

中国关于《网络犯罪问题综合研究报告（草案）》 的评论意见

（2016 年 8 月 22 日，北京）

1、中方高度评价联合国网络犯罪政府专家组秘书处——联合国毒品办授权撰写的《网络犯罪问题综合研究报告(草案)》的重要价值。《报告》以对各会员国、国际社会和私营部门进行广泛的调查（包括问卷和答复）为基础，涉及网络犯罪在全球的趋势、特点、危害、当前国际应对的状况和局限等，并提出制定综合性全球文书、国际示范条款、加强对发展中国家的技术援助等应对方案，总体全面系统、客观公允地反映了当前全球应对网络犯罪的现状、问题及各国、国际社会和私营部门对加强预防和打击网络犯罪国际合作的共同呼声，为专家组尽快完成授权并推动联合国框架下打击网络犯罪国际合作的后续进程提供了扎实基础。

2、鉴于联大 65/230、67/189 号决议、联合国犯罪委第 22/7 号决议以及联合国刑事司法大会《多哈宣言》要求专家组尽快完成相关工作，中方建议在 2017 年召开的第 26 届联合国犯罪委员会会议之前筹备和召开新一届联合国网络犯罪政府专家组会议，以便专家组完成其授权，并向联合国犯罪委提出相关工作建议。各国提交的新评论或材料可以作为《报告》的补充，但不应因此重新修订《报告》，否则《报告》将陷入无休止的补充、

修订的程序，专家组亦无法及时有效完成其授权。

3、中方认同《报告》所指出的各国在打击网络犯罪上面临的诸多挑战，特别是：网络犯罪日益明显的跨国性与各国及地区性网络犯罪法律文书的多样性的矛盾；现有多、双边国际合作法律文书及传统合作模式不能适应在确保尊重相关国家主权前提下的网络犯罪跨国侦查、域外数据获取等合作需求；云计算、加密技术等新技术以及网络犯罪形式的不断翻新对执法司法国际合作带来新的法律和技术挑战等。中方认为，面对这些复杂挑战及日益增长的网络犯罪，国际社会更加需要加速推进国际立法，弥补国际合作的法律空白或冲突，促进各国打击网络犯罪法律和实践的协调一致。下一步，联合国犯罪委有必要根据专家组提交的工作建议，就“加强现有并提出新的国家和国际打击网络犯罪的法律和其他对策”探讨进一步行动，更好回应国际社会的共同期待和迫切需求。

4、联合国在制定打击贩毒、恐怖主义以及跨国有组织犯罪等领域的全球性法律文书方面拥有丰富的成功经验，这些经验同样可以也应该适用于打击网络犯罪的国际合作。为此，中方支持联合国网络犯罪专家组的相关工作。中国政府先后于2014年、2015年两次向联合国预防犯罪和刑事司法基金捐款共计40万美元，指定用于《报告》翻译等专家组相关活动。中方愿与各方一道，共同支持和推动专家组尽快顺利完成授权，达成各方期待的成果，为加强在新形势下应对网络犯罪的国际合作奠定基础。

Comments of China on the Draft Comprehensive Study on Cybercrime

(Beijing, 23 August 2016)

1. The Chinese side highly appreciates the important value of the Draft Comprehensive Study on Cybercrime, prepared by the Secretariat of the UN Open-Ended Intergovernmental Expert Group to conduct a comprehensive study of the problem of cybercrime, i.e. the United Nations Office on Drugs and Crime, under the auspices of the Expert Group. The Study, based on thorough researches (including through questionnaires) on various stakeholders, namely member States, the international community and the private sector, not only gives us a whole picture of the global trend, characteristic and harm of cybercrime and the status quo and difficulties of international responses thereto, but also put forward several practical options for strengthening and improving legal and other responses to cybercrime, including development of a comprehensive multilateral instrument or international model provisions on cybercrime, delivery of enhanced technical assistance in developing countries and so on. In overall, the Study successfully captures, in a comprehensive, objective and impartial manner, the current situation and problems of global responses to cybercrime and the common need of States, the international community and the private sector on strengthening of international cooperation in preventing and combating cybercrime, and provides a solid foundation for the Expert Group to effectively fulfill its mandate and for the follow-up UN processes on international cooperation in combating cybercrime.

2. Given the fact that the UN General Assembly Resolutions 65/230 and 67/189, the UN Commission on Crime Prevention and Criminal Justice (CCPCJ) Resolution 22/7 and the Doha Declaration of the 13th UN Crime Congress called upon the Expert Group to complete its work and to present the outcome of the Study to the CCPCJ in due course, the Chinese side suggests that the Expert Group hold another Session prior to the 26th session of CCPCJ in 2017, with the aim of fulfilling its mandate and submitting relevant recommendations to the CCPCJ. The Chinese side is of the view that new comments or other documents submitted by member States and other stakeholders could be regarded as a supplement to the Study, but should not lead to another round revision of the Study, otherwise the Study shall fall into endless supplementation and modification thus preventing the Expert Group

from finishing its mandate.

3. The Chinese side recognizes the challenges facing States in combating cybercrime as pointed out by the report, especially the following: 1. The distinct trans-boundary nature of cybercrime and the divergences of domestic and regional legal instruments on fighting cybercrime; 2. Existing bilateral and multilateral legal instruments and traditional cooperation model can not fully meet the increasing need of transnational cybercrime investigation and extra-territorial access of data, etc., while ensuring the respect of sovereignty of relevant States; 3. New technologies such as cloud computing and encryption and the ever-transformation of cybercrime has brought new legal and technical challenges. With these complex challenges and ever-increasing cybercrime, it is imperative for the international community to accelerate relevant international cooperation and coordination tackling the legal vacuum or conflicts on international cooperation in combating cybercrime, so as to enhance the coordination and consistency of States legislations and practice. It is also imperative for the CCPCJ, based on recommendations of the Expert Group, to explore options to “strengthen existing and to propose new national and international legal or other responses to cybercrime”, so as to provide a concrete response to the common expectation of the international community.

4. The UN has earned abundant successful experience in formulation of global legal instruments on combating drug trafficking, terrorism, and transnational organized crime, etc. The above experience can and shall be applicable to international cooperation in combating cybercrime. Therefore, the Chinese side supports the work of the Expert Group in this regard. The Chinese Government has donated in total 400 thousand dollars in 2014 and 2015 consecutively to the UN foundation on Crime Prevention and Criminal Justice, designated for the translation of the Study and other work of the Expert Group. The Chinese side stands ready to work with all parties in supporting and promoting the Expert Group for its early accomplishment of mandate and for a consensus outcome, so as to lay a sound foundation for strengthening international cooperation against cybercrime in new era.