide benefits to all**
- **Direct cooperation with providers in other Parties:**
 - **Binding orders or voluntary cooperation?**
 - **Data protection requirements: Compliance with a legal obligation – Public interest – Legitimate interest?**
- **Relationship between negotiation of proposed EU Regulation and Directive on e-evidence and Protocol to Budapest Convention**