

Comments by the Government of Japan
on the Draft of Comprehensive Study on Cybercrime

August 31, 2016

First of all, Japan would like to extend its appreciation to the UNODC for its extensive work of the information gathering and analysis to formulate this Draft Study. Facts found in this Draft Study, Japan believes, would serve good basis for future discussions by member states.

However, Japan strongly believes it should be stressed that the key findings, which contain judgmental elements, options, key results and conclusions of the Draft Study is out of the scope to the Draft Study mandated by the open-ended intergovernmental expert group. In an intergovernmental process, interpretation of facts and inputs received from member states and drawing conclusions is the role of the group. In this regard, Japan is of the view that the key findings, options and conclusions that entail policy recommendation should be removed from the Draft Study and not serve basis for any future discussions in the group.

Moreover, even from the substantive point of view, Japan believes the key findings, options and conclusions should not serve basis for the discussion. Jumps in logic and lack of supporting facts that lead the key findings, options and conclusion are identified. Here we would like to demonstrate some examples, although not exhaustive.

The Draft Study asserts that divergence in the extent of procedural powers and international cooperation provisions may lead to the emergence of country cooperation 'clusters' that are not always well suited to the global nature of cybercrime. Then, the Draft Study notes that membership in a multilateral cybercrime instrument results in increased sufficiency of national criminal law. For instance, in "3.4 Implementing multilateral instruments at the national level" in Chapter 3, the Draft Study notes that many countries answered to its questionnaire that they had positive experience in incorporating provisions from the Council of Europe Convention on Cybercrime into national law (p.74) and clarifies that it has been the most widely used instruments for the development of cybercrime legislations (p.75). However, the Draft Study fails to illustrate any significant gap in national legislation that cannot be filled by the accession of a regional instrument but by a multilateral instrument. No convincing value a new

global instrument could provide for international cooperation that is insufficient in the existing mechanism. In short, a rationale of proposing new national and international legal or other responses to cybercrime is unclear. Japan is concerned that such proposal may incur a risk of additional fragmentation at the international level and may have negative effect on cybercrime policies worldwide.

Also, the Draft Study concludes there is no global mechanism to harmonize the rules of admissibility of electronic evidence. However, admissibility of electronic evidence in courts is a legal question determined by respective national legislation or jurisprudence and not a matter governed by a global mechanism.

To conclude, Japan strongly believes that the Draft Study should be revised based on the abovementioned comments in order to make it productive and beneficial to the development of countermeasures against cybercrime.

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