



14<sup>th</sup> meeting of the INTOSAI Sanding Committee on IT Audit  
Bhutan, 27 – 29 April 2005

**Agenda item 3d**

**Scoping paper possible project Cross-country systems**

*13 April 2005*

**1 Introduction**

During the 13<sup>th</sup> ISCITA meeting held in Moscow in 2004, we presented our main ideas about a possible project aimed at audits of information systems that encompass a number of countries. We argued that the functionality of information systems are more important than the systems themselves. We proposed to shift the attention from information systems towards information flows. We also put forward the practical proposal of finding a feasible starting point in information flows which mandatory under international treaties. The meeting decided that we should throw more light on the intended audit object by producing a (this) scoping paper.

In this paper we borrow from exploratory work that we have done in the context of the EUROSAI IT Working Group. We now bring the issue at the global level to fit the purpose of ISCITA, by focussing on United Nations treaties. In the EUROSAI exercise we considered not only treaties that regulate certain flows of information – the primary angle during the ISCITA meeting in Moscow – but also treaties that regulate certain IT aspects. We do not wish to withhold the ISCITA membership this wider view, and both angles are covered here.

**2 A first analysis of the area**

*2.1 Two Categories of treaties*

We see two main categories of treaties that could be of interest to ISCITA:

- (1) treaties addressing IT-issues;
- (2) treaties, addressing policy issues with implications for information systems and/or information flows.

*2.2 Example of treaty addressing IT-issues*



An example of a treaty that addresses an IT issue is the 'UNCITRAL<sup>1</sup> Model Law on Electronic Commerce with guide to enactment' (see Appendix 2). The Indian SAI carried out a survey on the national implementation of the model law last year. The reason for the model law lies in the observation that modern means of communication for the conduct of international trade transactions (electronic commerce) have been increasing rapidly and are expected to develop further. The purpose of the Model Law is to offer national legislators a set of internationally acceptable rules as to how a number legal obstacles to the development of e-commerce may be removed, and how a more secure legal environment may be created.

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The audit questions, as defined by the Indian SAI are summarized in Appendix 2. We might consider choosing a selection of these audit questions and analyze in more depth what progress our governments have made implementing the model law and how the implementation can be advanced should we be discontented with its current pace.

### 2.3 *Example of treaty addressing a policy issue with implications for automated processing and/or information flows.*

For an example in this category we can think of the United Nations 'Convention against Transnational Organized Crime' (see Appendix 3).

The convention addresses the negative economic and social effects of organized criminal activities. This issue is linked with combating terrorism, because of the growing links between transnational organized crime and terrorist crimes.

Consequently, the relevance of this subject to our societies has grown considerably over the past few years.

The purpose of this treaty is to promote cooperation to prevent and combat transnational organized crime more effectively.

Some relevant audit questions may be whether the committed countries have established (and act accordingly) procedures for cooperation on information exchange and special investigative procedures, such as electronic surveillance, whether adequate registers have been created, and whether such sensitive are sufficiently secured from unauthorized access.

### 2.4 *Selection criteria for choosing a treaty*

The treaty should:

- (1) offer a good starting point for cooperation between ISCITA members, i.e. the treaty should be undersigned by a substantial number of ISCITA member countries;
- (2) address, be it explicitly or implicitly, IT related issues that affect interests of individuals or has substantial financial consequences.

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<sup>1</sup> UNCITRAL: United Nations Commission on International Trade Law.



## 2.5 *Audit objectives*

Audits of treaties may be carried out with a view to one or more of the following objectives:

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- (a) provide assurance about compliance with international obligations;
- (b) provide assurance about the quality of processes, information systems and about security levels, involved in the implementation of the treaty;
- (c) provide assurance about the quality and security of information flows between countries and about the reliability of any necessary transformations from one national format to another;
- (d) build a catalogue of 'lessons learned' and/or a set of 'best audit practices'.

## **3 What SAIs can do**

We believe that SAIs have a role to play regarding treaties on two levels. On the national level, if their mandate implies so, they should provide assurance about their government's compliance with the treaty in question. On a trans-national level they can play a role in providing assurance to governments, on a mutual basis, that they can rely on each other's information systems.

## **4 Possible benefits of cooperation**

There are various options for cooperation, ranging from rather loose forms of cooperation, for instance developing a common audit approach, to tighter ones, such as concurrent, coordinated or joint audits (see Appendix 1 for definitions).

Whatever the tightness of cooperation, there is mutual benefit in cooperation in this area. Some sample benefits are:

- learning from each other;
- joining forces;
- producing added value by assuring a sufficient level of comparability between audits of various SAIs and overall insight into compliance by all undersigning countries.

## **5 Possible obstacles**

- SAI mandates: SAIs differ in the extent to which they have authority in the area of compliance audit.
- Concerted audit actions by a number of SAIs may present the participating SAIs with additional costs, notably costs of travelling and accommodation and the cost of staff time for coordination activities.
- SAIs set their own priorities. Also, even if different SAIs should wish to pay attention to the same issues, their audit planning will probably diverge.



These obstacles may hinder concerted cooperation between SAIs. They will be especially true should we aspire close forms of cooperation. Looser forms of cooperation may therefore be desirable.

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## **6 Closing remarks**

We see the audit of treaties as a suitable area for cooperation between ISCITA members. This does not necessarily mean that we plead for concerted action in actually auditing the area right away. We are aware that such a 'big bang' approach might overstretch our possibilities for cooperation, because of differences both in mandates as in audit priorities, while also costs could be prohibitive. Rather, we would opt for a stepwise approach, starting by exploring the area in more depth, after which we may work out a suitable audit approach, ending with one common audit framework, which is suitable for audits, whether it be individual, concurrent, coordinated or joint ones.

We invite the members to give their views on the following questions:

- (1) Do the main ideas as presented here appeal to them?
- (2) If so, which of the two categories of treaties are the most promising?
- (3) Are there any IT issues or policy areas that we could agree on to be the most relevant in the context of this project (see overview in Appendix 4)?



## **Appendix 1: Concurrent, Joint and co-ordinated audits defined**

(Source: 'How SAIs may co-operate on the audit of international environmental accords'. INTOSAI Working Group on Environmental Auditing, 1998.)

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### *Concurrent audits*

Concurrent audit is defined as an audit conducted more or less simultaneously by two or more SAIs, but with a separate audit team from each SAI reporting only to its own legislature or its own government and on only the observations and/or conclusions pertaining to its own country.

### *Joint audits*

Joint audit is an audit conducted by one audit team composed of auditors from two or more SAIs, who prepare a single, joint audit report for publishing in all participating countries.

### *Co-ordinated audits*

Co-ordinated audit is either a joint audit with separate reports (as outlined for concurrent audits) or a concurrent audit with a single, joint report in addition to separate national reports.



## **Appendix 2: Electronic Commerce**

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The 'UNCITRAL Model Law on Electronic Commerce' was adopted by the United Nations General Assembly 16 on December 1996. The acronym UNCITRAL stands for 'United Nations Commission on International Trade Law'. The Assembly decided to recommend that all member states give favourable consideration to the Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information.

### **Objectives**

1. The general purpose of the Model Law is to offer national legislators a set of internationally acceptable rules as to how a number of such legal obstacles may be removed, and how a more secure legal environment may be created for what has become known as 'electronic commerce'. The principles expressed in the Model Law are also intended to be of use to individual users of electronic commerce in the drafting of some of the contractual solutions that might be needed to overcome the legal obstacles to the increased use of electronic commerce.
2. The model law also aims to remedy inadequate or outdated legislation in a number of countries. For instance in cases where existing legislation imposes or implies restrictions on the use of modern means of communication, for example by prescribing the use of 'written', 'signed' or 'original' documents.
4. Besides this, the Model Law may help remove obstacles caused by inadequate legislation at the national level, a significant amount of which is linked to the use of modern communication techniques. Disparities among, and uncertainty about, national legal regimes governing the use of such communication techniques may contribute to limiting the extent to which businesses may access international markets.
5. Furthermore, at an international level, the Model Law may be useful in certain cases as a tool for interpreting existing international conventions and other international instruments that create legal obstacles to the use of electronic commerce, for example by prescribing that certain documents or contractual clauses be made in written form.
6. The objectives of the Model Law, which include enabling or facilitating the use of electronic commerce and providing equal treatment to users of paper-based documentation and to users of computer-based information, are essential for fostering economy and efficiency in international trade. By incorporating the procedures prescribed in the Model Law in its national legislation for those situations where parties opt to use electronic means of communication, an enacting member state would create a media-neutral environment.

### **Summary of content**

The Model Law is based on the recognition that legal requirements prescribing the use of traditional paper-based documentation constitute the main obstacle to the



development of modern means of communication. In the preparation of the Model Law, consideration was given to the possibility of dealing with impediments to the use of electronic commerce posed by such requirements in national laws by way of an extension of the scope of such notions as 'writing', 'signature' and 'original', with a view to encompassing computer-based techniques. It was observed that the Model Law should permit member states to adapt their domestic legislation to developments in communications technology applicable to trade law without necessitating the wholesale removal of the paper-based requirements themselves or disturbing the legal concepts and approaches underlying those requirements. At the same time, it was said that the electronic fulfilment of writing requirements might in some cases necessitate the development of new rules. This was due to one of many distinctions between electronic messages and paper-based documents, namely, that the latter were readable by the human eye, while the former were not so readable unless reduced to paper or displayed on a screen. 7/11

The Model Law thus relies on a new approach, sometimes referred to as the 'functional equivalent approach', which is based on an analysis of the purposes and functions of the traditional paper-based requirements with a view to determining how those purposes or functions could be fulfilled through electronic-commerce techniques. For example, among the functions served by a paper document are the following: to provide that a document would be legible by all; to provide that a document would remain unaltered over time; to allow for the reproduction of a document so that each party would hold a copy of the same data; to allow for the authentication of data by means of a signature; and to provide that a document would be in a form acceptable to public authorities and courts. It should be noted that in respect of all of the above-mentioned functions of paper, electronic records can provide the same level of security as paper and, in most cases, a much higher degree of reliability and speed, especially with respect to the identification of the source and content of the data, provided that a number of technical and legal requirements are met. However, the adoption of the functional-equivalent approach should not result in imposing on users of electronic commerce more stringent standards of security (and the related costs) than in a paper-based environment.

### **Audit questions**

Audit questions may be derived from the questions in the survey the Indian SAI has carried out, which are summarized below.

- Have all sections of the Model Law been translated into national legislation?
- What is the prescribed mode of authentication?
- What kind of electronic transactions using Digital Certificate is allowed (with government only / all with exceptions)?



- Is there a clause for recognition/licensing of Certifying Authorities for issue of Digital Certificates?
- Are foreign Certifying Authorities recognized?
- Is the liability of the Certifying Authority defined?
- Is the level of regulation of Certifying Authority high, intermediate, low or Non Existent?
- Does the legislation provide for Government or its agency to intercept electronic communication/enforce decryption of encrypted communication?
- Has the cost of obtaining Digital Certificate by a subscriber from a Certifying Authority been fixed?
- Have provisions been made to limit the liability of the network service provider for third party information or data made available by him?
- Has a classification of Information Systems been defined? (e.g. Open/Semi Open, Restricted, Confidential, Secret etc.)
- Does the legislation cover information security management standards specification and compliance verification?
- Is there a separate authority to deal with offences under the IT Bill?
- What categories of Cyber crime are explicitly covered?  
(Fraud/Forgery/Computer Sabotage/Unauthorised Access to Computer Services or Systems/Unauthorised Copying of Computer Programs/Cyber Stalking.
- Does the legislation apply to offences committed outside the country?
- Does the legislation provide for limited civil liabilities?
- Is publication of information which is obscene in nature explicitly covered and declared as an offence?
- Are copyright and related offences which involve reproduction and distribution by means of a computer system defined as criminal offences?
- Are criminal offences relating to information systems explicitly enumerated?
- Does the legislation give special powers to the government for dealing with Cyber crimes (e.g. confiscation, search etc.)?



### **Appendix 3: Transnational Organized Crime**

The Convention against Transnational Organized Crime was adopted by United Nations resolution A/RES/55/25 on 15 November 2000. 147 countries have signed the convention. It came into force on 29 September 2003.

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#### **Objective**

The purpose of the convention is:

1. To promote cooperation between member states to prevent and combat transnational organized crime more effectively.
2. To provide the member states with some advice on how to deal with the legislative and policy questions involved.
3. To provide greater standardisation or coordination of national policies and to develop an efficient way to control transnational crime.

#### **Summary of Content**

##### *Preamble*

As the preamble sets out, the globalization of economic systems and the developments in information and communications technologies have created enormous opportunities for human communication and economic development, but they are also the source of a significant new chances for organized crime.

The Convention specifies four specific crimes: participation in organised criminal groups; money laundering; corruption; obstruction of justice. These crimes are commonly committed in transnational organised crime activities. By mutual legal assistance and exchange of evidence member states will help one another to combat transnational organized crime.

##### *International Cooperation*

The basis for international cooperation is similar to traditional conditions in regional or bilateral agreements. However, the large number of countries that are willing to ratify the convention makes legal assistance much more widely available. The aim is to set out a minimal framework and to encourage member states to go beyond it.

The Convention provides the general basis for:

1. Conducting joint investigations (article 19);
2. Co-operation in special investigative procedures, such as electronic surveillance (article 20)
3. General law-enforcement co-operation (article 27).

##### *Protocols*



The Convention against Transnational Organized Crime is supplemented by a series of protocols targeting specific types of crime:

- The '*Protocol on Smuggling of Migrants*'.
- The '*Protocol on Trafficking in Persons*'.
- The '*Firearms Protocol*'.

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### **Obligations regarding Information**

The convention refers to information in the following ways:

- Providing mutual legal assistance by information, evidentiary items and expert evaluations.
- Providing originals or certified copies of relevant documents (including government, bank, financial, corporate or business records).
- Taking and transmitting evidence by a 'video conference', for instance when hearing as a witness an individual in another Party's territory.
- Cooperating in special investigative procedures, such as electronic surveillance.
- Keeping witnesses and testimonies safe by using communications technology or other methods.
- Register criminals and crimes.
- Promoting training and technical assistance.
- Keeping records that support a policy of reducing opportunities for 'money laundering'.

### **Audit questions**

Some relevant questions would be the following:

1. Do the authorities concerned cooperate sufficiently with similar authorities established by other member states to the convention as regards:
  - a. exchange of information?
  - b. special investigative procedures, such as electronic surveillance?
2. Are effective procedures in place for:
  - a. providing originals or certified copies of documents, such as government, bank, financial, corporate, or business records?
  - b. the protection of witnesses and testimonies?
3. Have effective facilities and arrangements been established with a view to hearing witnesses who reside in the territory of another member state?
4. Have adequately secured registers of criminals and crimes been established?
5. Have adequate registers been established with a view of reducing opportunities for 'money laundering'?



#### Appendix 4 Overview of policy areas of United Nations Treaties

CHAPTER I	CHARTER OF THE UNITED NATIONS AND STATUTE OF THE INTERNATIONAL COURT OF JUSTICE
CHAPTER II	PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES
CHAPTER III	PRIVILEGES AND IMMUNITIES, DIPLOMATIC AND CONSULAR RELATIONS, ETC.
CHAPTER IV	HUMAN RIGHTS
CHAPTER V	REFUGEES AND STATELESS PERSONS
CHAPTER VI	NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
CHAPTER VII	TRAFFIC IN PERSONS
CHAPTER VIII	OBSCENE PUBLICATIONS
CHAPTER IX	HEALTH
CHAPTER X	INTERNATIONAL TRADE AND DEVELOPMENT
CHAPTER XI	TRANSPORT AND COMMUNICATIONS
CHAPTER XII	NAVIGATION
CHAPTER XIII	ECONOMIC STATISTICS
CHAPTER XIV	EDUCATIONAL AND CULTURAL MATTERS
CHAPTER XV	DECLARATION OF DEATH OF MISSING PERSONS
CHAPTER XVI	STATUS OF WOMEN
CHAPTER XVII	FREEDOM OF INFORMATION
CHAPTER XVIII	PENAL MATTERS
CHAPTER XIX	COMMODITIES
CHAPTER XX	MAINTENANCE OBLIGATIONS
CHAPTER XXI	LAW OF THE SEA
CHAPTER XXII	COMMERCIAL ARBITRATION
CHAPTER XXIII	LAW OF TREATIES
CHAPTER XXIV	OUTER SPACE
CHAPTER XXV	TELECOMMUNICATIONS
CHAPTER XXVI	DISARMAMENT
CHAPTER XXVII	ENVIRONMENT
CHAPTER XXVIII	FISCAL MATTERS
CHAPTER XXIX	MISCELLANEOUS