



**UNITED
NATIONS**

INTOSAI

**SYMPOSIUM
ON
THE INDEPENDENCE
OF
SUPREME AUDIT INSTITUTIONS**

Report on the 17th UN/INTOSAI Seminar
on Government Auditing

Vienna
19 - 23 April 2004

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Division of Public Economics and Public Administration,
Department of Economic and Social Affairs (DESA)

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I. INTRODUCTION

The interregional seminar “Symposium on SAI Independence” which was jointly organized by the United Nations (UN) and the International Organization of Supreme Audit Institutions (INTOSAI) was held from 19 to 23 April 2004 in Vienna, Austria. This event was the 17th interregional seminar organized by the UN Division for Public Administration and Development Management, Department of Economic and Social Affairs (DESA) in conjunction with INTOSAI (17th UN/INTOSAI Seminar).

In the past, DESA had initiated several training programmes, designed to support developing countries in strengthening their government audit systems. As part of these training activities, the United Nations, together with INTOSAI, organized international training programmes on government audit at biennial intervals, as of 2002 at annual intervals. In the past 33 years, sixteen such events took place, dealing with the following topics:

1. General principles, methods and goals of government audit and related institutional problems (1971)
2. Techniques and methods used by Supreme Audit Institutions with a view to improving financial and performance auditing (1973)
3. Public budgeting and accounting, the position of Supreme Audit Institutions in the modern state, audit of public enterprises (1976)
4. Principles of audit, organisation audit, performance audit and state audit of public enterprises (1979)
5. Concepts of audit, audit of tax receipts, audit of government financial institutions for development and audit of performance in public enterprises (1981)
6. Nature and scope of internal management control systems; Role of internal audit in internal management control systems, Internal management control systems in developing countries (1984)
7. The audit of major development projects (1986)
8. Application of audit standards in the public sector (1988)
9. Accounting and auditing of foreign aid programmes and EDP audit (1990)
10. EDP Auditing - Sharing experiences, opportunities and challenges (1992)
11. The role of SAIs in the restructuring of the public sector (1994)
12. The role of Supreme Audit Institutions in fighting corruption and mismanagement (1996)
13. The role of Supreme Audit Institutions in auditing public works (1998)
14. The audit of public-health care systems by SAIs (2000)
15. The role of SAIs in agricultural auditing (2002)
16. The role of SAI in the audit of funds in the field of education (2003).

As stated in the outset, this seminar was dedicated to the theme of SAI independence.

A total of 60 delegates attended the event, among them members of Supreme Audit Institutions from developing countries. Speakers came from the United Nations, the World Bank and the Supreme Audit Institutions of Canada, Ghana, Morocco, New Zealand, Uruguay and Austria. The head of the Supreme Audit Institution of Canada who also chairs the INTOSAI Subcommittee on SAI Independence, acted as technical chair (for a list of participants please refer to the Attachment).

The seminar was inaugurated on 19 April 2004 in a plenary and ended on 23 April 2004 after a total of twelve plenary sessions, three working group meetings and one excursion.

During the 17th UN/INTOSAI seminar, the following topics were the subject of lively and in-depth discussions:

1. legal framework
2. scope of the audit mandate
3. free access to information
4. right and duty of submitting reports
5. provision of sufficient resources.

In addition, the Supreme Audit Institutions of Australia, Bahrain, Botswana, Brazil, Cambodia, Cameroon, Chad, the Czech Republic, Ecuador, the Gambia, Greece, Nicaragua, Portugal, Rwanda, Saudi Arabia, Trinidad and Tobago, and Venezuela, reported on the situation of independence in their countries. In their reports, the seminar participants provided valuable insights into the organisation of their Supreme Audit Institutions and shared information on future development trends and existing potentials for improvement in respect of the independence of their SAIs.

The discussions following the main presentations provided the participants with an opportunity for a lively exchange of ideas and an identification of key aspects of SAI independence. Several working groups then offered the participants a setting for exchanging their experiences in a smaller forum, addressing the issues which had been brought to their attention during the discussions at greater detail, and arriving at conclusions and recommendations.

The seminar participants considered the following issues as particularly relevant:

- presenting the different forms in which SAI independence is enshrined in the law,
- developing an ideal-type model of SAI independence, always aware of the fact that no SAI fully meets these requirements;
- understanding that the achievement of a higher degree of independence is a development process which requires time;
- the interaction between the legislative and the executive powers with a view to ensuring sufficient funding for the SAI, and
- the significant role of the SAI as the body auditing government financial management.

Special attention was drawn to the fact that SAIs need sufficient funding as well as audit staff with both audit-related methodological skills and expertise in the area to be audited to be able to comply with their statutory audit mandate in the best possible manner.

II. INTRODUCTORY PRESENTATIONS - SUMMARY

II.1 General Secretariat INTOSAI

Dr. Franz Fiedler, the Secretary General of INTOSAI and President of the Austrian Court of Audit, welcomed the participants. He underlined the importance of cooperation between the United Nations and INTOSAI as manifested in the longstanding, successful tradition of interregional seminars and expert meetings on government audit.

Ever since its foundation in the year 1953, INTOSAI has dealt with the issue of SAI independence. There was hardly an INTOSAI event, be it a seminar, a Governing Board meeting, or a congress, which did not in some way or other concern itself with independence, either directly or indirectly. All members of INTOSAI were convinced that audits that lead to an objective outcome could only be conducted if the SAI enjoys genuine independence.

The principles of independence have been recorded in the Lima Declaration of Guidelines on Auditing Precepts (Lima Declaration) at INCOSAI IX in 1977. Deriving its name from the venue it was adopted, the Lima Declaration lays down what is to be understood by the concept of "independence". These principles have lost nothing of their validity up to the present day.

Although all INTOSAI members recognize the principles of the Lima Declaration, not all of them have attained full independence. The path to genuine independence is difficult and long-drawn out. INTOSAI is trying to support all members on their way towards greater independence.

Against this backdrop, a Task Force on SAI Independence was set up in 1998 chaired by the SAI of Canada, and transformed in 2001 into a sub-committee that was to deal with strengthening SAI independence.

Its objective is twofold; e.g.

- establish independence for SAIs to the extent it is not yet enshrined in the laws (constitutions) of their states, and
- enforce the actual independence of SAIs in countries where SAI independence is enshrined in the laws (constitutions), but denied in practical terms.

The INTOSAI General Secretariat is informed on a regular basis on violations of SAI independence, e.g. on

- the dissolution of SAIs if they submit reports that are not to the liking of their governments;
- the dismissal of SAI heads by the governments after critical reports (sometimes legitimated formally by legislation that abruptly shortens the term of office of the SAI head);
- government preventing the publication of SAI reports;
- government barring SAI members from attending international events;
- government interfering with the staffing of SAIs and their careers;
- threats or violence exercised against auditors without sanctions;
- cuts in SAI funding to curtail their scope of action.

SAI independence is generally impaired by governments; often, however, Parliaments equally feel tempted to infringe on SAI independence. SAIs should be independent both of the government and of Parliament.

The principles of SAI independence as laid down in sections 5 to 7 of the Lima Declaration can be summarized as follows:

1. Organizational independence is to ensure
 - independence of SAI members (acting free from instructions; no possibility of wilful dismissal), and
 - supreme authority of the SAI head in all staff-related matters, as well as
 - non-interference on auditors by external sources.
2. Functional independence implies that
 - the audit powers of the SAI are laid down in the constitution, at least in general terms;
 - the SAI is free to set up its own audit programme, and
 - the SAI is free in drafting reports intended for publication.

3. Financial independence implies that

- SAIs can directly apply for the required funding to the body adopting the state budget (Parliament), as necessary, and
- SAIs can freely dispose of the appropriated budget during the financial year.

The Lima Declaration makes exacting demands on the legal framework governing SAI independence. Rare are those countries that meet these requirements to the full. Even in states with a highly developed democracy and well-functioning SAIs, Parliament may make binding proposals for the SAIs audit programme.

In the past 15 years, the INTOSAI General Secretariat could observe that progressing democratisation of a country regularly went hand in hand with the attainment of a higher degree of independence of government audit.

Recent years have shown that not only INTOSAI has an interest in strengthening SAI independence, but that international donor organisations granting funds for countries (particularly developing countries) equally show mounting interest in having functioning SAIs in place in the recipient countries, which examine in an unbiased manner without interference from the government whether aid funds are being spent as earmarked. This presupposes the independence of SAIs in developing countries. International donor organisations such as the World Bank therefore must be commended for supporting the efforts of INTOSAI to help SAIs worldwide attaining or securing independence. A convergence of interests between INTOSAI and international donor institutions is generated, backed by the United Nations which equally promote the cause of SAI independence, as manifested once again by the organization of a joint seminar.

Being a fundamental prerequisite of effective government audit, independence will always remain a concern for INTOSAI. Independence is a sine qua non for government audit by SAIs that is genuinely free from outside influence and objective audit findings, hence an effective control function.

Dr. Fiedler was hopeful that, apart from shedding further light on the issue of independence, the UN/INTOSAI would provide for an open exchange of experience on independence deficits between the participating SAIs, and lead to proposals on how to ensure or better safeguard SAI independence in all states. Dr Fiedler rightly remarked that the seminar would not be able to deal with all aspects of independence exhaustively. Its outcome however was to constitute a major input for the further work of the Subcommittee on SAI Independence and will be followed up on at future Governing Board meetings and congresses.

Dr. Fiedler expressed his belief that the seminar would constitute a major step forward towards strengthening SAI independence. The country papers showed that all participants together could contribute to improving the situation of SAIs for the benefit of all.

In conclusion, Dr. Fiedler stressed that independence was not an end for itself, but should lead to the best possible control of the use of public funds in the interest of taxpayers. He thanked the United Nations for the good cooperation on the seminar and those SAIs which had delegated speakers, calling on all seminar participants to contribute to the success of the meeting and hence to better government financial managements in their countries with their professional know-how and experience.

II.2 INTOSAI Governing Board

Mr. Jeon Yun-Churl, the head of the SAI of Korea, welcomed the seminar participants in his capacity as chairman of the INTOSAI Governing Board and thanked the Secretary General of INTOSAI, Dr. Franz Fiedler, and the United Nations for organizing the symposium. He extended special thanks to the head of the SAI of Canada, Mrs. Sheila Fraser, for her able chairmanship of the Subcommittee on SAI Independence.

Ever since INTOSAI was founded in 1953, SAI independence has been considered a prerequisite for reliable audit results. The 1977 Lima Declaration sets out the basic requirements for SAI independence in succinct terms. Only an independent government audit which submits unbiased, objective and adequate audit reports, contributes to effective and efficient government financial management.

Mr. Jeon Yun-Churl stressed the need for having independence enshrined in the laws and pointed to the constitutional independence of the SAI of Korea. He expressed his hope that the guidelines developed by the Subcommittee on SAI Independence were applicable for all SAIs.

II.3 United Nations

On behalf of the United Nations, Esther Stern, the representative of the Division for Public Administration and Development Management, Department of Economic and Social Affairs (DESA), welcomed the participants and distinguished Permanent Representatives to the United Nations who were attending the Seminar opening. She emphasised the significance the United Nations was attaching to seminars and events of this kind and the important role which these programmes played, particularly in

developing countries, in improving overall financial management and good governance.

The theme of the 17th UN/INTOSAI-Seminar, “The Independence of Supreme Audit Institutions (SAIs)”, is a timely and important topic for consideration by the auditing profession in a setting like this seminar, which brings together a group of most senior audit officials from around the globe, as well as keynote speakers from international organizations and other distinguished guests and observers.

Although the mandates and legal status of supreme audit institutions vary from country to country due to a variety of factors such as historic evolution and political systems, SAIs have been able to come together under the common umbrella of the INTOSAI to formulate common codes and standards which they can collectively and individually adopt. It is remarkable that the march toward globalization has allowed INTOSAI and its regional groups to explore and share views over the years --through different forums-- on a variety of topics relevant to the strategic and operational functioning of SAIs, notwithstanding variances such as structure, size and age of their respective institutions.

The United Nations was particularly keen on the Seminar’s theme of Independence of SAIs because it is one of the necessary conditions towards achieving good governance and a transparent, responsible and responsive public administration, goals which the international community has been promoting for many decades in a variety of ways. The advantages for participants to examine this theme under the able guidance of members of the subcommittee on Independence chaired by the SAI of Canada are many: exchanging about SAI specific and regional differences in defining the parameters of independence, and more importantly in sharing experiences and best practices in the quest for effective principles of independence.

Within the general theme of independence, DESA is proposing that the participants to the Seminar discuss an enhanced role for SAIs in their countries’ adherence to and achievement of internationally agreed commitments, conventions and treaties, in particular the Millennium Development Goals (MDGs) encapsulating the United Nations Millennium Declaration of September 2000. Ms. Stern has taken note in the excellent website dedicated to the INTOSAI Working Group on Environmental Auditing that an increasing number of SAIs are carrying out audits dedicated to international and regional treaties and accords. She has also noted that this working group has recently launched a paper on a possible role of SAIs in sustainable development and commends the group for this initiative.

DESA’s proposal to the membership of INTOSAI is to consider further stretching the mandate of the Working Group on Environmental auditing, or to create another focal

point within INTOSAI examining how to make the audit function more central to the achievement of MDGs and the processes involved. As a first step, Ms. Stern would welcome proposals for interregional technical cooperation in the area of results-based auditing of MDGs and is looking for opportunities to engage in partnerships. The technical cooperation ventures DESA envisages are not intended to enlist SAIs in servicing the financial and other reporting requirements of multilateral and bilateral donors. Rather, the aim would be for SAIs to become stakeholders in the important challenge the MDGs present not only for their own countries, but also for their regions and the globe. For instance, through the independence they enjoy, SAIs could assess to what degree their governments have ownership of the policies and processes involved, ensure transparency and accountability in the use of resources, and to ascertain key successes through evidence.

The representative of the United Nations hoped that the seminar would allow the distinguished participants to gain better insights in the principles that foster independence of audit institutions and its individual auditors, and that the deliberations would bring INTOSAI members yet a step closer to their goals for adopting a Charter of SAI Independence. Ms. Stern also expressed the wish that the deliberations assist the participants in pursuing initiatives that support and enhance the capacities of their governments to achieve the MDGs.

II.4 World Bank

The World Bank (WB) representative, Mr. Paul Bermingham, Director, Financial Management, emphasized the special role which INTOSAI played for the WB and reported that the WB was highly committed to closer cooperation so as to better implement joint goals.

The WB has lending commitments of 20 billion USD annually for projects to attain the Millennium Development Goals. At present, poverty eradication projects in 120 developing countries and Newly Industrialised Countries (NICs) are being funded.

For scaled-up development results, not only World Bank funds should be managed effectively and efficiently, but all public monies. This generates communities of interests between donor organisations with a view to effective controls. The focus of development projects is therefore on the performance of public institutions ("good governance" and anti-corruption measures). SAIs are a key element for each country's public financial management institutional framework.

The WB supports effective and efficient public sector auditing in recipient countries for the achievement of development goals and as a key element of its fiduciary obligation to obtain assurance on the use of funds.

In individual countries, WB support takes many forms, e.g. analytic and advisory work (Country Financial Accountability Assessments), support for policy reforms to strengthen SAIs (policy based lending), and loans and grants to assist SAIs.

The WB strongly supports SAI independence, as it considers the independence criteria set out in the Lima Declaration as essential to effective auditing. Support for independence is reflected in the WB's lending policy, according to which the use of all public funds must be subject to oversight by the SAI. However, there are concerns; bank funding through governments, as well as bank engagements with INTOSAI, may be seen as weakening independence.

Yet SAI independence is a shared objective of both, donors and SAI communities. The WB therefore believes that an active and constructive agenda of cooperation that respects independence can be developed.

At present, not all donor funds are reflected in government accounts. The WB believes that all donor funds should be reflected in government accounts and subject to SAI oversight. This has not been the case so far, especially with extra-budgetary expenditure and material mandate restrictions. Public disclosure of audit findings and appropriate follow-up of SAI findings should be aspired to. To meet this aim, SAIs need organisational, functional and financial independence.

All bank-financed projects are required to receive audits. There are some 5000 individual audit opinions each year, half of which from SAIs and half from private auditors. In 2003, the WB approved a new audit policy. World Bank requirements should be aligned with those of other donors, as well as with the audit requirement individual countries to reduce costs and help strengthen country institutions. The WB specifically supports the INTOSAI peer review system.

Cooperation with INTOSAI was promoted in that the Bank has funded different projects, mainly IDI, for many years. Currently, the WB is supporting the harmonization of auditing standards on financial reporting. The WB looks forward to a fuller, constructive relationship with INTOSAI in the future. It welcomes the INTOSAI Strategic Plan with its emphasis on standards, capacity development and knowledge sharing. All this is important for the development of strong government audit in developing countries. The WB will continue to support the emerging INTOSAI agenda together with the donor community.

The WB is currently seeking to elaborate a more effective engagement with public auditing, at national, regional or global level together with INTOSAI. A meeting of 10 SAIs was held in March 2004 to respond to changing needs for cooperation. A strategy on future cooperation is being finalized.

II.5 Technical Chair

The Auditor General of Canada and chair of the Subcommittee on SAI Independence, Sheila Fraser, welcomed the participants in her introductory statement and recalled that the issue of this meeting, SAI independence, had always been a fundamental concern and subject of unbroken interest.

Mrs. Fraser pointed out that INTOSAI had accomplished several important milestones on its way towards strengthening SAI independence, some of which would be taken up by way of illustration so as to offer a basis for a common view of past developments on which the discussion on independence could rest.

The first INTOSAI Congress in Cuba already adopted recommendations in 1953 which formed the basis for future action in the field of independence.

Member then demanded that SAIs should have the power to "defend and maintain their independence in the case of a violation or non-respect by adopting appropriate measures." Members further stated that SAIs "should be granted the required funding so as to be able to fully meet their mandates".

The second Congress in 1956 in Belgium went one step further and recommended that SAIs "should be fully independent from administrative departments and should be protected against any form of outside influence".

Members called for the general structure and the nature of SAI work to be enshrined in the constitution which would include an official statement on the independence of the SAI and the non-removability of its members. It was also recommended to adopt legal provisions governing the reports, document and notes to be published by SAIs.

At INCOSAI VII in 1971 in Canada, the members reiterated that sometimes there were "constraints with regard to their freedom of discretion in administrative questions (e.g. established posts and allocation of funding)". They concluded that it was paramount to "enjoy a maximum degree of independence in respect of their operations, reporting and status....".

These recommendations culminated in the adoption of the Lima Declaration at INCOSAI IX in 1977 in Peru.

The Lima Declaration encapsulates many concerns that have been raised in the course of time at various INTOSAI congresses. It is stipulated in section 5 that SAIs can accomplish their tasks effectively only if they are independent of the audited entity and protected against outside influence. However, it recognizes that SAIs are part of the state as a whole and therefore cannot be absolutely independent.

The Declaration clearly states that the required degree of SAI independence needs to be set out in the Constitution or the law. Section 6 deals with the independence of SAI members in terms of their appointment, term of office and dismissal and calls for constitutional safeguards to ensure such independence. The Declaration also affirms that SAIs need a sufficient degree of financial independence to exercise their mandate and a high degree of autonomy in their relation to Parliament.

The Lima Declaration also addresses the independence of auditors and clearly stipulates that SAI auditors "...must not be influenced by the audited organisations and must not be dependent on such organisation." (Section 6, Para 3).

At its 44th meeting in Montevideo, Uruguay, in 1998 the INTOSAI Governing Board set up a Task Force to survey the status of SAI independence and to elaborate recommendations on how to realistically improve the situation in a proactive and productive manner.

On 31 March 2001, the Chairman of the Task Force, Denis Desautels, then Auditor General of Canada, submitted a report on the activities of the Task Force. The Task Force recommendations contained in that report were adopted at INCOSAI XVII. The report defined eight core principles which are generally considered as essential requirement for sound government audit (see Attachment I).

One of the recommendations adopted by INCOSAI XVII was to set up a Subcommittee on SAI Independence under the umbrella of INTOSAI's Auditing Standards Committee. The Subcommittee was to be chaired by Canada, the members would be those of the Task Force.

III. SUMMARY OF THE OUTCOME OF THE SEMINAR

III.1 Summary of the Results of Group Work

General

(1) Independence is generally recognized as an essential value to a credible external audit function – be in the private or public sectors. As stated in one country paper “Independence is multi-dimensional-covering constitutional, political, operational and professional independence. Independence is not an end in itself, but rather is a means – or a collection of means - of enabling scepticism and objectivity in the auditor and, hence, an audit that not only is, but also is perceived to be, of high quality”.¹

(2) The subject of independence has been of continuing interest and importance to INTOSAI since its earliest days. In fact, the subject was dismissed at the first INTOSAI Congress in 1953 and in various Congresses to the present day. The Lima Declaration codifies many of the concerns raised over the years, in sections II, paragraphs 5 to 7.

(3) At INCOSAI XVII, held in 2001, eight core principles of independence, which are generally recognized in the SAI community as essential requirements of proper public sector auditing, were adopted. As well, a Sub-committee of the Auditing Standard Committee (the Sub-committee) was established to deal with the independence of SAIs.

Programme and Theme of Seminar

(4) The Symposium on the Independence of Supreme Audit Institutions had two objectives:

- to provide input to the Sub-committee on its elaboration of application provisions² supporting the core principles of independence,
- to discuss challenges to the independence of SAIs.

¹ Basic paper prepared by New Zealand

² Draft applications provisions as approved by the INTOSAI Governing Board in 2003 (see Attachment I)

(5) The work of the Seminar was initiated by the following keynote presentations:

- Capacity-building in independent auditing of the Millennium Development Goals, presented by the United Nations
- World Bank Support for SAI Independence, presented by the World Bank
- Presentation on the work of the Sub-committee on SAI Independence, by the SAI of Canada
- Presentation on the position of the Austrian Court of Audit with regard to independence, by the SAI of Austria

as well as five reports describing the situation of independence in five regional groups; presented by Saudi Arabia, Uruguay, Ghana, Morocco and New Zealand.

(6) In addition, the vast majority of participants prepared written papers in advance of the Seminar. 14 SAIs presented their papers and discussed the key aspects of their independence as well as challenges they face.

(7) Four discussion groups were formed. They were ably led by four presenters of the regional reports (SAIs of Uruguay, Ghana, Morocco and New Zealand). Active, engaged discussions occurred between participants and important comments were provided to the Sub-committee on the draft application provisions. As well, major challenges to independence and potentials for improvement were identified.

Comments on draft application provisions

(8) The four discussion groups reviewed all the draft application provisions. Overall, the groups were in general agreement with many of the draft provisions. There were certain comments for improvements made, which have been provided to the Sub-committee.

(9) Major comments concerned:

- the importance of recognizing the various constitutional arrangements which apply to SAIs
- the importance of recognizing that the application provisions are a “best case” model and that it is unlikely that any SAI meets all conditions. That full independence is an evolving process and will require time, in many cases
- relationships with legislature and the Executive, in particular as regards the budgetary process for the SAI
- accountability processes of SAIs

(10) The Sub-committee is most appreciative of the valuable input received. It has committed to provide participants with a summary of comments as well as the disposition of these comments. This will be provided after the Sub-Committee's deliberations to be held in the fall of 2004.

Challenges to independence

(11) The participants also discussed the various challenges to independence faced by SAIs. Major challenges included:

- limitations in scope of mandate of SAI
- Human resource issues, including
 - professional and technical expertise required
 - training and HR development
 - ability to assign staff within SAI
 - ability to establish remuneration of staff
- Budget and resourcing, including
 - budget process which respects independence of SAI
 - sufficient resources to carry out mandate of SAI
- Appointment, term of mandate and qualifications of head of SAI

Other

(12) During the discussions, in plenary and in groups, several other topics were identified as potential subjects of discussion among INTOSAI members. These include:

- communication strategies of SAIs, in particular, relations with media
- audit of revenues
- use of private sector auditors (how to provide against conflict of interest, ensure quality)
- joint audits (e.g. by donor and recipient countries)
- sustainability reporting-issues of basis for reporting and standards.

Conclusion

(13) The importance of independence to SAIs was confirmed by the level of interest in the Seminar (evidenced by the large number of heads of SAIs in attendance) as well as the level of participation in the very lively discussions held throughout the week.

III.2 Evaluation by Participants

It was one of the fundamental aims of the seminar to provide a forum for discussing best-practice approaches, deficits and problems of SAI independence and to enable a broad-based exchange of experience between SAIs of developed and less developed countries, as well as SAIs that belong to different audit systems (court system and audit office system).

The seminar also aimed at promoting an exchange of ideas of what should be included in a Charter of SAI Independence that is to be drafted.

At the end of the seminar, the participants were asked to complete a questionnaire that was to provide information as to how far the above objectives had been met.

All participants completed and returned the questionnaire (response rate: 100 %); analysis of the responses yielded the following evaluation:

- (1) Overall, 89 % of all respondents stated that they were highly satisfied with the seminar, 3 % were less satisfied.
- (2) For 87 % of all respondents, the theme addressed was of major relevance of their SAI, 5 % stated that the theme was of lesser relevance.
- (3) 65 % of the respondents stated that the know-how they acquired was highly useful for their work, 35 % said it was useful.
- (4) 67 % of the respondents stated that, on the technical level, they could derive a very high benefit from the seminar, 30 % said the benefit was high and 2 % stated that they derived little benefit from the subject matter.
- (5) 70% of the respondents stated that the structure of the seminar consisting of technical presentations, discussions, country reports by selected participants, group work and an excursion was excellent, against 22 % which rated the structure as good, and 8 who felt it was less satisfying.
- (6) 76 % of the respondents rated the group work as highly useful, 19 % said it was useful, and 5 % stated it was less useful.
- (7) 84 % of the respondents rated the practical organisation of the seminar as very good, 16 % said it was good.

The participants were also asked to make suggestions for future seminars. The following proposals were made:

- (1) continue to organize this type of training event;
- (2) allow more time for the presentation of country reports;
- (3) shorten time allocated to principal papers;
- (4) allow more time for debate after presentations.
- (5) The following topics were suggested for future seminars:
 - The relation of SAIs and the media;
 - Audit in a "paperless" environment – E-Government.

The organisers of the seminar concluded that the objectives that had been set for the seminar had been met to a very high degree and that there was a high rate of acceptance among the seminar participants. The wish expressed by the participants to allow for more time for debate and an exchange of experience clearly reflects the high level of commitment on the part of the participants, their readiness to learn from one another and to build a network of mutual information sharing and support.

IV. MAIN PAPERS

1. **United Nations** **Capacity Building in the Independent Audit of the United Nations 2000** **Millennium Development Goals**

The United Nations Conferences and Summits of the 90s, the Millennium Summit, the Monterrey Conference and the Johannesburg Summit of the early 2000s have provided a comprehensive framework to guide a renewed effort by the international community to bring about an environment conducive towards poverty eradication, sustained economic growth and sustainable development. Achieving greater policy coherence at national and international levels is the key to this effort.

Within this context the United Nations Department for Economic and Social Affairs (DESA), which I represent, provides a vital interface between global policies in the economic, social, demographic and environmental spheres and national action. The Department works in three interlinked areas: (i) it compiles, generates and analyses a wide range of economic, social, demographic and environmental data and information on which Member States draw to review common problems and to weigh policy options; (ii) it facilitates negotiations of Member States in intergovernmental bodies on joint courses of action to address ongoing or emerging global challenges; and (iii) it advises interested governments on the ways and means of translating policy frameworks developed in UN conferences and summits into coherent programmes at the country level and, through technical assistance, advisory services and research, helps build national capacities of public administration and other governance institutions.

1. Responses to Challenges of Globalization

The work of DESA deals with the increasing complexities in global environments, including the challenges for public administrations which individually, regionally and globally have to reassess how to conduct business. On the one hand, governments need to respond to a number of social and economic issues, including poverty; spread of diseases (particularly severe in the case of HIV/AIDS); unemployment; poor education systems; and environmental degradation. On the other hand, governments are being forced to readjust their policies and skills to effectively respond to the challenges of globalization. DESA dedicated its 2001 World Public Service Report to "Globalization and the State".

The report pointed out that while the challenges are many, so are the opportunities for public administrations in both developing and developed countries, as well as for countries with economies in transition. Indeed, it has been gradually recognized that the public sector has a crucial role to play in meeting these challenges, as well as the broader goals of the United Nations, notably maintenance of peace and security, upholding human rights and democratic ethos, making globalization work for all, eliminating corruption and money laundering, fighting drugs and crime, protecting the vulnerable and meeting the special needs of Africa.

The myth that markets and the private sector alone can accelerate development, spearhead growth, eliminate inequalities and make life better for all has been replaced by bitter disappointments; so has the myth that the State alone can be the engine of growth and development. Both the State and market have a fundamental role to play in the development process and effective partnerships between State, private sector and civil society are greatly needed in this respect.

To forge such new alliances public administration cannot remain its old self. This view has been affirmed by the United Nations Committee of Experts on Public Administration, which met in New York from 30 March to 2 April 2004: the public sector needs to be transformed into a responsive instrument to meet the needs of all citizens, including the poor, and to be accountable to the most vulnerable populations. This requires lessons to be learned in areas ranging from citizen dialogue in policy development to service delivery to remote, disadvantaged and challenged people.

The number of public-private partnership ventures and exploration of alternate service delivery models continue to grow, although lessons remain to be drawn on successes and failures. Over the last decades the role of civil society in driving policy change has steadily grown. This has been the case with debt relief and is now the case with pro-poor policies and strategies. NGOs, community organizations, professional associations and other civil society groups are not only vocal in these areas, but are regularly called upon to help design and implement poverty reduction strategies. In addition, initiatives to engage citizens in policy development, decision-making on fiscal policy and budget formulation, and other important areas, as well as in scrutiny of implementation and use of resources in such spheres are on the rise; so is the use of e-government to involve citizens in policy areas for the “public good”, as demonstrated in the 2003 DESA World Public Service Report entitled “E-Government at the Crossroads”.

In view of the above, the UN is dedicated to promoting the exchange of experiences and best practices concerning innovations in governance and public administration contributing to social and economic development. DESA supports forums and

networks to enable the exchange and sharing of innovative experiences, whether in the South or North. The Division of Public Administration and Development Management created an interactive network www.unpan.un posting over half a million pieces of information on global, regional and country information on public administration and management. DESA also promotes good governance through its annual Public Sector Awards.

The activities of the Division's Socio-Economic Governance and Management Branch include the promotion of socio-economic governance with a special focus on the public finance and audit functions. Socio-economic governance refers to institutions, institutional arrangements, procedures and processes, tools and techniques that help mainstreaming citizen's concerns for formulation and implementation of pro-poor public policies and programmes. One of our endeavours is to make the audit function central to the MDG process.

The Branch has also launched a programme on "engaged governance" examining and promoting citizen dialogue with the legislative, executive and judicial on such important areas as fiscal policy and budgeting. An Expert Group Meeting was held in March 2004 on "Civil Society Participation in Fiscal Policy". The experts emphasized that role of civil society has moved from participation in the design of pro-poor strategies and service delivery to acting as watchdogs to ensure governments fulfill their commitments. It is in that context that we will be examining during this biennium the concept of "social audit". The Branch will also be organizing a world conference in the summer of 2005 on "engaged governance" which will be hosted by the Government of Queensland, Australia.

2. The 2000 Millennium Development Goals (MDGs)

"We believe that the central challenge we face today is to ensure that globalization becomes a positive force for all world's people". So reads the statement of the 147 heads of State and 189 Governments representing all Member States of the United Nations in the Millennium Declaration. The world leaders identified global poverty as the most daunting of all problems facing the world in the new century. To help drive a global poverty reduction effort, they included in the Declaration eight goals and a series of eighteen time-bound, poverty reduction and development targets, which were subsequently consolidated as the Millennium Development Goals to be achieved by 2015.

The first seven Goals are “pro-poor” related:

- halve extreme poverty and hunger
- achieve universal primary education
- empower women and promote equality between women and men
- reduce under-five mortality by two-thirds
- reduce maternal mortality by three quarters
- ensure environmental sustainability
- reverse the spread of diseases, especially HIV/AIDS, tuberculosis and malaria

The eighth goal – “a global partnership for development” – comprises a set of commitments by developed countries to support these efforts through increased aid, a non-discriminatory and fair trading system and debt relief:

- create a global partnership for development, with targets for aid, trade and debt relief

2.1 A common framework for development

A positive impact so far is that the Millennium Development Goals have helped to transform the framework for global development. As a set of measurable, shared objectives endorsed by all Member States, they have provided an unprecedented basis for partnership between developed and developing countries and have been embraced by other intergovernmental bodies, including the African Union and the group of eight. They have allowed the United Nation system, the Bretton Woods institutions and other development partners to align their work around a common framework and to improve the coherence of all their efforts at the country level. The General Assembly reviewed at its 58th session the report of the Secretary-General on the role of the public administration in the implementation of the Millennium Declaration and adopted a resolution calling for a particular emphasis on the exchange of experiences related to the role of public administration in the implementation of the Millennium Declaration.

The United Nations Development Group is overseeing the MDG processes, including the integration of MDGs into all aspects of UN activities at the country level, in response to the priorities identified by each country. The UN launched the Millennium Development Goals Campaign and also set up the UN Millennium Research Project, which draws together policy makers, practitioners and experts from across a wide range of institutions and countries to research how progress can be accelerated and sustained, in terms of policy, expanded capacity, required investments and financing.

2.2 Monitoring and reporting of MDGs

Global, regional and country reporting has proven challenging to date, as the capacity of countries to provide reliable statistics and data for monitoring trends needs to be considerably strengthened in order to provide sound measurements both of their needs and achievements. Data are currently insufficient in many countries, for many goals, for proper quantitative assessments.

The Goals are measured against 1990 baseline year. International experts have selected 48 indicators linked to the eight goals and eighteen targets that are used to globally assess progress over the period 1990 to 2015. A yearly report is issued by the SG since 2002 on progress achieved towards implementing the Declaration, based on the 48 indicators, aggregated at global and regional levels. The UN Statistics Division of DESA coordinates - through the Inter-Agency and Expert Group on the MDG Indicators - data collection and data analysis from the UN specialized agencies and other programmes, as well as from the other international partners including the World Bank, the International Monetary Fund, the World Trade Organization, the Organization for Economic Cooperation and Development. Progress will be evaluated every five years and 2005 will mark the first global stock taking.

The United Nations Development Programme (UNDP) coordinates country-level monitoring reported in Country Reports. UN staff and country teams are working closely with a steadily expanding circle of partners who are supporting developing nations with practical advice and assistance in designing policies and programmes, building capacity and testing innovations, as these countries must map out their own paths to reach the goals. UN agencies, the OECD Development Assistance Committee (DAC), and in many cases, the Bretton Woods Institutions - often through their own programmes, including the Poverty Reduction Strategy Papers process - are harmonizing their approaches to support MDG country implementation, monitoring, evaluation and reporting. Country reports are currently largely driven by the international community but are increasingly the product of collaboration between a country's government, the private sector and civil society. The reports highlight where countries are on track to meet the Goals, where urgent efforts are needed, and how money is being spent. The UNDP has 46 country reports posted on its MDG website, and nearly every developing country is planning to produce its first by the end of 2004.

2.3 Progress at the national level is presently very uneven, with wide variations across regions and countries, and even within countries

Rapid advances in some areas have shown that the MDGs, while ambitious, can be reached at the global level. Over the past years, growing political and financial support for key priorities, in particular in the fight against HIV/AIDS, clearly shows that resources can be mobilized rapidly if there is the political will. Success stories have been reported on this target and other goals. However, for every goal, there are encouraging signs of progress in some areas alongside worrying evidence of stagnation and reversal in others. Current trends show that some parts of the world risk falling short of achieving most of the MDGs by 2015. The MDGs place a great responsibility on developing countries to mobilize domestic resources, implement policy reform, strengthen democratic governance and protect human rights. With the global economy relatively weak, the scale of political and financial support is well below the level needed to meet the Goals.

The MDGs, and the commitments of rich and poor countries to achieve them, were affirmed in the Monterrey Consensus that emerged from the March 2002 United Nations Financing for Development Conference, the September 2002 World Summit on Sustainable Development and the launch of the 2001 Doha Round on international trade. The UNDP Human Development Report 2003, as well as the Global Monitoring Report 2004 of the Bretton Woods Institutions, indicates by and large that a number of developing countries are fulfilling their pledge at Monterrey while the performance of developed countries is uneven, particularly in the areas of international financial cooperation and international trade -- although there are positive movements on both fronts. The UNDP report classified dozens of countries as priority cases because they are perilously off track to meet the Goals. The main reason given is that just as globalization has systematically benefited some of the world's regions, it has bypassed others as well as many groups within countries. Over 1.2 billion people still live on less than \$1 a day.

2.4 The Millennium Development Compact

Following the Monterrey Consensus, the UN and its partners have been insisting on national ownership of the Goals, without which national programmes will neither be appropriate to local conditions nor politically sustainable. National strategies for poverty reduction should be based on specific needs, solid evidence, good science and proper monitoring and evaluation.

To give the MDGs renewed impetus, the UN proposed in 2003 the Millennium Development Compact, which calls on all stakeholders to orient their efforts towards

ensuring the success of the Goals, in a system of shared responsibilities. Poor countries can insist on increased donor assistance and better market access from rich countries. Poor people can hold their politicians accountable for achieving poverty reduction targets within the specified timetable. And donors can demand better governance in poor countries and greater accountability in the use of donor assistance.

The Compact thus calls for new forms of partnerships and also addresses the roles of local authorities, private actors, civil society organizations and the scientific community.

3. Making Audit an Integral Part of MDG Processes

As joint commitments by many are now at the centre of the achievement of MDGs, there must be assurance that actions by all parties are carefully monitored, outcomes evaluated, and that utilization of resources are audited for their prudent and effective use. As there is a likelihood of increased donor flows, greater attention must be paid to transparency and accountability in their use. Special care must also be taken to monitor corruption and “leakage”.

A great effort is being put in place by the UN and its international partners to prepare and fine-tune planning, monitoring and evaluation tools for the indicators. They are also delivering related capacity building in formulating policies and strategies, assessing resource needs, and in measuring and reporting progress, including data collection and analysis.

However, as far as the audit function is concerned, there seems to exist little concerted and dedicated effort at the global, country or local level to engage and mobilize the external and internal audit community around the MDG processes, targets and indicators -- with a view to track related financial flows, assess utilization of resources, adequacy of decision-making and implementation processes, or ascertain results achieved. Where donor contributions are involved, auditing, like financial reporting, usually conforms to the specific donor requirements for audited financial statements. Where government resources are used, audits seem to be planned according to existing institutional audit regimes and are usually sector or project based, without special regard for the targets and indicators of the MDGs.

Taking HIV/AIDS programmes as a case study we noted that legislative auditors at national and sub-national levels, as well as internal auditors of ministries and institutions, have in fact performed audits related to various aspects of HIV/AIDS as part of their mandate and regular cycle of audits of public expenditure items. Those audits varied widely in approach, objectives, scope and type of audit. Similarly, donor

countries and institutions have performed or requested financial audits from recipient institutions – be it a ministry or implementing agency – according to their own specific requirements. In general, the audits dealt with financial and materiel matters and rarely zeroed in on performance or results achieved.

3.1 Capacity Building and Methodology Research in the Independent Audit of MDGs

As part of our programme to make the audit function central to the MDG roadmap, we are seeking to engage in technical cooperation ventures and partnerships with SAIs and other auditors interested in exploring MDG related independent and results-based auditing from a regional or interregional perspective. We would like to share with you today and during your deliberations our plans in this regard.

Over the next two years, we are planning to conduct a study which we hope will include INTOSAI as partners. We will in a first phase survey and compare current mandate, audit approach, audit scope and audit methodologies of selected SAIs of high income, low income, middle income and countries in transition in audits related to their country's achievement of the MDGs. The study will also examine related linkages to other stakeholders such as policy makers, implementing ministries and institutions, internal audit of government ministries, legislative auditors of other levels of government, donor institutions, civil society, private sector, beneficiaries and MDG monitoring and evaluation experts.

In a second phase we will document methodologies, best practices and list areas where SAIs can make a difference relative to resources spent on results-based auditing of MDGs through focusing on high risk areas.

The objective of the study is to further methodology research and capacity building of SAIs in the independent and results-based audit of MDGs.

3.2 Interregional workshops

We will underpin the study through two initial interregional workshops the objectives of which we would like to share with you for your comments.

One workshop would examine MDG processes and achievements from a horizontal perspective with as objective to perform a risk assessment exercise. It would focus on planning and implementation processes, management for results (including measurement), internal controls and related auditing. This workshop would adopt a central government perspective and bring together, besides SAI officials and internal auditors of key ministries and agencies, representatives of key policy making and

planning institutions, key implementing ministries and executing agencies. Three low or medium income countries from one or more regions are being considered. The discussions would include the various accountability relationships amongst the central bodies and with international organizations and other levels of government; the implications of decentralization, privatization, outsourcing and other alternate service delivery modalities through partnerships with the private sector, involvement of transnational corporations and civil society. The outcome would be a risk assessment matrix enabling auditors to plan their MDG related audits based on the high risk areas; and providing a tool for key government actors to manage risk.

The second workshop envisaged would be of a vertical nature with as objective to exchange audit methodologies, experiences, lessons learned and best practices in results-based auditing of MDG related programmes and initiatives in one critical target of the MDGs namely the reverse of the spread of HIV/AIDS. This workshop would target auditors at the national and sub-national level, including non-governmental, from three or more countries that have a mix of experience in auditing the sector chosen. The auditors would represent the central and local government, community level, as well as non-government and not-for profit organizations involved in HIV/AIDS related programmes. Monitoring and evaluation experts in the HIV/AIDS field would also participate in the workshop to explore potential collaboration and to create synergies between the audit community and the monitoring and evaluation experts. The outcome would be a clarification of the concepts of ownership and accountability for the MDG processes at the national and sub-national levels, as well as a compendium of methodologies, lessons learned and best practices for legislative and internal auditors relative to a critical target.

4. Potential for Technical Cooperation through Partnerships

Many of the Seminar participants have had experience in regulatory auditing of compliance with international or regional treaties, mostly in the environmental sector; some have also performed performance audits in those areas. Moreover, a few SAIs represented at the Seminar have also engaged with sister organizations, mostly from the same region, in joint, concurrent or co-ordinated audits in the environmental and other sectors.

It is in a similar spirit that we recommend the following discussion points to the distinguished participants, as part of their deliberations during this Seminar:

- to exchange experiences, lessons learned and best practices on past audits which are related to the MDGs

- to explore what MDG processes and targets are most amenable to audit under the SAIs' respective mandates and priorities
- to discuss with the DESA representative the potential for regional and interregional technical cooperation ventures and opportunities for partnerships

We are seeking partnerships for technical cooperation activities and for mobilization of resources for MDG related independent auditing and we look forward to collaborate with INTOSAI and its membership as well as with its training and development arm, the INTOSAI DEVELOPMENT INITIATIVE (IDI). Some UN agencies and other international organizations already focusing their activities on MDGs have expressed interest in this initiative. We also have approached universities and public administration and audit research institutions.

5. Conclusion

In the past sixteen UN/INTOSAI Seminars, we have been able to successfully focus on topics which are at the heart of the UN agenda, such as aid delivery, anti-corruption, health and education. It is our wish that the independent and results-based audit of MDGs will be listed on the action plan arising from this Seminar and that SAIs will consider becoming stakeholders in their countries' commitment towards the Millennium Declaration. We would welcome proposals and discussions of possible ventures for technical cooperation and partnerships with the distinguished Seminar participants and guests during the course of the Seminar.

2. Canada

Activities and Achievements of the Sub-Committee on Independence

In December 2001, as chair of the sub-committee, I sent a copy of the Suggested Application Provisions to the members of the sub-committee. (See Attachment I.) The Application Provisions were drafted as illustrations of how the eight core principles might be applied. The challenge was to ensure that the Application Provisions were meaningful, yet broad enough to apply universally to all SAIs. Comments on the Suggested Application Provisions were received from all members of the sub-committee.

As chair, I called a meeting of the sub-committee in Toronto in June 2002 to approve the Suggested Application Provisions and Work Plan for the sub-committee. And in the wake of situations such as ENRON, we also wanted to look not only at the independence of SAIs, but also at the independence of auditors.

Eight countries attended the meeting. Members went through the Suggested Application Provisions and looked at the comments. In the discussion that followed, all members agreed on the wording of the Suggested Application Provisions, which now stand in the form of Draft Application Provisions. The sub-committee also approved a work plan prepared by Canada that sets out a number of milestones for the sub-committee's future work.

When we considered the issue of auditor independence, the sub-committee concluded that a useful first step would be to benchmark existing guidance in the INTOSAI Code of Ethics and Auditing Standards against the principles on independence of the International Federation of Accountants (which is usually referred to in its short form as IFAC), and those of other standards-setting bodies.

Subsequently, the Draft Application Provisions and Work Plan were distributed to all members of the Auditing Standards Committee, which approved both documents at its September 27, 2002 meeting in Stockholm.

In October 2002, the Governing Board approved both documents. The Work Plan provided for a second survey to consult the INTOSAI membership on the current status of SAI independence and the degree of compliance with the eight core principles.

In December 2002, the survey questionnaire was field tested with the sub-committee members and amendments were made. In January 2003, the survey was sent out to the INTOSAI members. The sub-committee met in May in Ottawa to discuss the survey results. The sub-committee also considered a report on how the existing guidance in the INTOSAI Code of Ethics and Auditing Standards fared against the IFAC principles on independence. I will talk in more detail about this in a minute.

The attached survey results and the recommendations on the Code of Ethics with respect to the independence of SAIs were reviewed and approved by the Auditing Standards Committee at its September 4 and 5, 2003 meeting in Bratislava.

At its October meeting, the Governing Board approved the survey results and the recommendations on the Code of Ethics. The Work Plan of the sub-committee calls for a presentation and discussion of the Draft Application Provisions and the survey results at this UN/INTOSAI Seminar. We want to examine with you the issue of independence from different perspectives.

It is the sub-committee's intention, in the three-year period following INCOSAI XVIII, to identify regional initiatives in the pursuit of SAI independence in order to develop case studies for presentation at INCOSAI XIX. I hope that our work here in Vienna will assist us in identifying such regional initiatives, developing "minimum standards" of SAI independence, and developing graduated standards for their implementation taking into account different systems of auditing.

Benchmarking INTOSAI's Code of Ethics and Auditing Standards

Now let me give you a bit more detail on our benchmarking exercise...

In April 2003, when the sub-committee undertook this exercise, our goal was to see whether INTOSAI's independence standards were generally consistent with IFAC's principles on independence.

The first thing we did was to compare INTOSAI's standards with IFAC's current independence principles. We found that INTOSAI is fully consistent with the current guidelines and standards of IFAC, except in a few areas, which basically stem from the differences between professional accountants in private practice and legislative auditors.

Next, we compared INTOSAI's standards to IFAC's new principles on independence, which will apply to audits concluded after 31 December 2004. However, IFAC is encouraging its members to apply these revised principles earlier if possible.

The key difference between these two sets of principles is that the new ones take a risk-based approach. What this essentially means is that IFAC members are expected to assess the risks they are facing and determine how much of a threat these pose to their independence.

Potential threats to independence are grouped under five headings: self-interest threats, self-review threats, advocacy threats, familiarity threats and intimidation threats. These principles require that before conducting an audit, IFAC members establish appropriate safeguards to eliminate or reduce threats to independence to an acceptable level. If this is not possible, they should refuse to conduct the audit.

IFAC cites a few specific threats that are so significant that no safeguard could reduce them to an acceptable level. This is the case, for example, when an accounting firm has a significant financial interest in a client.

Although INTOSAI's ethics and auditing standards on independence were not developed using a risk-based approach, we concluded that they are still generally consistent with the new IFAC principles on independence.

The sub-committee has suggested that INTOSAI's Auditing Standards Committee review the Code of Ethics in light of IFAC's new set of principles and develop relevant examples for each type of potential threat to SAI independence. We have also recommended that the Auditing Standards Committee address the issues of rotation of staff and litigation between auditor and client.

In September 2003, the sub-committee presented its report to the Auditing Standards Committee in Bratislava. The report was amended mainly to specify that the Auditing Standards Committee would look at both IFAC's new principles as well as changes that have been brought forward by other professional bodies and standard setters.

We must continue to pay attention to this important topic. As SAIs strive to report information fairly and to encourage positive change, we have become painfully aware of the risks and pitfalls that have faced auditing in the private sector. It is very much in our interest to be open to learning key lessons about independence so as to avoid these problems in legislative auditing.

Survey on SAI independence

Now, I'd like to talk about the survey we carried out on SAI independence. The purpose of the survey was to measure the extent to which SAIs are able to adhere to the core principles of SAI independence.

The survey report was submitted to the Auditing Standards Committee and the INTOSAI Governing Board in the fall of 2003 and will be presented for approval to the XVIII INCOSAI in Budapest in October 2004. The survey analysis will provide input for Thursday's discussion on a draft Charter of SAI independence.

We sent the survey questionnaire to 180 SAIs. Eighty-seven of these responded, for a response rate of 48 percent. The response rates did vary somewhat among INTOSAI regional groups, however, we are confident that there is limited bias in the overall survey result.

In September 2002, the Auditing Standards Committee approved the application provisions developed by the Sub-Committee on SAI Independence for each of the eight core principles of SAI independence. For the purpose of the survey, these application provisions were expressed as a series of independence criteria.

Let me briefly tell you what the survey found.

SAIs consider most criteria to be necessary

The first survey question asked whether SAIs considered the proposed independence criteria necessary for sufficient independence to fulfil their mandate effectively.

On average, the SAIs that responded considered 93 percent of the proposed independence criteria to be necessary. It is interesting to note that there is no significant difference here among the different INTOSAI regional groups, or among the different types of audit institutions.

However, up to 15 percent of SAIs thought that some criteria are not necessary, in particular the criteria requiring SAIs to apply the same standards to their own operations that they apply to the organizations they audit.

A number of SAIs believed that while these criteria are vital to ensure accountability, transparency, and good management, they are not necessary to independence. Some also commented that their small size does not warrant undergoing internal audits or external reviews, and that their internal control systems are sufficient. Finally, a couple of SAIs expressed concern that an external review could have an adverse effect on their independence.

Fourteen percent of the SAIs felt the criterion stating that heads of SAIs should be immune to legal prosecution for any act, past or present, resulting from the normal discharge of their duties is not necessary. While some said this was simply not needed, one SAI commented that if immunity for heads of SAIs was not used in a responsible manner, it could lead to arbitrary decisions.

As well, 12 percent of SAIs thought the criterion requiring budgets to be submitted directly to the legislature for approval was not necessary. Some SAIs noted that although they present their budget to the minister in charge of budget estimates, a legal provision exists to ensure that any reduction in the SAI budget is approved by the legislature.

Overall, a high percentage of SAIs believe they meet the independence criteria

Overall, a high percentage of SAIs believed they meet the independence criteria—84 percent. There are only 10 or so criteria where the percentages are low.

Ensuring the financial and administrative autonomy of SAIs and the availability of sufficient human, material, and monetary resources are two key issues where between one-third and one-half of the SAIs responded that they are not meeting the proposed criteria.

In addition, it is perhaps not surprising that a relatively high percentage of SAIs do not meet the criteria that are not unanimously considered necessary. Thus, 23 percent of SAIs do not submit to external review and 20 percent do not have an internal audit function. As well, in 26 percent of SAIs, current and former heads of SAIs are not immune to prosecution for acts that result from the normal discharge of their duties.

At the other end of the spectrum, some key independence criteria are met, or addressed, by basically all SAIs. For example, all SAIs said that they feel free to make observations and recommendations in their audit reports, taking into consideration, as appropriate, the views of the entities they audit. Also, almost all SAIs decide on the timing of their audit reports, except where specific reporting requirements are prescribed by law.

Overall, the differences between INTOSAI regional groups are relatively minor. However, not surprisingly, differences between regions are more pronounced for specific criteria, some of which are key criteria. For example, the percentages of SAIs responding that access to resources is not under the control of the executive, or that

they have sufficient human, material, and monetary resources to fulfil their mandate effectively, vary greatly between regions.

Overall, the differences between the different types of audit institutions are not significant.

Most SAIs that do not currently meet the criteria are not sure they will be able to meet them within the next five years

Most SAIs that do not currently meet the criteria are not sure that they will be able to meet them within the next five years. For example, only 5 of the 33 SAIs that did not have sufficient human, material and monetary resources felt certain that they would solve this problem within the next five years. None of the 23 SAIs whose current or former heads are not immune to prosecution believed this situation would change within the next five years.

On average, two-thirds of these SAIs felt there were barriers preventing them from implementing these criteria. In many cases, legislative change would be required to enable SAIs to meet the criteria, although there are a number of examples of non-compliance within existing constitutional or legislative frameworks.

How Canada measures up

I would now like to give you an overview of Canada's own situation as a SAI and how it measures up to the core principles and the Application Provisions.

In Canada, we have Westminster-inspired model with an Auditor General. The mandate of the Auditor General is not set out in the constitution, but in an act of Parliament. The function of Auditor General has existed for 125 years and is well respected in Canada as a tool that serves democracy. The current *Auditor General Act* is 25 years old and will eventually need revamping.

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As it reads today, the Act provides enough independence with respect to the appointment, tenure and removal of the Auditor General. Although the government appoints the Auditor General, the process used for recommending a candidate to the government involves a third party review by a panel of experts and extensive consultation.

Although this process is not perfect (since the perception may still exist of government intervention in the appointment), in practice it has not once produced an

incumbent that is aligned with government in the last 125 years. In our Act, the Auditor General is treated in the same way as a judge with respect to removal and compensation. Only the legislature is involved in these decisions; the government cannot intervene. The Auditor General serves a 10-year term that cannot be renewed.

The Auditor General does not enjoy legal immunity from legal prosecution for acts past or present resulting from the normal discharge of her duties. However, the Auditor General can be protected from legal action by using a qualified privilege where the legal action arises from the content of her reports to Parliament.

The *Auditor General Act* gives the Auditor General a sufficiently broad mandate and full discretion in carrying out her mandate. The Auditor General can look at the use of public monies or assets by the government and bring to the attention of Parliament any cases where money has been spent without due regard to economy, efficiency, or the environmental effects of expenditures in the context of sustainable development.

We audit only the implementation of government policy, never the policy itself. The Auditor General, alone, decides on the audit issues she will report to Parliament and maintains a good relationship with Parliament through the Public Accounts Committee, which is kept informed of planned audits as well of such administrative details as the budget of the Office. The Auditor General appears frequently as a witness before the Public Accounts Committee and other parliamentary committees to discuss the findings of reports and to listen to the concerns of committee members.

The Auditor General can request any information that is needed in the course of an audit and has free access at all convenient times to the premises of the entity being audited. The *Auditor General Act* makes it clear that the Auditor General can station any of her staff in a department while the audit is going on and the department cannot refuse.

Although we do obtain most of what we need to conduct our audits, there are limits to this access. For instance, we do not have access to all cabinet documents, only to some identified cabinet documents. Also, when we are denied access, our only remedy is to report to Parliament that we have met with a refusal. Usually the government tries to arrive at some arrangement with us since it is generally not interested in appearing before the Public Accounts Committee to explain its refusal.

Our *Act* requires that I report to Parliament at least once a year. I am also allowed three additional reports throughout the year. Also, the Commissioner of the Environment and Sustainable Development, who is a key part of my Office, is required to report annually on a number of environmental matters.

As Auditor General, I decide on the contents of my reports. It is true that I listen to Parliament committees when I select audit topics but I undertake this work because it is also consistent with my mandate and my priorities.

Aside from the annual report which is required to be published before December 31 every year, I decide on the dates of publication of periodic reports. Reports are submitted to the Speaker of the House of Commons who is required by our *Act* to table our reports forthwith after having received them. There is no intervention from the government or Parliament with respect to the publication or dissemination of reports of the Auditor General.

Another feature of independence is that SAI recommendations have effective follow-up mechanisms. In Canada, all reports of the Auditor General are referred automatically to the Public Accounts Committee, while reports of the Commissioner of the Environment and Sustainable Development are referred to the Standing Committee on Environment and Sustainable Development.

The Committees decide whether or not to hold meetings and call officials from departments to appear as witness to explain how they will deal with the Auditor General's recommendations. In their reports after hearings, committees may require the audited department to submit an action plan to implement our recommendations. If this does not happen, we ourselves after some time may revisit the audited department so see if our recommendations have been implemented.

From a financial and managerial perspective, the Office of the Auditor General is almost fully autonomous. Two areas need improvement, however. First, the funding of the Office is currently approved by the Treasury Board Secretariat, which is one of the entities we audit. This must move to a third party review. Secondly, the collective agreements we negotiate with staff should not have to be approved by government. Although these are needed improvements, they have in no way stopped the Office from carrying out its mandate effectively. Neither do they lessen the extent to which we are trusted by Parliament and Canadians.

The *Auditor General Act* allows the Auditor General to hire her own staff while respecting public service values such as appointment on the basis of merit. The Auditor General has the authority to enter into contracts while respecting the rules of fairness and competitiveness in the selection of successful bidders. The Auditor General is also allowed to make a special report to Parliament in the event the funds negotiated with the Treasury Board Secretariat are not sufficient to allow the Office to carry out its mandate.

In closing, I would like to say that in Canada the Office of the Auditor General continues to be perceived as being extremely credible, and is held in high regard by Parliamentarians and the citizens who elect them. Our audit work is seen as clear evidence that we are intellectually and organizationally independent of government, and that we are fair, impartial and objective in all we do. It is a great honour and privilege for me to lead this Office and I want to pay tribute to all those who work with me to uphold its commitment to independence, objectivity and excellence.

3. Austria

The Position of the Austrian Court of Audit with respect to its Independence

I. General remarks on the independence of government auditing and on the position of the audit function within the system of government

The preamble of the Lima Declaration of Guidelines on Auditing Precepts states that the orderly and efficient use of public funds constitutes one of the essential prerequisites for the proper handling of public finances and the effectiveness of the decisions of the responsible authorities. To achieve this objective, it is indispensable that each country have a Supreme Audit Institution whose independence is guaranteed by law.

The significance the Lima Declaration attributes to the independence of Supreme Audit Institutions can be derived from the fact that Section II defines the term independence in more detail in paragraphs 5 to 7.

Paragraph 5 governs the independence of Supreme Audit Institutions as entities, paragraph 6 the independence of the members and officials of Supreme Audit Institutions, and paragraph 7 the financial independence of Supreme Audit Institutions.

The way government auditing falls within the sphere of one of the classic powers of government – legislative, executive, and judiciary – in a system of checks and balances is being dealt with in different ways in different parts of the world.

When it comes to government auditing being able to fulfil its functions, however, it is of only minor importance where a Supreme Audit Institution is embedded in the system of government. The Lima Declaration does not provide any binding provisions in this respect either. Whatever the type of Supreme Audit Institution – be it one assignable to the judiciary or to the legislative or an institution sui generis or a kind of fourth power in the system – it will be able to fully meet its responsibilities if its independence is guaranteed.

While the Lima Declaration rightly states that a Supreme Audit Institution cannot be absolutely independent of state institutions because they are part of the state as a

whole paragraph 5 item 2), it points out very clearly that Supreme Audit Institutions can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence.

For this reason, the Lima Declaration postulates that the independence of the Supreme Audit Institutions be laid down in the constitution (paragraph 5 item 3 first sentence). This should not be just a non-committal declaration, but take a form to ensure that adequate legal protection by a supreme court be guaranteed against any interference with a Supreme Audit Institution's independence and audit mandate (paragraph 5 item 3 second sentence). The Lima Declaration thus addresses effective legal safeguards for Supreme Audit Institutions, which can be provided only in a state truly governed by the rule of law, which presupposes the existence of such a state.

In Section III, the Lima Declaration details the relationship of the Supreme Audit Institutions to parliament, to government and the administration (paragraphs 8 and 9).

In this context, the Lima Declaration demands that the independence of Supreme Audit Institutions provided under the constitution and the law also guarantee a very high degree of initiative and autonomy, even when they act as an agent of parliament, thus being attributable to the legislative, and perform audits on its instructions.

The Declaration makes it very clear that even a Supreme Audit Institution established as an organ of parliament must not be regarded as a non-autonomous extension of parliament, but should have a functionality of its own. From this derives the right of the Supreme Audit Institution to basically decide alone on its audit programme, its audit methodology and its audit focus points as well as the right to defend these freedoms against parliament.

Even if the Lima Declaration does not make a definitive statement on where the government audit function should be positioned within the system of government, the experience found internationally in all democratic states shows that the Supreme Audit Institution has a relationship to the state's parliament, whatever form this relationship might take. In most cases, such relationships are characterized by the Supreme Audit Institution's right or duty to report to parliament. In many cases, however, there is also a right on the side of parliament to appoint the top-level management of the Supreme Audit Institution.

To the Supreme Audit Institution, its right to report to parliament implies improved chances of enforcing the recommendations it issues to audited entities, as is also stated in paragraph 16 item 1 last sentence of the Lima Declaration. Experience has shown that most Supreme Audit Institutions are themselves not able to enforce their

recommendations against the will of the audited entities, because as a rule they have no means of enforcing sanctions. As far as the Supreme Audit Institution is thus unable to enforce its findings vis-à-vis the audited entities, it is dependent upon parliament as supreme control instance to provide support in this respect.

The potential threats to the independence of a Supreme Audit Institution and the possibilities of the executive branch to assert influence on the Supreme Audit Institutions are manifold. Successful prevention of such circumstances requires specific normative determinants which flesh out the term “independence” and make it more concrete. The example below will provide more details.

II. Characteristics of the independence of government auditing in Austria

1. General Information

The Republic of Austria has a federal structure and consists of nine provinces. The legislative and administrative powers are distributed between the central state (federation) and the nine member states (provinces). The legislative organs on the federal level are: the National Council, whose 183 delegates are elected every four years by the electorate, and the Federal Council, whose members are appointed by the individual provinces and which thus constitutes a representation of the provinces at the federal level. The Court of Audit does not have any relationship to the Federal Council.

In the provinces, legislation is in the hands of the diets (province parliaments), which are elected by the people.

2. Legal framework for the Court of Audit

The framework of legal provisions applicable for the Court of Audit is laid down in Title Five of the Federal Constitution. Accordingly, the existence of the Court of Audit is guaranteed in the Constitution. The respective implementing provisions are set forth in the Court of Audit Act dating from 1948:

In Austria, the appropriations prerogative rests with parliament as the supreme institution elected in a democratic manner. The National Council adopts the Federal Finance Act (including the federal budget and the plan of established posts) as the basis for the state’s annual financial management.

In line with the separation of powers, the bodies in charge of executing the budget and of approving the budget are different ones. Therefore the appropriations prerogative must be supplemented by a control prerogative. This also lies with parliament, which for this purpose relies on a dedicated audit institution, the Court of Audit.

Pursuant to the Constitution, the Court of Audit acts as an institution of the National Council where financial operations on the federal level are concerned, and as an institution of the respective diet where financial operations of the provinces, communities and associations of local authorities are concerned.

In addition, the Court of Audit draws up the federal financial statements, which the National Council then adopts in the form of an act of law.

Since in Austria the Court of Audit reports immediately to the National Council, government auditing is not attributed to the judiciary or the administrative power, but to the legislative power.

One of the consequences of this fact is that the Court of Audit is not a part of public administration, but an independent function.

Even though the Court of Audit is an audit institution within the legislative branch, it has, in conducting audits, been endowed with a functionality of its own. In drawing up its audit programme, in selecting its audit priorities and methodology, and in drawing up its reports, the Court of Audit is not only independent of the governments, but also of the parliaments on the federal and province levels. With respect to the Court of Audit, the National Council and/or the provincial diets only have the rights accorded to them expressly in the Constitution.

3. Organisational independence of the Court of Audit

The organisational independence of the Court of Audit is guaranteed by the rules laid down in the Constitution regarding the appointment and dismissal of the Court's President.

The Court of Audit is organised in a monocratic manner - it is headed by the President. The President is elected by the National Council upon nomination by the standing committee for a term of twelve years. Re-election is not possible. The President of the Court of Audit may be removed from office by a vote of the National Council at any time without any reason having to be stated. In this way, the President

is thus politically accountable to the National Council, similar to a Federal Minister, which underlines high eminently political function.

The provinces do not have any say in the election or dismissal of the President.

With respect to legal responsibility, the President of the Court of Audit has the same standing as the members of the federal government or the provincial governments. The National Council or a provincial diet can bring charges against the President before the Constitutional Court for a violation of the law.

The civil servants of the Court of Audit are appointed by the Federal President upon nomination by the President of the Court. However, the President of the Court has been authorized by the Federal President to appoint certain categories of civil servants by his own right. The President of the Court is directly entitled to appoint all auxiliary staff by constitutional provision. The President exercises the supreme authority in personnel matters of the Court.

4. Functional independence of the Court of Audit

4.1 Rights and duties of the President of the Court of Audit

In executing a highly political function, the President of the Court of Audit has, similar to a member of the Government, the right to participate in the proceedings of the National Council and its committees on the reports of the Court of Audit, the Federal Financial Statements, motions for special investigations, and those chapters of the Draft Federal Budget which concern the Court of Audit. The President has the right to take the floor at any time during such proceedings.

On the other hand, the National Council and its committees also have the right to request the attendance of the President of the Court of Audit in proceedings dealing with the issues mentioned above.

Analogous provisions governing the right of the President to participate in the proceedings of the provincial diets and their committees are not in place in most of the provinces.

Also, it is only members of the National Council, but not members of the provincial diets, who have the right to submit requests in writing to the President of the Court of Audit. However, the scope of such requests is restricted to the financial operations and the organization of the Court of Audit as well as to the service authority of the President, but must not address the auditing activities of the Court as such.

The President the Court of Audit communicates directly with the National Council and its committees. The President is obliged to furnish to the National Council and its committees information concerning his activities whenever requested, in person. This refers to the right of the members of the National Council to receive additional information about audits so as to enable them to perform their control tasks with respect to the executive branch of government in a more effective way.

4.2 Audit competence

The Court of Audit audits the financial operations of the federal government, the provinces, the associations of local governments, and local government units with at least 20000 inhabitants. The Court also audits enterprises in which these bodies have an at least 50% share, as well as other entities designated by law.

The audit competence of the Court of Audit thus encompasses all areas of government as well as all public revenues and expenditures. The Court conducts regularity, legality and value-for-money (performance) audits.

In addition, the Court of Audit is involved in the assessment of bills of law and in the drawing up of effective standards for government auditing.

Upon decision by the National Council, the Court of Audit has to comply with audit requests. If supported by 20 members of the National Council, a motion for the Court to conduct a requested audit will be upheld. Only three such motions are admissible in parallel.

The diets have analogous rights. However, if an audit is still pending, that is if the report in question has not yet been submitted to the diet, it is not allowed to table another motion for an audit.

The fact that the National Council and/or the provincial diets can take the initiative for an audit implies that the Court is restricted to a certain degree in its independent choice of audit projects as well as in the use of its proper resources.

However, the National Council or the provincial diets are in no way authorized to influence the course of the audit, the methods used, and the reporting.

4.3 Unrestricted access to information

In performing its audits, the Court of Audit directly communicates with all audited entities and is authorized to request from the audited entities any information deemed necessary at any time, in writing or orally, and the submission of books, vouchers and other records (such as files, contracts, correspondence) and to conduct an on-site inspection of such books, vouchers and other records.

The audited entity is obliged to disclose to the Court of Audit also data that is subject to the provisions of the Data Privacy Act. Likewise, business and trade secrets (e.g., in the course of the auditing of business enterprises) must be disclosed to the Court of Audit. On the other hand, the Court is obliged to protect the confidentiality of business and trade secrets disclosed to it.

4.4 Reporting by the Court of Audit

The Court of Audit has to submit an annual report to the National Council. Moreover, the Court may, at any time, report on any specific observations made.

The annual report comprises the results of the audits of financial operations conducted at the federal level. Separate sections are dedicated to selected problems of public administration, proposals for administrative reform, or fundamental issues of government auditing.

Once the reports have been received by the National Council, they are distributed to the members and also made public. The President of the National Council assigns the Court of Audit reports to the Court-of-Audit Committee for preliminary deliberation. The Committee is obliged under law to commence preliminary deliberations of the reports of Court of Audit reports within six weeks.

The reports are then submitted for discussion to the Court-of-Audit Committee in the presence of the President of the Court of Audit. The President is accompanied by the auditors having conducted the audit.

Subsequently, the reports are submitted to the National Council plenary assembly, which may or may not adopt the report after a discussion and a vote on it. The latter, however, has never been the case, at least in the more recent history of the Court of Audit.

As an organ of the provincial diets, the Court of Audit reports analogously to the provincial diets on its activities during the previous year.

4.5 Defined procedures for tracking the implementation of recommendations made by the Court of Audit

In its annual report, the Court of Audit points out, broken down by auditees, which of its recommendations have been left unattended, which are being implemented, and which have already been implemented. These reports to the National Council or, on the province level, to the diets, enable the legislative branch to track how the recommendations of the Court of Audit are being implemented.

5. Financial independence of the Court of Audit

In paragraph 7 item 1, the Lima Declaration requires that Supreme Audit Institutions be provided with the financial means to enable them to accomplish their tasks. In order to ensure this, Supreme Audit Institutions shall be entitled to apply directly for the necessary financial means to the public body deciding on the national budget (paragraph 7 item 2).

The Austrian Court of Audit does not directly apply to the National Council for the financial means it deems necessary. The budget for the Court of Audit is drawn up by the Minister of Finance. The same holds for the personnel requests of the Court, which must be applied for each year.

However, the President of the Court of Audit may influence the granting of a sufficient budget. The President has the right to participate in the proceedings of the National Council and its Committees on the budget of the Court of Audit. The President may take the floor at any time and apply for additional funding.

In this way, the President was able several times already to achieve a budget commensurate with the tasks to accomplish when the draft budget submitted by the Ministry of Finance had not been adequate.

The budget of the Court of Audit is a separate chapter of the Federal Budget. The President may dispose of the funds allocated to the Court at his discretion.

III. Concluding remarks

The independence of the Austrian Court of Audit in organizational, functional and financial terms as described above presupposes an adequate legal framework for government auditing. The Austrian Court of Audit is in the privileged position to have gained, during the course of the 250 years of its existence, a status of independence meeting nearly all the requirements specified in the Lima Declaration.

This degree of independence does not preclude, however, a cooperation between government auditing and the executive branch of government, as long as this cooperation is based on the principle of equality. In a democratic state governed by the rule of law, this will be the normal state of affairs, not least because it is in the interest of a rational use of public funds and thus in the interest of the tax payer.

4. Uruguay

Status of Independence from the Perspective of a Latin American SAI

I. Introduction

This paper attempts to provide general information on the degree of independence achieved by supreme audit institutions (hereinafter SAIs) of the Latin American and Caribbean region, which are grouped together within the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS).

The general concept of independence will first be discussed and then applied to the structure of SAIs, followed by an overview of the current situation in the region, with specific reference to the Court of Audit of Uruguay, and concluding remarks on the survey of SAI independence in Latin America.

II. Notion/concept of independence

Even though the term “independence” has a variety of meanings, they are all concerned with “independent status”. In that sense, the different conceptions focus on one key aspect: an independent person is someone “who is not dependent on or subordinate to another”.

III. SAI independence

When applied to supreme government audit institutions, this “non-subordinate” status is not only an important requirement; it is also essential to their existence. However, such independence should be understood not as “isolating” SAIs from the country’s other institutions but rather as requiring them to act in an interdependent way. Interdependence preserves their non-subordinate status while allowing them to benefit from the activities of other auditors and avail themselves of audited entities’ internal audit mechanisms; it also serves to assist Parliament, which is usually the recipient of their work.

In short, independence within the context of an SAI means no to subordination and yes to cooperation.

IV. Independence in INTOSAI documents

Given its importance, INTOSAI has, since its establishment, viewed the issue of independence as a determining factor in the effective performance of an SAI's auditing tasks.

1. Congresses

The first Congress (Havana, Cuba, 1953) and the second Congress (Belgium, 1956) regarded the independence of SAIs as an issue of vital importance. At the second Congress, it was concluded that, for the sound administration of public funds, it is necessary for there to be in every country an SAI that is endowed with complete independence in relation to the administrative authorities and protected against any kind of external influence.

2. Lima Declaration of 1977

Those efforts culminated in the Lima Declaration (Lima, Peru, 1977), one of whose chapters, which is devoted to this issue, sets out three aspects of the independence of SAIs: (a) their own independence (section 5); (b) the independence of their members and officials (section 6), and (c) their financial independence (section 7).

3. Auditing standards

The auditing standards prepared by the Standing Committee on Auditing Standards stipulate, in the chapter on general standards in government auditing, that auditors and SAIs have to be independent (article 2.2.2), with the following explanations:

- Whatever the form of government, the need for independence and objectivity in auditing is vital (article 2.2.3);
- Parliament should not interfere in the programming, planning and conduct of audits (article 2.2.9);
- It is necessary for the legislature to provide the SAI with sufficient resources, for which the SAI is accountable, for the effective discharge of its mandate (article 2.2.12).

Finally, the Auditing Standards state that SAIs should be independent from the audited entities but that an SAI should seek to create among audited entities an understanding of its role and function with a view to maintaining amicable relationships with them.

4. Code of Ethics

The INTOSAI Code of Ethics, which was also prepared by the Standing Committee on Auditing Standards and was approved at the Montevideo Congress of 1998, regulates this matter but its scope is restricted to the independence of auditors.

5. Task force on SAI independence

The establishment of a task force on SAI independence again shows INTOSAI's continuing interest in the issue of independence.

V. Independence in OLACEFS documents

OLACEFS, which is the INTOSAI regional group for Latin America and the Caribbean, has also been involved in the issue of SAI independence. By way of example, the twelfth General Assembly (Mexico City, D.F., Mexico, 2002) recommended in general terms that work should be continued on strengthening and preserving the independence and autonomy of SAIs.

VI. Independence of SAIs in the region

1. Regional overview

In Latin America and the Caribbean, the vast majority of SAIs possess a high degree of independence.

The establishment of practically all SAIs has been provided for in their respective constitutions and, although there have been some changes in their mandates, those amendments have in most cases not affected their degree of independence.

Also, the vast majority of SAIs in the region possess a high degree of technical, administrative and functional independence. With regard to their financial independence, a variety of situations exists, ranging from an SAI's preparation of its own budget to the possibility of veto by the executive following approval by Parliament. As to its execution, this is in all cases dependent on the SAI itself.

2. MERCOSUR

Below is an overview of the situation in the subregion comprising the MERCOSUR member countries, i.e. Argentina, Brazil, Paraguay and Uruguay – which will be dealt with separately – and the associate countries of Chile, Bolivia and Peru, the last of which joined recently, in December 2003.

In general, it can be concluded from the legislations of these countries that their SAIs possess a high degree of independence, albeit with some differences. The SAIs in all those countries have constitutional status, although in some their mandates are regulated just as simple laws..

Functional and technical autonomy or independence is in all cases established by specific wording in constitutional and statutory provisions. Also, all SAIs have, with a few exceptions, a sufficient degree of financial independence to fulfil their audit functions effectively.

1.- Argentina

The Argentine Constitution assigns external auditing of the country's public sector, in its economic, financial and operational aspects, to the legislature and it recognizes the Office of the Auditor-General of the Nation (AGN) as its technical support institution possessing functional and technical autonomy, without whose prior report on the public administration's performance and general situation it does not issue any opinion.

2.- Brazil

The Court of Audit of the Union (TCU) in the Federative Republic of Brazil is also constitutionally established.

3.- Paraguay

As with the other countries of the region, the establishment of Paraguay's Office of the Comptroller-General of the Republic (CGR) is provided for by the national Constitution as an institution with functional and administrative autonomy, although it does not have budgetary autonomy.

4.- Bolivia

In Bolivia, the Office of the Comptroller-General of the Republic (CGR) is an institution recognized by the political Constitution of the State with operational, technical and administrative autonomy.

5.- Chile

In Chile, the Office of the Comptroller-General of the Republic (CGR) is provided for in the political Constitution and enjoys autonomy vis-à-vis the executive and other public bodies. It does not have separate legal status or financial autonomy.

6.- Peru

The Office of the Comptroller-General (CGR) in Peru possesses constitutional status as a decentralized public-law agency with technical, functional, administrative and financial autonomy.

VII. Independence of the Court of Audit of Uruguay

The status of the Court of Audit of Uruguay with respect to its high degree of independence is in line with the general overview given above.

1. Historical background

The legislation prior to the 1830 Constitution referred to certain audit modalities, the Commission of Audit (*Comisión de Cuentas*) undertaking external audits of government financial management within the parliamentary sphere.

The Court of Audit of the Republic was incorporated, as an independent external auditing body, into the country's institutional system by the 1934 Constitution, whose fundamental principles, with some variations in detail that do not alter the essence of the original norms, have been maintained to the present day.

2. Institutional organization

Institutionally, the Court of Audit occupies the most senior supervisory position within Uruguay's representative, democratic republican system of government. To ensure that its powers are effective, certain basic attributes have been conferred upon it by the constituent assembly:

- Highest hierarchical ranking within the institutional framework, on a par with a branch of government;
- Total independence from the branches of government, agencies and audited entities;
- Functional, administrative and technical autonomy, which enables it to act in an objective and impartial manner, free from any political influence;

- A certain degree of economic and financial autonomy, with the power to plan its own budget, which, together with amendments proposed by the executive, must be submitted to Parliament for it to make a final decision.

As a technical institution, it has a clearly defined sphere of responsibility, namely to oversee the legality of the State's entire financial operations. Its role is essentially one of supervision and monitoring; it does not interfere in the management of the audited administrations, nor may it halt, amend, condition or modify their actions or activities.

The Court of Audit has no jurisdictional functions.

3. Independence of the Court of Audit

Uruguay's Court of Audit has a sufficient degree of independence to fulfil its audit functions effectively.

As regards its functional and administrative autonomy, it is a collegiate body composed of seven members, who are appointed by the General Assembly (the Senate and the Chamber of Deputies acting jointly) by a special majority (two thirds of the total composition), which is the same as the majority required for their dismissal by the General Assembly in the event of incompetence, omission or misconduct. This system for the appointment and removal of members provides SAI officials with a guarantee of stability, independence of opinion and autonomy, which are essential for discharging the institutional role assigned to them.

Its members have to meet the same qualifications as senators and are subject to the same conflict-of-interest rules as senators and representatives. They may not obtain gainful employment in the branches of government or in any public body. Also, they may not have any involvement in enterprises which conclude works or supply contracts with the State or handle or manage third-party affairs with public bodies. Finally, they are forbidden from performing any public or private act of a political nature other than voting.

With regard to their tenure, the Constitution lays down that they will cease to hold office when the General Assembly which replaces the one that appointed them makes the appointments for the new period, and they are eligible for re-election without any limitation.

Members are subject to a system of accountability for the "exact fulfilment of their duties" which is far stricter than that imposed on ministers and heads of autonomous

agencies and decentralized departments. First, their responsibilities are concerned with breaches of the Constitution or other serious offences, for which impeachment proceedings may be brought against them. Secondly, ministers of the Court of Audit are constitutionally responsible for the due and faithful observance of the Constitution and, as indicated above, they may be dismissed by the General Assembly for incompetence, omission or misconduct.

The Constitution recognizes the Court of Audit's functional autonomy, which is to be regulated by a law drafted by the Court of Audit itself. In this respect, it is vested with the highest powers of administration to regulate its internal organization, promulgate its own regulations, appoint and dismiss its staff, plan its budget and determine all matters relating to the operation of its services.

In the exercise of its regulatory powers, the Court of Audit has issued general regulations concerning its internal organization and the operation of its services.

As regards its financial autonomy, the Court of Audit, as stated, plans its own budget, which is submitted to the executive, and the executive is able to make amendments to it. The executive presents the original plan and amendments, for consideration, to the legislature, "whose decision shall be abided by".

VIII. Conclusions

From the foregoing it may be concluded that:

- The concept of SAI independence cannot be understood in absolute terms, SAIs being required to act in coordination and collaboration with the other organs of the State;
- The effective discharge of an SAI's tasks is dependent on the recognition of a "sufficient" degree of independence;
- That independence has to be reflected in particular in three areas, i.e. functional, technical and financial, with technical independence being the most important since it affords an SAI's pronouncements consistency, force and impact and significantly enhances its profile in the eyes of the other organs of the State and the public.

It is evident from a general survey of the situation in Latin America and the Caribbean that the majority of SAIs conform to the precepts discussed, these rules also being complied with by the Court of Audit of Uruguay. Apart from some isolated exceptions, the SAIs of the region possess a high degree of technical, administrative and functional independence.

5. Ghana

Situation of Independence of the SAI of Ghana and the AFROSAI Region

Introduction

I was pleased to note that the theme of this symposium is the independence of Supreme Audit Institutions, because the topic was discussed at a seminar organised by the Auditor-General of Sierra Leone in Free Town in February 2004. It is a topic of interest to both SAI of Ghana and AFROSAI generally.

Ghana Audit Service

Ghana Audit Service is the supreme audit institution in Ghana. The governing body of the Service is the Audit Service Board. The Service employs more than 1,300 staff, half of whom are professional staff, and is organised with one head office in Accra and 87 branches spread throughout the country. The branches are made up as follows: 10 regional offices, 53 district offices, 20 Accra branches and commercial audit branches.

Mandate

The role of the Auditor-General in Ghana is very wide in that he is responsible for the audit of the entire public sector including the courts, central and local government administrations, universities and public institutions of like nature, public corporations or other body or organisation established by an Act of Parliament. While Ghana has shared the experience of public sector growth with most countries of the world, it stands out as unusual in the pattern of accountability and audit, which it has devised. Whereas in other countries public audit responsibilities have over time become reduced and/or shared amongst various auditing bodies, in Ghana, the growth of the public sector has led to a consistent increase of the demands placed on the Auditor-General. In effect, the 1992 Constitution of Ghana requires that by June 30 each year, the accounts of central government, ministries, departments and agencies (MDAs), educational institutions, the courts, district assemblies, all corporate bodies including Bank of Ghana, Volta River Authority, Ghana Cocoa Board, etc, should have been audited and reported upon to Parliament.

The demands made on SAI of Ghana continue to increase. One of our tasks is to respond (rapidly) to ad-hoc demands from the Executive for the audit of specific areas, institutions or programmes. In addition, donors also have specific demands on us.

SAI of Ghana's independence

SAI of Ghana's independence follows the recommendations made by INTOSAI at its first Congress in Cuba in 1953 and the second Congress in 1956 in Belgium. And I would like to quote the recommendations, as stated in the paper by Mrs. Sheila Fraser, FCA, Auditor-General of Canada, to this meeting, with her permission. In the first Congress members stated SAIs should have the power to "defend and maintain such independence through the exercise of appropriate actions in the event it should be violated or neglected". SAIs needed to be "guaranteed necessary economic means so that they may be able to accomplish fully the mission incumbent upon them. The second Congress in Belgium stated further that SAIs "be endowed with complete independence in relation to the administrative authorities and be protected against any kind of external influence".

Members made the point that the general structure and the nature of duties of SAIs should be laid down in constitutions that include a formal statement of their independence and of the irremovability of their members. It was also recommended that there should be legal provisions regarding the reports, documents, and observations to be published by Audit Institutions. It is also stated that members should have "the greatest possible degree of operating, reporting and status independence". I am glad to say that SAI of Ghana's independence follows on INTOSAI agenda.

Provisions of the 1992 Constitution of Ghana and the Audit Service 2000 (Act 584)

The independence of SAI of Ghana is enshrined in the Constitution and Acts of Parliament, with respect to the appointment, remuneration, mandate and removal of the Auditor-General of Ghana, and the operation of the SAI.

Term of appointment and conditions of service of the Auditor-General

In Ghana the Auditor-General is appointed by the President acting in consultation with the Council of State.

The office of the Auditor-General is a public office, and before entering upon the duties of his office, the appointed Auditor-General shall take and subscribe to the Oath of the Auditor-General set out in the second schedule to the Constitution.

The Auditor-General shall retire after attaining the age of 60 years but may be engaged for a limited period of not more than 2 years at a time but not exceeding 5 years in all, and upon such terms and conditions as the President acting in consultation with the Council of State shall determine.

The salary and allowances which include facilities and privileges, retiring benefits or awards available to the Auditor-General are a charge on the Consolidated Fund and are determined by the President on the recommendations of a committee of not more than five persons appointed by the President, acting in accordance with the advice of the Council of State.

The salary and allowances payable to the Auditor-General, his rights in respect of leave of absence, retiring award or retiring age shall not be varied to his disadvantage during his tenure of office.

The Auditor-General shall not be removed from office except for stated misbehaviour or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind. He can only be removed by the President on the recommendation of a five-man committee set up by the Chief Justice after a petition received by the President for his removal has been referred to the Chief Justice and where the Chief Justice decides that there is a *prima facie* case.

The Auditor-General may at any time resign his office in writing addressed to the President.

One factor which may vitiate the autonomy and independence, in Ghana, is the appointment of the Auditor-General in the acting capacity. The President may appoint a person to act as the Auditor-General for any period of time; and may be confirmed in accordance with the provisions of the Constitution or have his appointment terminated by the President.

The Auditor-General shall make a written declaration of his assets and liabilities to the President in the manner and subject to the conditions provided in the Constitution.

Powers of the Auditor-General

In the performance of his functions under the law:

The Auditor-General is not subject to the direction or control of any other person or authority.

He has power to disallow any item of expenditure, which is contrary to law.

He has power to surcharge:

- (a) the amount of any expenditure disallowed upon the person responsible for incurring or authorising the expenditures;
- (b) any sum which has not been duly brought into account, upon the person by whom the sum ought to have been brought into account; and
- (c) the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred.

He has power to surcharge any head of a public institution or other body subject to auditing by him who fails to comply with seeking prior approval of all financial and accounting systems and prior approval of any change in any system, with the cost of any loss occasioned by defective or deficient internal controls of auditing.

He may with the prior approval of Parliament, revoke any surcharge.

The Auditor-General or any person authorised or appointed by him for the purpose of auditing any account, has power of access to all books, records, returns and other documents in computerised and electronic form relating to or relevant to those accounts.

He has power to direct the withholding of the emoluments and allowances of persons who fail or refuse to reply to audit observations within 30 days after their receipt.

It is obligatory for an Internal Auditor of any public institution or body to submit a copy of each report issued as a result of internal audit work carried out to the Auditor-General.

The Auditor-General and the Audit Service Board

The governing body of the Ghana Audit Service is the Audit Service Board. The Board consists of:

- (a) a chairman and four other members appointed by the President, acting in consultation with the Council of State;
- (b) the Auditor-General; and
- (c) the Head of Civil Service or his representative.

A member of the Audit Service Board, other than the Auditor-General or the Head of Civil Service or his representative, may be removed from office by the President, acting in accordance with the advice of the Council of State for inability to perform the functions of his office arising from infirmity of mind or body or for any other sufficient cause.

Functions of the Board

The Board shall:

- (a) determine the structure and technical expertise required for the efficient performance of the functions of the Service;
- (b) ensure that the auditing activities of the Audit Service as spelt out in the Audit Service Act, 2000 (Act 584) are carried out in accordance with best international practices;
- (c) appoint officers and other employees of the Service other than the Auditor-General; and
- (d) determine the terms and conditions of service of officers and other employees of the Service other than the Auditor-General.

In pursuance of subsection (1) the Board shall hold consultation with the Public Services Commission but final decision on any matter is subject to the approval of the Board.

The Board may delegate to the Auditor-General or any officer of the Service or a committee of the Board, the appointment of such category of staff of the Service as the Board may determine. So the Board will have to work in close harmony with the Auditor-General but at the same time the Auditor-General must maintain his independence.

It is worthy to note that in terms of constitutional and legislation provisions SAI of Ghana is sufficiently protected.

Financial and administrative independence

It is on the agenda of INTOSAI that SAIs must have sufficient financial independence to carry out their mandate and a high degree of autonomy in their relations with Parliament. Also the staff of SAIs “must not be influenced by the audited organisations and must not be dependent on such organisations. I am afraid this is where, in many respects, several SAIs in the AFROSAI region have problems.

SAI in Ghana has existed for 94 years. The Auditor-General’s position has existed since 1951. There has been a quantum leap in the independence process of SAI of Ghana in the last three years. No doubt, there still be real challenges to creating a truly effective office that is immune from the pressures of clients or institutions being audited, particularly in the context of a developing democracy, where tensions often exists between offices such as ours and those approving or releasing scarce resources and having indirect influences on the administration and management of our SAIs. In the AFROSAI region, we ought to consider the extent to which the office of the Auditor-General can operate independently from public service structures and the extend to which that office will be allowed to hire and retain competent staff on terms and conditions; and that will allow it to operate effectively in delivering high quality and effective reports.

Conditions of the Service in December 2002

Let me take you through the condition of Service when the current Board was appointed in December 2002, as a case study. The Board encountered a very deprived Audit Service with some of its constraints as follows:

- Very low staff morale due to several factors including low salaries, unpaid claims and delays in promotions. Some staff had actually been on their current grades for periods spanning anywhere between ten and twenty two years.

- The workload of the Service as per its constitutional mandate has increased several-fold without adequate compensating increase in staff strength and competence. Due to lack of funds, adequate training courses could not be organised to update the knowledge and skills required to cope with the expanded responsibility.
- These and other situations had combined to create a backlog in some of the audits resulting partly in delayed submission of some of the Auditor-General's Annual Reports to Parliament.
- Audit Service offices outside Accra were mostly in bad state. Furniture and equipment are broken down and most of the offices, especially at the district level, were without vehicles even though their job schedule is itinerant. Out of the 110 administrative districts in the country the Audit Service offices are physically located in only 53. Most of these physical locations are rented premises. Staff members often travelled on official duties at their own expense without being reimbursed until several months after. Trekking officers sometimes lived on the handouts of their client organisations, at the risk of their independence, integrity, health or even life.
- Most serious of all, the Audit Service was still a part of the treasury system of the Controller and Accountant-General and did not have its own separate operational bank account with which to order its affairs. This had led to a situation where the Service could have access to funds only at the convenience of the Ministry of Finance and Economic Planning and the Controller and Accountant-General's Department, two of the SAI's major organisations it audits.

Resources from the government

The core problem of the Ghana Audit Service lies in the mismatch between resources and responsibilities. The prime difficulty is the absence of adequate and predictable financial resources. There have been substantial discrepancies between budget requested, allocated and disbursed. Problems relate to both size and timing of actual disbursements.

Structurally, the influence of both the Ministry of Finance and Economic Planning (MOFEP) (in allocation) and the treasury, i.e. the Controller and Accountant-General (in release of funds) is strongly impinging on the Ghana Audit Service' planning and budgeting latitude.

On the positive side, the SAI of Ghana became self-accounting in January 2004. The situation is expected to improve the predictability of releases and ability to disburse our funds with little or no outside administrative interference.

Major challenges and the way forward

Major challenges we are anticipating in the immediate future are:

- Ensuring the clearance of backlogged audits and submission of overdue Report of the Auditor-General to Parliament and timely submission of current Reports to Parliament when due.
- Tackling the fifth thematic area for the Ghana Poverty Reduction Strategy (GPRS), which is the promotion of 'GOOD GOVERNANCE', to highlight the tenets of transparency, accountability and probity in the financial management of the country. The audit coverage would be extended to the Road Fund, Ghana Education Trust Fund and Highly Indebted Poor Country (HIPC) Fund.
- Ensuring full transition from the treasury system of disbursements and the implementation of self-accounting process in timely and effective fashion to bring about the desired efficiency in the operations of the Audit Service.
- Implementation of the agreed salary levels for 2004 and the recruitment of professionals and multidisciplinary skills to enhance staff quality to ensure improved performance.
- Managing changes resulting from implementation of the Corporate Plan and other Board decisions to ensure smooth administration of the Service.
- Ensuring that the Service is well equipped to discharge its responsibilities.
- Facilitating the work of the auditors appointed to audit the accounts of the Audit Service.
- Promoting good working relations with the union to create a congenial atmosphere for effective service delivery.

Conflicts exist between offices as ours and those approving or releasing scarce resources and having indirect influences on the administration and management of our SAIs. In the AFROSAI region, we ought to consider the extent to which the office of the Auditor-General can operate independently from public service structures and

the extent to which that office will be allowed to hire and retain competent staff on terms and conditions that will allow it to operate effectively in delivering high quality and effective reports.

Examination of some countries within the AFROSAI region

The appointment, removal and powers of the Auditor-General within the AFROSAI region are generally governed by the constitutional provisions or by Acts of Parliament. AFROSAI has about 46 members out of which one-half are also members of either AFROSAI-E or AFROSAI-E/SADCOSAI. For a want of time and space, within the context of this presentation, I would like us, briefly, to look at the situation of the Republic of Cameroun who are yet to set up a SAI with any semblance of what may be found in Ghana or Gambia. The Government of Cameroun has passed a new law which requires the establishment of a Court of Audit. In December 2003, a three-man delegation was sent by the Government of Cameroun on a fact-finding mission to learn from Ghana and some selected countries about practices concerning auditing and reporting as well as action taken against offenders. Gambia, Sierra Leone, Nigeria and Zimbabwe have certain similarities.

SAI of Gambia

In Gambia sections 158 to 160 of the 1997 Constitution established the National Audit Office headed by the Auditor-General. The President appoints the Auditor-General after consultation with the Public Service Commission. In the exercise of his functions the Auditor-General shall not be subject to any direction or control of any other person or authority. The Auditor-General shall submit the annual estimates of the National Audit Office to the President for presentation to the National Assembly. The President shall cause the estimates to be placed before the National Assembly without amendment, but may attach to them his own comments and observations.

SAI of Sierra Leone

The 1991 Constitution of Sierra Leone, the Public Budgeting and Account Act 1992 and the Audit Service Act 1998 govern the appointment, responsibility and functions of the Auditor-General. Section 119 of the Constitution provides that there shall be an Auditor-General for Sierra Leone whose office shall be a public office. The Auditor-General is appointed by the President after consultation with the Public Service Commission, and subject to the approval of Parliament.

In the exercise of his functions the Auditor-General shall not be subject to the direction or control of any other person or authority. The President, acting in

accordance with the advice of Cabinet, or Parliament may request the Auditor-General in the public interest to audit at any particular time, the accounts of any body or organisation.

The provisions of section 137 of the Constitution relating to the removal of a judge of the Supreme Court of Judicature, other than the Chief Justice, from office, shall apply to the Auditor-General. The Auditor-General shall retire from office on attaining the age of sixty-five years or such age as may be prescribed by Parliament.

SAI of Zimbabwe

The provisions of the Constitution of Zimbabwe govern the SAI of Zimbabwe. It provides that there shall be a Comptroller and Auditor-General whose office shall be a public office but shall not form part of the Public Service. The Comptroller and Auditor-General is appointed by the President acting on the advice tendered after consultation with the Public Service Commission. The Comptroller and Auditor-General may only be removed from office by the President if the House of Assembly has resolved by the affirmative votes of more than one-half of its total membership that he be removed from office for inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour. In the exercise of his functions the Comptroller and Auditor-General of Zimbabwe shall not be subject to the direction or control of any person or authority other than the House of Assembly.

A SUMMARY OF STRUCTURES OF SOME SAIs

COUNTRY	POSITION/ TITLE	APPOINTING AUTHORITY	FUNDING	INDEPENDENCE POLITICAL/FINANCIAL		REMOVAL FROM OFFICE
Ghana	Auditor-General	President in consultation with the Council of State	From the Consolidated Fund	Reports to Parliament	Treasury system through MOFEP	President upon the recommendation of Chief Justice after investigation
Zimbabwe	Comptroller and Auditor-General	President acting on the advice tendered after consultation with the Public Service Commission	- do -	Reports to the House of Assembly	- do -	House of Assembly through President
Kenya	Controller and Auditor-General	President	- do -	Reports to National Assembly through MOF	- do -	-
Swaziland	Auditor-General	President	- do -	- do -	- do -	-
Sierra Leone	Auditor-General	President in consultation with the Public Service Commission and approved by Parliament	- do -	Reports to Parliament	- do -	President after investigation
Cameroun	Head of Audit Bench	(Not yet fully in operation)		Reports to State Council	- do -	-

Conclusion

The intense interest of the public in the work of the Auditor-General has demonstrated the important contribution we make in helping our nation spend wisely. Our main function, financial audit, provides assurances to Parliament that public money is spent properly. Our comprehensive programme of value for money audits, in the form of performance audit, looks in detail at particular programmes and project chosen from education, health and environment which are of general interest.

In the terms of the appointment, removal and conditions of service, the Auditor-General seems to be reasonably autonomous, although there still exist the perception of executive interference in the appointment and removal of the Auditor-General. One area of concern is where the Auditor-General is appointed in acting capacity for a considerable length of time before being confirmed. During the period when he is in acting position he could be removed by the President on merely giving notice of the intention to terminate the appointment.

We also have independence in our operations. We submit our reports to Parliament without any directives from the government or any authority. There is an effective follow-up mechanism of our recommendations. Each ministry, department and agency is required to set up Audit Report Implementation Committee to follow-up and ensure that the audit recommendations are implemented.

Financial independence needs to be improved, particularly in the area of release of funds from the Ministry of Finance and Economic Planning and disbursement by the Controller and Accountant-General, two of the entities we audit. We have partially moved away from the treasury system and now operate our own bank account and do our own disbursements. Another area of concern is our ability to engage professional accountants, pay them reasonable remuneration and keep them. Although there are financial and administrative problems in our operations, these have not significantly affected our efficiency in the discharge of our mandate. In the last three years Ghana SAI has experienced a remarkable improvement in our work.

6. Morocco

The Status of Independence of SAIs from the Perspective of an Arab SAI

I. National experience

Following the example of advanced countries, Morocco has, in its most recent Constitution, which was adopted by the Moroccan people in September 1996, established the Court of Audit as a constitutional institution with the role of actively participating in enhancing the management of public funds and fully discharging its mission as a supreme audit institution that is independent both of the legislature and of the executive.

The independence of the Court of Audit can be appreciated by reference to the statutory texts governing it, to the requirements for the appointment of its members and to the degree of autonomy and freedom enjoyed by it in the preparation and execution of its budget and in the formulation and implementation of its work programme.

1.1 Historical developments

Morocco has undergone three major stages in the establishment of its supreme government audit institution.

- *1960: creation of the National Audit Commission*

This Commission comprised:

- A chairman, who was appointed by His Majesty the King at the proposal of the Minister of Justice;
- Finance inspectors, who were appointed by the Minister of Finance.

The Commission was responsible for auditing the accounts of public accountants, i.e. for determining the regularity and legality of the transactions contained in those accounts.

The Commission's findings were made on the basis of documentary evidence and its decisions were not subject to appeal. However, accountants had the possibility of seeking a judicial review before the administrative division of the Supreme Court. They could also apply for a review of the Commission's decisions on the grounds of error, omission, false entry or duplication if the facts giving rise to the review application became known subsequent to the decision.

The Commission was also required to submit to the House of Representatives, as an annex to the Settlement Act, a report on the implementation of the Budget Act.

The scope of the Commission's public finance audit was very limited owing to the lack of human and material resources and because it was in the form of an administrative audit rather than a jurisdictional control function.

- *1979: establishment of the Court of Audit under Law No. 12-79*

In 1979, the Court of Audit was set up as a jurisdictional body with responsibility for auditing the implementation of the budget acts. It determines the regularity of audited entities' income and expenditure transactions and penalizes any breaches of the rules governing those transactions. It examines and assesses auditees' management. It submits reports on its entire operations to His Majesty the King.

- *1996: elevation of the Court of Audit to the status of a constitutional institution*

With a view to fully performing its role as a supreme audit institution (SAI), the Court of Audit was established as a constitutional institution by the Constitution of 13 September 1996. Title 10 of the Constitution stipulates that the Court of Audit is responsible for auditing the implementation of the budget acts.

It verifies the regularity of income and expenditure transactions of entities audited by it pursuant to the law and assesses their management. It penalizes any breaches of the rules governing those transactions.

The Court of Audit assists Parliament and the Government in areas coming within its sphere of responsibility pursuant to the law.

It submits reports to His Majesty the King on its entire operations.

As part of the decentralization and devolution policy and with a view to improving local authority administration, the Constitution also provides for the establishment of regional courts of audit, to which it assigns responsibility for auditing the accounts and management of local authorities and their associations.

- *13 June 2002: promulgation of Law No. 62-99 establishing the Revenue Courts Code*

In application of the provisions of the Constitution, Law No. 62-99 establishing the Revenue Courts Code was promulgated on 13 June 2002.

This law marks an important stage in the Court of Audit's development since it expressly laid down the powers, organization and functioning of the Court of Audit (Book I) and of the regional courts of audit (Book II) and the special statute of their members (Book III).

It should be noted that the powers of the Court of Audit were strengthened and expanded and its autonomy was fully established as a result of this new reform.

1.2 Overview of the national audit system

1.2.1 Expanded and redefined functions

In addition to its regular powers, which have been enhanced and adapted on the basis of accumulated experience, several further provisions have been incorporated in the new Code in order to complete the reform of the Court of Audit and rightly elevate it to the status of a supreme government audit institution.

Provision has also been made for the establishment of regional courts of audit (CRCs), in accordance with the stipulations of article 98 of the Constitution. This measure reflects the legislator's aim of strengthening the decentralization and devolution process and improving local authority administration.

Also, the Court of Audit's function of assisting Parliament and the Government was defined and its terms of implementation specified.

The sphere of responsibility of the Court of Audit and regional courts of audit will now extend to all parties involved in the process of administering public income and

expenditure, i.e. authorizing officers, auditors and accounting officers of public entities.

Management audits conducted by the Court of Audit fall into three distinct categories:

- Comprehensive audit of the administration of government departments, local authorities and their associations and of other institutions in which the State or public agencies have a majority capital holding or predominant decision-making authority;
- Audit of the use of public funds administered by subsidized institutions or agencies with a minority public participation;
- Audit of the use of funds collected by associations through public generosity.

In addition, the Court of Audit rules on appeals lodged against decisions of the regional courts of audit. It also performs a coordination and oversight function in relation to the regional courts of audit.

In summary, it can be asserted that the functions devolving on the revenue courts are better defined and geared to the objectives of carrying out comprehensive audits, achieving a better balance of auditees' responsibilities and establishing a more equitable system of punishments and proceedings in regard to them.

The main audits undertaken by the revenue courts can be classified into the following types:

- Jurisdictional control of the regularity and compliance of operations, covering financial audits, unauthorized conduct and budgetary and financial discipline;
- Management appraisal, in the context of which the court seeks to develop methodological tools for analysing results obtained in relation to expected outcomes, resources implemented to achieve those results as well as any significant shortfalls observed and their underlying reasons and to formulate recommendations for improving audited entities' management and performance;
- Public project evaluations, which are undertaken by the court directly or at the request of the Prime Minister for the purpose of ascertaining whether public projects have been carried out effectively, economically and efficiently by the institution entrusted with their execution.

1.2.2 *Specific powers of the regional courts of audit*

In addition to transferring to the local level the Court of Audit's functions relating to financial audits, budgetary and financial discipline and management appraisal, the Revenue Courts Code lays down that the regional courts of audit (CRCs) are to be entrusted with audit functions in respect of certain budgetary operations and to issue opinions on the conditions of budget execution by local authorities and their associations, in particular when such authorities and associations are unable to approve their administrative accounts.

The Decree of 29 January 2003 fixed the number of CRCs, their appointment, seat and territorial jurisdiction (there are nine CRCs, which are established in the cities of Rabat, Casablanca, Settat, Marrakech, Agadir, Fez, Oujda, Tangier and Laayoune).

1.3 Assistance provided by the Court of Audit to Parliament and the Government

The independence of the Court of Audit does not preclude the possibility of its assisting both Parliament and the Government without being subject to direction by them concerning the programming or conduct of its audits.

This further function of the Court of Audit was set out in the new Code, in which its terms of implementation are specified. While the Court of Audit's discharge of its regular powers can be regarded as ongoing assistance to the authorities, the Code expressly provides for two new forms of assistance:

- With regard to Parliament, the Court of Audit can reply to questions which may be put to it by the presiding officers of the two Houses of Parliament in connection with the examination of the Budget Act Implementation Report and the General Statement of Compliance, which two documents accompany the draft Settlement Act when it is submitted by the Government to one of the Houses of Parliament;
- With regard to the Government, the Court of Audit may, at the request of the Prime Minister, include in its programmes the functions of evaluating public policies and appraising the management of any of the institutions audited by it;

The fact that the Court of Audit is independent of Parliament and the Government does not mean that it is outside the State institutional system. Quite the opposite; its presence among the major institutions of government is not a bar to the conduct of its functions and investigations in the general interest with total freedom and without political bias.

1.4 Court of Audit's establishment of its own annual programme

The Court of Audit has complete discretion to programme its annual activities. To that end, article 24 of the Revenue Courts Code provides for the establishment of the Programmes and Reports Committee with responsibility for drawing up the annual programme and reports to be issued by the Court of Audit.

This Committee, which is chaired by the senior president, also includes the Court of Audit's divisional presidents and the presidents of the regional courts of audit (when the Committee examines issues that concern the regional courts of audit).

1.5 Preparation of an annual report by the Court of Audit for submission by its senior president to His Majesty the King

The Court of Audit's annual report is submitted to His Majesty the King by the senior president prior to the close of the budget year following that to which it relates. This report, which is published in the Official Gazette, gives an account of all operations of the Court of Audit, an outline of the proposals aimed at improving public finance administration and a summary of the Court of Audit's report on the Government's implementation of the Budget Act.

This report, which each year provides a survey of public finances and an assessment of their standard of management, constitutes an invaluable source of information for the nation's entire key personnel. Its wide dissemination among information agencies, the mass media, members of the judiciary, elected representatives, researchers, academics, etc. and the discussions to which it gives rise will undoubtedly encourage decision-makers to take the Court of Audit's observations into consideration and implement its recommendations by taking the necessary remedial measures.

1.6 Court of Audit's financial autonomy

Each year the Court of Audit has a budget, which is incorporated in the General State Budget. This budget is approved in accordance with established budgetary procedures. The draft budget is initially determined with the Minister of Finance and may, if disagreement persists concerning the budgetary appropriation, be submitted to the Prime Minister for settlement of the matter. In a second stage, this budget is discussed before the specialist commissions of both Houses of Parliament and approved at a plenary meeting within the overall framework of the Budget Act.

Finally, this budget is executed by the senior president of the Court of Audit, who is appointed as authorizing officer and who may delegate his authority, including signing authority, to the presidents of the regional courts of audit, appointed as assistant authorizing officers.

It should, however, be pointed out that the execution of the Court of Audit's budget, which is not subject to prior control of the expenditure commitment, is undertaken by a public accountant appointed to the Court of Audit by the Ministry of Finance, a procedure which gives the implementation of the Court of Audit's budgetary operations the required flexibility without such operations being exempt from the rules governing public expenditure.

1.7 Independence of the Court of Audit's internal management

All internal administrative and human resource management operations are conducted under the responsibility of the senior president, who undertakes the general direction and organization of the work of the Court of Audit and directs its administration. The senior president determines the organization of the revenue courts' services and is responsible for the administrative management of the revenue courts' officers and administrative personnel. It should be pointed out that related decisions of the senior president are taken in most cases with the concurrence of the Court of Audit's collegiate bodies, whose functioning is determined by the law, and in some cases after approval by the governmental authority responsible for the civil service and/or the governmental authority responsible for finance.

1.8 Independence of members of the revenue courts

The Court of Audit and the regional courts of audit are composed of officers who enjoy security of tenure. They have a special statute, whose application is overseen by the Council of the Judiciary of the Revenue Courts, in which the different officer ranks are represented.

The Council of the Judiciary of the Revenue Courts is chaired by the senior president.

Its composition also includes:

- The Principal Crown Prosecutor;
- The General Secretary;
- One divisional president, who is elected by his or her peers;
- One regional court of audit president, who is elected by his or her peers;

Two representatives from the officers practising at the Court of Audit;
Two representatives from the officers practising at the regional courts.

1.9 Access to information and documents

The Revenue Courts Code grants the Court of Audit wide powers of access to information and to documents necessary for the performance of its functions.

It should, however, be pointed out that, certain communication obstacles continue to exist in practice, these being connected essentially with organizational difficulties that are still experienced by some audited entities. The Court of Audit is endeavouring, as part of the overall reform aimed at modernizing the Moroccan administration, to make its contribution to improving the auditee reporting and management system and internal controls.

Also, the Court of Audit may utilize the results of examinations carried out in the course of internal audits. Internal control bodies are under an obligation to present the reports prepared by them to the Court of Audit . Furthermore, the Court of Audit can, within the scope of its functions, make use of audit operations carried out by independent firms (external audits).

II. Experience of the supreme audit institutions belonging to ARABOSAI

The Arab Organisation of Supreme Audit Institutions (ARABOSAI) was established in 1976 as an INTOSAI regional group. It comprises twenty-two SAIs from the Arab countries.

The aims of the Organisation are primarily:

- To develop cooperation in areas of common interest among member institutions and to strengthen their mutual relationships through the exchange of information and experience;
- To generate awareness of the importance of the role of SAIs in government auditing and to assist Arab countries wishing to establish supreme audit institutions or develop existing institutions;
- To unify auditing terminology used in member institutions.

The Lima Declaration of Guidelines on Auditing Precepts, adopted at the ninth INTOSAI Congress, constitutes the conceptual framework for ARABOSAI activities.

Like the other regional groups, ARABOSAI regards independence as an essential requirement for effective auditing of the public sector since SAIs cannot perform their role objectively or act with total impartiality unless they are protected against outside influence.

Independence can be perceived from the following main indicators:

1. Existence of an appropriate constitutional or legal framework

An SAI's independence should be laid down by the Constitution and its terms detailed in legislation.

The Arab SAIs which completed the questionnaire on SAI independence all considered that criterion to be essential for the due performance of their functions and the preservation of their independence by means of institutional structures and constitutional principles.

The establishment of the SAI is provided for in many Arab countries by their constitutions and the terms of its organization and operation are set out in legislation. That is the case, inter alia, in the Sudan, Algeria, Tunisia, Morocco and Kuwait. In a limited number of cases, SAIs have been established by a simple law. In Syria, for example, the SAI was set up under a decree of the President of the Republic.

2. Independence of SAI auditors, who should enjoy security of tenure of office

The independence of SAIs is inseparable from that of their officers or auditors, who must be free from any pressure and perform their duties objectively.

The heads of the SAIs within ARABOSAI are generally appointed by the Head of State. In Egypt and the Sudan, the SAI head is appointed by the President of the Republic, subject to agreement by the National Assembly, and is accountable both to the President of the Republic and to the National Assembly. In Yemen, Syria, Algeria and Tunisia, the SAI head is appointed by the President of the Republic.

It should also be noted that those Arab SAIs which are organized in the form of courts of audit are composed of officers who enjoy security of tenure and are governed by a

special statute. In other SAIs, the auditors are senior civil servants, who are most often governed by the civil service statute.

Officers and auditors must in any event have their own statutes and clearly defined powers of investigation and inquiry and be protected against external pressure. Necessary corollaries of their independence are probity and professionalism in the accomplishment of the tasks entrusted to them.

3. Wide and specific powers

In general, SAIs conduct audits to determine compliance with laws and regulations and the regularity of financial and accounting management. Developments in methods of public sector administration have compelled them to modify their operating methods by assigning an increasingly large proportion of their activities to management audits. They verify the proper use of public funds by assessing the attainment of allocated targets and the standard of the services provided and works carried out by audited entities.

Those ARABOSAI member SAIs which are organized in the form of courts of audit undertake the jurisdictional control of agencies which perform public financial transactions and punish, either themselves (Morocco, Algeria) or in conjunction with other institutions (Tunisia),³ any breaches of budgetary and financial rules. They also have non-jurisdictional functions, in particular the conduct of management audits on entities coming within their sphere of responsibility.

While the rule is that SAIs perform post-audits, some Arab SAIs still carry out pre-audits (the SAIs of Syria, Lebanon and Jordan) with the aim of preventing irregular acts of administration. Pre-audits require the mobilisation of very substantial material and human resources, to the detriment of post-audits.

With regard to areas of operation, the majority of SAIs audit government departments and institutions which are wholly public or in which the State has a majority holding. In Tunisia, the auditing activities of the Court of Audit also encompass political parties. In Egypt, the SAI's sphere of responsibility includes political parties, trade unions and press agencies.

³ The Finance Disciplinary Court in Tunisia is presided over by the senior president of the Court of Audit. Its composition also includes two members of the Court of Audit and two judges of the Administrative Court.

4. Free access to information

The statutory texts lay down that SAIs may have access to any documents and information required for the performance of their functions. Internal control and oversight bodies are required to forward their reports to the SAI and to notify it of any breaches discovered in the course of their duties. The time-limits for communication of information and documents to the SAI have to be specified.

In Morocco, the Revenue Courts Code stipulates in its article 107 that “the minister concerned shall forward to the Court of Audit or competent regional court of audit, as appropriate, the reports prepared by the control or oversight body, which shall detail transactions constituting unauthorized conduct or breaches of budgetary and financial discipline or contain observations on the management of entities subject to audit by the revenue courts”.

In Syria, for example, auditees are required to hand over to the SAI all documents and information required by it to carry out its audit. The SAI is also empowered to conduct unannounced inspections or field audits.

Nevertheless, even where access to information is provided for by law, it still depends on the good will of the audited entities. It is thus a question of progressively finding ways of overcoming this dependence on the auditee.

5. Possibility of publishing audit reports

The publication of SAIs' reports is regarded as a fundamental means of informing public opinion with a view to building a culture of transparency and good governance.

Reports are most often submitted to the Head of State. In Morocco, the report is formally presented by the senior president to His Majesty the King. In some cases, it is forwarded both to the Head of State and to Parliament (Yemen and Kuwait). In Syria, the general report on activities is submitted to the President of the Council of Ministers.

Publication of annual reports and their dissemination among the media or general public are, however, still limited in some ARABOSAI countries.

6. Existence of mechanisms for following up recommendations of SAIs

SAIs have incorporated in the statutory texts governing them certain provisions relating to the follow-up of their recommendations. The administrative authorities and heads of audited entities are required to inform the SAI of action taken in response to its audit findings. In Jordan, the annual report is discussed within the Finance Commission of the House of Representatives in the presence of the ministers concerned.

In Tunisia, an independent body, the Senior Administrative and Financial Audit Committee, which is organized in the form of a public administrative institution, is responsible for coordinating the auditing bodies' programmes of operations and for examining, acting on and following up their reports.

7. Financial and administrative autonomy and availability of human, material and financial resources

It is necessary to ensure SAIs' independence in terms of their financing. They should have sufficient staff and the necessary appropriations to discharge their functions satisfactorily.

In some SAIs, the budget is prepared and executed under the same conditions as for ministerial departments.

The budget may also be submitted directly to Parliament, as is the case in Egypt, where the SAI draws up a draft budget as a single line, which is incorporated in the State budget. The draft is forwarded directly to Parliament for approval. An SAI internal commission is responsible for determining the rules and conditions governing execution of the budget.

It should finally be pointed out that, in some cases, a serious shortage of financial resources prevents SAIs from adequately performing their role despite the fact that this shortage is often due to the financial repercussions of the economic difficulties experienced by some countries.

CONCLUSIONS

The principle of independence constitutes an essential precept which should govern the establishment and operation of SAIs, since even partial non-observance of this precept will in itself seriously impair an SAI's functioning, which hampers its smooth running and prevents it from achieving the objectives for which it was established.

In order that SAIs can play their role in promoting ethical standards in public life, disseminating a culture of transparency, strengthening democracy and enhancing public finance administration, it is necessary for them to be afforded all possible guarantees of independence that will provide them with the conditions required for them to discharge their functions with responsibility, clarity and probity.

These guarantees, which are embodied in the Lima Declaration and in each country's laws, are, as stated above, concerned with:

- The existence of a constitutional framework appropriate for each SAI;
- Independence of SAI members and of their actions;
- Free access to information;
- The publication of reports;
- The existence of mechanisms for following up recommendations;
- Financial and administrative autonomy.

SAIs' standards of independence should also enable them to be protected from any pressure or political influence aimed at their instrumental use.

Finally, other support measures should strengthen and reinforce these independence-related standards in order that SAIs can fully discharge their role by ensuring not only the due observance of laws and regulations, this being an essential requirement, but also the economical, effective and efficient use of resources entrusted to public officials.

Such support measures should focus, inter alia, on:

- The adaptation of SAIs to changes in the constantly and rapidly evolving environment;
- The strengthening of their members' skills and expertise;
- The development of a programming strategy based on the assimilation of investigative and regulatory tools that will enable major policy concerns in the financial sphere to be identified;
- The use of auditing standards marked by objectivity and professionalism;

- The strengthening and development of the benefits gained through cooperation and the sharing of experience;
- The supervision and monitoring of investigation and audit work by highly qualified teams;
- The optimum use of information and communication technologies.

Genuine independence rests not only on legal foundations but also on the credibility of SAIs, the quality of their work, the professionalism of their officers or auditors and their adaptability to a changing environment.

7. New Zealand

The Independence of the Supreme Audit Institutions of New Zealand and other Pacific and Asian states

INTRODUCTION

1. This paper is in two parts:

- a case study of the New Zealand Auditor-General's statutory and professional independence; and
- a review of the independence provisions applying to SAIs in parts of the ASOSAI region – in particular, the Pacific Islands, Australia, and Asia.

2. Independence is a critically important value in public sector auditing. It is multi-dimensional – covering constitutional, political, operational and professional independence. Independence is not an end in itself, but rather is a means – or a collection of means – of enabling scepticism and objectivity in the auditor and, hence, an audit that not only is, but also is perceived to be, of high quality.

3. Most states' SAIs are established under the Constitution or by specific legislation relating to the office. Those instruments commonly contain high statements and guarantees of institutional independence, with appointment and funding procedures located in the Legislature to remove the risk of auditee (i.e. Executive) influence. But such guarantees and protections are effective only so far as the particular state's political and social culture allow. And there are other common threats to independence in practice. To name four:

- *Capability*: an inability to find, train and retain capable auditing staff can be a huge obstacle to an independently functioning SAI – especially in smaller states.
- *Corruption*: endemic corruption can make the auditing task overwhelming, and even pose threats to the integrity of the SAI itself.
- *Lack of discretion*: an inability to target audit effort and concentrate scope can weaken the ability of the SAI to provide true assurance over the integrity, effectiveness, and efficiency of public expenditure.

- *Inadequate follow-up*: reports that languish and are not acted upon diminish effectiveness and, in turn, independence of mind.

4. The guiding precepts for SAI independence are well known: see the 1977 *Lima Declaration of Guidelines on Auditing Precepts*. The more recent INTOSAI survey on the independence of SAIs (2003) used 8 core principles:

- the existence of an appropriate and effective constitutional/statutory/legal framework and *de facto* application provisions;
- the independence of SAI heads, including security of tenure and legal immunity in the normal discharge of their duties;
- a sufficiently broad mandate and full discretion in the discharge of SAI functions;
- unrestricted access to information;
- the right and obligation to report on their work;
- the freedom to decide on the content and timing of their reports and to publish and disseminate them;
- the existence of effective follow-up mechanisms on SAI recommendations; and
- financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources.

5. To these I would add the need to ensure the professional integrity of the SAI and those who perform work for it.

6. But independence is not absolute. An SAI which asserts independence at the expense of its relevance or credibility is of no use to stakeholders or the public. Being truly independent means having the confidence to engage with other authorities, and to listen, while refusing ever to be controlled or swayed by them.

7. Neither should independence place an SAI beyond accountability.

8. My case study of the New Zealand situation addresses all of these principles, either directly or indirectly. My review of other ASOSAI states is by necessity more limited. However, New Zealand's role as the Secretary-General of SPASAI (the South Pacific

Association of SAIs – a subgroup of ASOSAI) gives us something of a wider perspective on public sector auditing in the Pacific, which I will seek to convey as well.

PART 1: THE AUDITOR-GENERAL IN NEW ZEALAND

9. The office of Controller and Auditor-General (described as “the Auditor-General”) is New Zealand’s SAI. It is a useful case study of SAI independence because of:

- New Zealand’s traditionally strong commitment to independence as a value in its key institutions; and
- a recently completed reform of the governing legislation of the Auditor-General – resulting in the Public Audit Act 2001.

10. The Public Audit Act addresses the appointment and conditions of office of the Auditor-General, and sets out the Auditor-General’s mandate and powers. The Public Audit Act and the Public Finance Act 1989 together address the funding and accountability of the Auditor-General.

11. The Auditor-General in New Zealand has three main roles:

- Controlling the Executive’s spending of public money – the “Controller” function.
- Being the auditor of all central and local government entities, and a range of other public entities. The statutory mandate for this work includes the power to undertake performance audits and inquiries relating to public entities, as well as a duty to conduct annual audits of public entities’ accountability reports.
- Helping the Legislature (known in New Zealand as Parliament) to hold the Executive (i.e. Ministers and government departments) and other state-owned entities responsible and accountable for their use of public resources. The Auditor-General does this principally by reports to Parliament on the results of audits and inquiries, and by giving advice and assistance to parliamentary committees (known as select committees) on public entities’ spending intentions and financial and non-financial performance.

12. Central to the Public Audit Act is section 9, which says:

The Auditor-General must act independently in the exercise and performance of the Auditor-General's functions, duties, and powers.

13. I will describe how this independence works both in theory and in practice, focusing on the Auditor-General's:

- status as an Officer of Parliament;
- independence from the Executive;
- funding and accountability arrangements;
- operational independence from Parliament;
- powers of access to information;
- power of independent report; and
- means of ensuring professional independence.

The Auditor-General as an Officer of Parliament

14. New Zealand is a constitutional monarchy. Its constitutional arrangements evolved from, and are largely consistent with, the so-called Westminster model of the United Kingdom. Like the United Kingdom, there is no written constitution as such.

15. Parliament is the supreme lawmaking body under the law of New Zealand, with sole power to raise and authorise the spending of public money. It is unicameral – i.e. there is only one chamber, the House of Representatives (“the House”) which is elected under a proportional system. Ministers of the Executive are drawn from, and responsible to, the House.

16. Under New Zealand's comparatively loose constitutional arrangements, statutory officers like the Auditor-General, the Ombudsmen, and the Parliamentary Commissioner for the Environment have important roles in safeguarding the public interest and providing a check on arbitrary use of power by the Executive. These officers are known in constitutional terms as “Officers of Parliament”. This concept has evolved over the past half century, and is generally accepted to signify:

- performance of functions which the House itself, if it so wished, might carry out; and
- independence from the Executive.

17. An Officer of Parliament should be appointed by or through Parliament, and is both funded by and accountable to Parliament. However, it should also be independent of Parliament – in particular, from political influence. Accordingly, an Officer of Parliament is ideally established with its own governing legislation that spells out the status of the Officer and describes its relationship with Parliament and the Executive from both a constitutional and an operational perspective.

18. The Public Audit Act fulfils that function in the case of the Auditor-General. The Act conferred the status of Officer of Parliament on the Auditor-General for the first time – although the desirability of that status had been recognised officially since 1989. Although the Auditor-General had always reported to Parliament, and had been funded by Parliament in common with the existing Officers of Parliament since 1990, power of appointment rested with the Executive until the new Act was passed. The move to parliamentary appointment was a significant advance.

The Auditor-General's independence from the Executive

19. The Auditor-General's auditing and inquiry functions fit neatly with the notion of an Officer of Parliament performing functions which the House itself, if it wished, might perform. The Public Audit Act establishes the Auditor-General's independence from the Executive as follows:

- The Auditor-General is appointed by the Governor-General (the Head of State) on the recommendation of the House, for a single term of up to 7 years with the same protection from removal as judges have.
- There is a Deputy Auditor-General, also an Officer of Parliament appointed on the recommendation of the House but for renewable terms of up to 5 years, who has full capacity in the absence of the Auditor-General or if that office is vacant.
- The Auditor-General's and the Deputy's personal remuneration is fixed by an independent commission (known as the Remuneration Authority), and cannot be reduced during their terms of office.
- The Auditor-General's organisational funding is fixed by the House (see the next section for more detail).

20. These provisions create a strong measure of independence from the Executive. In practice, this independence is reinforced by:

- The prevalence of minority governments under New Zealand's proportional electoral system. The Executive cannot necessarily control, by force of numbers in the House, either the appointment or the funding of an Officer of Parliament.
- The convention that the Governor-General will always act on a resolution of the House recommending the appointment of an Officer of Parliament.

Funding and accountability arrangements

21. The funding procedures for the Auditor-General (largely in common with the other Officers of Parliament) are as follows:

- The Auditor-General submits a Draft Annual Plan (containing a Statement of Intent, proposed funding baseline, and any capital requirements – all based on a three-year business plan) to the Officers of Parliament Committee of the House. This committee is chaired by the Speaker (the Presiding Officer of the House) and has seven other members. By convention, they are drawn from all significant political parties represented in the House. The current Committee does not have a government majority.
- The Treasury (a department of the Executive) has an opportunity to comment and advise the Committee on the business plan and each Draft Annual Plan – although the Committee is not bound to accept its advice (and in practice does not necessarily do so).
- The Committee then recommends to the House the level of annual appropriation for the Auditor-General, for inclusion in an Appropriation Bill.
- The Auditor-General completes and publishes the Annual Plan based on the amount of funding appropriated.

22. Each annual appropriation is a mix of direct parliamentary funding (spent mainly on performance audits, inquiries, and the function of advising and assisting select committees) and authority to raise revenue from public entities by charging fees (principally for annual audits). The Auditor-General has sole power to set audit fees.

23. At the end of each financial year, the Auditor-General must prepare and submit to the Speaker an Annual Report containing audited financial statements. The financial

statements include a statement of service (i.e. non-financial) performance. The Auditor-General's auditor is appointed by the House on the recommendation of the Officers of Parliament Committee.

24. The financial statements and audit report are subject to the same procedure for financial review as exists for other governmental entities. This involves a review by a select committee, whose report is then debated by the House.

Operational independence from Parliament

25. The Public Audit Act:

- allows the Auditor-General to set the office's discretionary work programme and determine the approach to be taken to audits and inquiries; but
- imposes corresponding duties on the Auditor-General to consult with, and provide information to, the House about these matters.

Setting the work programme

26. Most of the Auditor-General's work involves annual audits, which are a matter of statutory duty. However, a substantial part of the office's work programme (especially the performance audit programme) is for the Auditor-General to determine. The Auditor-General's inquiry mandate is also discretionary.

27. The performance audit programme is prepared on a three year basis, and updated annually, through a comprehensive process of strategic audit planning. It then forms part of the Auditor-General's Draft Annual Plan, presented to the Speaker of the House before the start of each financial year (see preceding section). In practice, the Speaker circulates the proposed work programme to a number of select committees of the House for comment. Committees often provide useful feedback, both as to topic selection and as to intended scope or emphasis, which is helpful to the Auditor-General in refining the programme.

28. The Act requires the Auditor-General, when finalising the Annual Plan, to *consider* any comments by the Speaker or any select committee of the House, and amend the Plan *as he or she thinks necessary*. The Auditor-General *must*, however, identify any changes to "work programme priorities" that are requested by the Speaker or a select committee but not made.

29. These provisions were the subject of debate and careful scrutiny during the drafting and enactment of the Public Audit Act between 1999 and 2001. When first brought before the House, the legislation provided for the House to *direct* the Auditor-General on work programme priorities, if it was dissatisfied with the outcome of the consultation process on the draft Annual Plan. The Auditor-General objected to the provision, on the ground that it would impinge on his independence. The select committee considering the legislation agreed, noting that the relationships between Auditors-General and Legislatures in similar jurisdictions are generally based on consultation and co-operation rather than direction.

30. In practice, the consultation procedure has worked well and has provided benefits for the process of identifying topics for performance audit – as well as for the relationship between the Auditor-General and Parliament.

Audit approach

31. Financial reporting standards in New Zealand have legal status, and currently apply equally to public and private sector entities. This provides a solid platform for public sector auditing.

32. By contrast, New Zealand's auditing standards have no legal status, and are promulgated by a professional body, the Institute of Chartered Accountants of New Zealand ("ICANZ"). For this reason, the Public Audit Act allows the Auditor-General to decide what standards or methods are to be applied in a public sector audit.

33. The Auditor-General has used this freedom by establishing a comprehensive array of auditing standards which adopt, and supplement, the ICANZ standards. (The ICANZ standards, in turn, are based on international auditing standards.) Auditors appointed by the Auditor-General to carry out audits on his behalf must comply with the Auditor-General's standards as a condition of their appointment.

34. The power to determine auditing standards is a significant element of the Auditor-General's independence. In return, the Public Audit Act obliges the Auditor-General to publish the standards at three-yearly intervals, by way of report to the House. The Auditor-General must also, in each year's annual report, specify any changes to the standards made during the preceding year.

35. These provisions enable the House, should it wish, to debate and express to the Auditor-General any dissatisfaction with the content of an auditing standard. No such concern has ever been expressed, however, and the Auditor-General's standards are widely regarded as appropriate to the needs of public sector auditing in New Zealand.

The disclosure requirement is nevertheless seen as an appropriate check on the Auditor-General's autonomy.

Powers of access to information

36. The Auditor-General in New Zealand has extensive powers to:

- obtain information, documents, and explanations, and enter premises;
- summon an individual to give evidence (including on oath); and
- inspect any person's bank account where theft or fraud is suspected.

37. The only fetter on these powers is the need to obtain a judicial warrant before entering private premises or inspecting a person's bank account. This safeguard is designed to protect the right of individuals not to be subject to unreasonable search and seizure, which is guaranteed under New Zealand's Bill of Rights.

The power of independent report

38. The power to report is central to the Auditor-General's role and relationship with Parliament, the Executive, and local government. The Public Audit Act has three specific reporting provisions:

- a duty to report publicly to the House at least once a year, besides the Auditor-General's own annual report;
- a wide-ranging power to report to a Minister, select committee, public entity, or any person, in respect of "any matter arising out of the performance and exercise of the Auditor-General's functions, duties and powers that the Auditor-General considers it desirable to report on"; and
- a power to direct a local authority to table a report in a public meeting of the authority.

39. I will examine three aspects of these reporting powers.

Determining what to report

40. The Auditor-General has full discretion as to the content of a report, subject to the need to take into account certain principles (such as the privacy of individuals). In practice, reports to the House are published on the Auditor-General's website as soon as they have been presented.

41. Significantly, the Auditor-General is not subject to New Zealand's freedom of information statute, the Official Information Act 1982. This means that the Auditor-General cannot be compelled to make available information (e.g. the contents of audit working papers) that has not been included in a public report. However, the Auditor-General is not exempt from the power of select committees of the House to compel the production of evidence. In theory, therefore, a select committee could summon the Auditor-General to explain a report and require the production of information not included in the report.

42. In practice, the Auditor-General offers oral briefings to select committees on significant reports. By convention, committees confine their questions to seeking explanation or amplification, rather than seeking information additional to what has been reported. However, Members of Parliament sometimes have political incentives to disregard the convention – for example, by seeking production of commercially sensitive information that the Auditor-General has obtained for the purpose of an audit but has reported on in only general terms. To date, no such request has been endorsed by a select committee to the point of a formal requirement to produce information. But the possibility exists, which creates a risk not only to the Auditor-General's power of independent report but also to his relationship with the House. The risk needs careful management.

Exposure to potential liability

43. The Public Audit Act protects the Auditor-General, the Deputy, and any employee from *personal* liability arising from the exercise of duties in good faith. However, New Zealand law gives no *corporate* immunity (i.e. for the Auditor-General as a body corporate) against lawsuit for audit failure arising from negligence. The legality, fairness or reasonableness of the Auditor-General's procedures could also be challenged through an application for judicial review. And the Auditor-General's reports are not always subject to parliamentary privilege. This could open the possibility of a legal claim for damages resulting from defamation (although in practice this would be unlikely to succeed unless malice could be proven).

44. Personal immunity goes some way towards mitigating the threats to independence in this area. But it is not a complete answer. The risk of litigation (although very infrequently realised) diverts attention from the task at hand and could inhibit independent exercise of the reporting power. The Auditor-General has addressed the risk by purchasing professional indemnity insurance and implementing a comprehensive internal quality assurance programme.

Parliamentary reporting – the search for influence

45. The Auditor-General's parliamentary reporting function is exercised through:

- advice given to select committees of the House when examining public entities' accountability documents; and
- formal, published reports on the results of annual audits, performance audits, and inquiries.

46. New Zealand has no Public Accounts Committee of the type found in similar jurisdictions. This creates a significant weakness in the Auditor-General's relationship with the House, in that there is no committee with which the Auditor-General can primarily engage on either general auditing and accountability matters or specific audit reports. Instead, the function of examining public entities' accountability documents and scrutinising reports is devolved to select committees with specific sector responsibilities (for example, transport, education).

47. The corresponding advantage is that the various select committees can bring their more specialised knowledge of their sectors to bear in their examinations. A senior member of the Auditor-General's staff is assigned to each committee as an adviser. The permanent nature of their assignment allows a level of trust to be established, which results in a considerable ability to influence the committees' work and enhance its quality. Formal and informal feedback from select committees and individual Members of Parliament regularly attests to the value of the assistance given. The Auditor-General's independence in carrying out this role is recognised in a protocol adopted by the House.

48. The fate of the Auditor-General's specific reports is less predictable. There is no formal requirement in New Zealand for either the House or its committees to consider an Auditor-General's report. Nor is the Executive obliged to respond formally to a report. Attempts by the Auditor-General and others to redress this situation have met with only limited success. This contrasts with the position in Canada, for example, where each report of the Auditor-General stands referred to the Public Accounts

Committee after it has been tabled in the House of Commons, and the Government must respond formally to each report within 150 days.

49. Nevertheless, in practice a number of reports by the Auditor-General in New Zealand have led to significant change – especially in public sector governance and reporting.

Professional independence

50. As well as being the holder of a significant public office, the Auditor-General is the head of a professional auditing organisation. Two factors are important to the Auditor-General's professional independence:

- the availability of competent auditing resources, especially through an in-house capability; and
- the ability to ensure that those who are appointed to perform audit work on the Auditor-General's behalf observe applicable ethical standards and take other measures to ensure their objectivity.

Auditing resources

51. Compulsory tendering systems and the loss of an in-house auditing capability can be a significant threat to an Auditor-General's independence. The Public Audit Act allows, but does not require, the Auditor-General to appoint chartered accountants in private practice to carry out audits under the Act. The Auditor-General can also employ staff and determine their terms and conditions of employment, independently of any government service requirements. This autonomy, together with the power to charge audit fees, has allowed the Auditor-General both to retain a substantial in-house auditing capability and to draw upon resources available from the private profession.

52. Compulsory tendering was mooted in New Zealand in the early 1990s, but never implemented. Instead, a voluntary system of contestability was implemented progressively between 1992 and 2002. The system was recently abandoned in favour of a discretionary allocation of audits between employees and suitably qualified firms. Some 40% of audit work is allocated to private sector auditors, and the remainder is undertaken by employees.

53. The allocative approach enhances independence by giving access to a diverse mix of skills and capability, which can be concentrated in particular sectors and regions – without making the Auditor-General overly reliant on the private profession for auditing resources.

Ethics and objectivity

54. The Auditor-General and all appointed auditors are members of ICANZ, and as such are bound by its Code of Ethics and other applicable independence standards. The Auditor-General enforces those professional rules in public sector audits through his own standard on independence, which forms part of the auditing standards published under the Public Audit Act.

55. The Auditor-General's standard is fully consistent with, but in places more stringent than, the Institute's rules. Key requirements include:

- auditor rotation (a six-yearly rotation is required for all appointed auditors);
- requirements to avoid and/or disclose conflicts of interest;
- prohibition of certain types of non-assurance engagement, including tax advice and the performance of valuation services; and
- restrictions on appointed auditors accepting permitted non-assurance engagements (the annual limit on such work is 100% of the annual audit fee, unless the Auditor-General agrees otherwise).

56. A recent amendment to the standard also obliges an auditor to consult the Auditor-General before accepting any engagement (other than an annual audit) that might be politically sensitive or create political risk for the Auditor-General.

Summary

57. New Zealand has made strong progress in the past 15 years in achieving a new legislative framework for the Auditor-General. The Public Audit Act achieves full independence from the Executive as regards appointment and funding. It also appears to strike an acceptable balance between operational autonomy (including independence from Parliament and political influence) and the need for accountability and parliamentary scrutiny. The existence of an in-house auditing capability, together

with the availability of private sector resources as required, reinforce the statutory independence provisions.

58. The main area in need of improvement is the follow-up of reports. The power to report is itself extensive and largely unfettered. Take-up of reports is also often satisfactory. However, the absence of a Public Accounts Committee as a primary source of operational interaction with Parliament, and the lack of any formal procedure for either the House or the Executive to review and respond to the Auditor-General's reports, are recognised weaknesses that need addressing.

PART 2: OTHER SAIs OF THE ASOSAI REGION (INCLUDING THE PACIFIC)

59. ASOSAI covers a very large area, stretching from the Eastern Mediterranean to the Pacific Ocean. The states in the region vary hugely in size, prosperity, culture, and politico/legal environment. Any comparative review of their SAIs' independence must, of necessity, be selective, and care must be taken in forming judgments.

60. My review covered 16 states in Australasia, the Pacific Islands, the Indian subcontinent, and the Pacific rim of Asia – regions with which New Zealand has either geographical or historical affinity. No Eastern Mediterranean or Arabian states were covered. The review examined each SAI's constitutional or legislated framework for signs of independence based on the following indicators:

- method of appointment, tenure, and procedure for removal from office;
- remuneration of office holders;
- organisational funding arrangements;
- presence or otherwise of statements about independence;
- discretion in selecting work priorities; and
- reporting arrangements.

61. The Appendix lists the states reviewed, in two groups:

- those in the Pacific Islands, whose SAIs are members of SPASAI; and
- other ASOSAI states.

Pacific Islands

62. Six Pacific Islands states were reviewed. Of these, four derive their constitutional arrangements from the Westminster model, and two from the US model. The separation of powers between the Executive and the Legislature is an important concept under both models.

63. It is therefore not surprising to see strong indications of independence from the Executive regarding appointment to, and removal from, office. In one case (Fiji), the Auditor-General is appointed by an independent commission, established under the Constitution, after consultation with the Legislature. In three other cases, appointment is either by or with the consent of the Legislature. Appointment is controlled by the Executive in the remaining two cases.

64. Remuneration of office holders is mostly fixed either by statute or by the Legislature. Non-reduction provisions (i.e. preventing remuneration being reduced during an individual's term of office) are common.

65. The review also showed a strong degree of operational independence. Four of the six SAIs have legislated statements of independence, and in every case the SAI has power to report to the Legislature either directly or, in one case, through the Prime Minister. Discretion in selecting work priorities is less common, being found in only half the cases reviewed.

Funding and capability

66. The biggest practical threat to the independence of Pacific Island SAIs is a lack of secure funding. In small island economies, it is unrealistic to expect funding arrangements to be altogether free of Executive control. Nevertheless, security of funding is a real issue. For example, one SAI recently reported to SPASAI that it had been directed to leave all vacant positions unfilled – effectively reducing the maximum staff establishment from 72 to 55.

67. Capability is a related issue. Qualified accounting and auditing staff are hard to come by in small, isolated societies. One SAI (not otherwise covered by the review) has reported to SPASAI that the only way it can expect to reduce a significant backlog of government audits is to obtain funding to engage a chartered accounting firm to undertake the work. This is not an unusual situation.

68. In recognition of these problems, SPASAI's main activity in the past 5 years has been to provide extensive auditor training programmes for staff of Pacific Island SAIs. This work has been co-ordinated and largely undertaken by the New Zealand SAI as Secretary-General of SPASAI, with funding assistance by the Asian Development Bank and the INTOSAI Development Initiative.

69. The training programmes have focused on strengthening both the training capability in the SPASAI region and the operational capability of individual SAIs. There has been considerable success in expanding the pool of qualified trainers, as well as upgrading audit practices, methods and procedures. This can only strengthen the ability of SAIs in the region to function independently.

Other ASOSAI states

70. The review covered 10 other ASOSAI states, and produced some contrasting results.

71. States such as Australia, Japan and Korea have well-developed independence provisions. In each case the legislation establishing the SAI has a strong independence statement, and the Legislature effectively controls the appointment of the office holder. Australia's legislation also requires the office holder's remuneration to be fixed by an independent tribunal, places the organisational funding role with the Legislature, and gives the Auditor-General discretion in selecting work priorities.

72. In most other states reviewed, the appointment of the office holder is made either by the President (with no statutory indication as to how candidates are to be nominated) or by or on the advice of the Prime Minister. This suggests that constitutional independence is relatively undeveloped in these states – an impression that is reinforced by a lack of any independence statements in the establishing legislation or any express discretion to select work priorities. Although some of the SAIs have the power to determine the manner in which an audit is conducted, their mandates tend to be focused on the financial audit of government accounts, rather than a combination of financial and performance auditing. There were also some indications of Executive power to direct the SAI – albeit with an express requirement to consult the SAI beforehand.

73. But care must be taken in drawing conclusions from these indicators. The Presidential or Executive oversight of some Asian SAIs may be explained by the importance of the Presidential role and strong political leadership in their societies. In many of the states reviewed, the SAI appears to rank alongside the judiciary in terms

of protection from removal from office, and alongside Ministers or senior officers of the Executive in terms of personal remuneration.

74. In India, the Auditor-General is appointed by the President under the Constitution, but has security of tenure and a guarantee of organisational funding, which appear to provide a high degree of independence.

75. It is also significant that in all the states reviewed the SAI has power to report to the Legislature. In many cases this is through the President, but presentation to the Legislature appears to follow as a matter of course.

Summary

76. The nature and extent of SAIs' statutory independence vary considerably across the ASOSAI region (including the Pacific). This is to be expected, given the size and diversity of the region itself. The strongest elements of independence are the mechanisms for appointment of the office-holder, and the ability to report to the state's Legislature. However, Executive influence is reasonably common in both of these elements, especially in some Asian states.

77. Constitutional and legislative protections will always be the most visible signs of an SAI's independence. They are important in both a symbolic and an operational sense. But, as the review of the smaller states of the Pacific Islands shows, those protections are not enough on their own. Addressing capability and resource issues are as important to SAI independence as constitutional or legislative reform.

APPENDIX: SPASAI AND ASOSAI STATES REVIEWED

Note: the review was mainly limited to examining the constitutional or legislative framework for each SAI.

SPASAI (Pacific Islands)

Federated States of Micronesia

Fiji

Marshall Islands

Papua New Guinea

Samoa

Tonga

Other ASOSAI states

Australia

India

Indonesia

Japan

Korean Republic

Malaysia

Pakistan

Philippines

Singapore

Sri Lanka

V. REPORTS OF THE WORKING GROUPS

1. Report of Working Group 1 (Report of the English Working Group 1)

Introduction

The Working Group comprised delegates from China, Czech Republic, Greece, Kazakhstan, Korea, Latvia, Moldova and New Zealand.

The Group considered issues concerning SAI independence, and identified problems that individual SAIs had experienced in achieving desired levels of independence. There was broad unanimity on the key indicators of SAI independence, subject to the comments set out below.

Constitutional statements of independence

A proclamation of independence at constitutional level is important, but this needs to be subject to the constitutional arrangements of each country. (For example, some countries have no provision for inclusion of audit arrangements in their constitutions. For others, such arrangements can be incorporated in general constitutional law although not in the constitution itself).

The proclamation should be operationalised throughout the SAI organisation. For younger SAIs, it is also important to develop and maintain independence over time.

Terms of office of SAI

A fixed term must be long enough to survive changes of government and avoid pressures concerning re-appointment impinging too early in the term of office of the SAI office holder.

A single non-renewable appointment is preferable to avoid those pressures.

Relevance of accountability to independence

Accountability provisions are not directly related to independence, but a lack of structured accountability can indirectly affect independence, by allowing the Executive to exert control over the SAI. In particular, external audit of the SAI should be implemented by the SAI or the Legislature, using a transparent process. The SAI should not be subject to control of a governmental body without the consent of the person or organ to whom the SAI is responsible.

Performance auditing mandate

In respect of performance audit, the group agreed this mandate is desirable for reasons of independence, but noted that it might not be realistic for younger SAIs. Instead, the acceptance of the need for the mandate may develop over time, as the core financial auditing role becomes established and accepted.

The freedom to report

The working group did not agree over whether an auditee's comment should be included in the auditor's report, or whether the time for the auditee to respond is when the report has been completed and is under consideration by the recipient.

Resourcing and budgets

The group agreed that the Legislature should be responsible for ensuring the proper resourcing of the SAI, to enable it to fulfil its mandate. However, some degree of involvement by the Ministry of Finance (or equivalent Executive body) is also realistic, given its responsibility for public revenue and expenditure. That involvement may vary according to local circumstances.

Similarly, the degree of involvement by the SAI in the process of setting its own budget may vary, but some degree of involvement is desirable. Preparation of its own budget for approval by the relevant body is seen as the optimal situation.

Conclusions and Recommendations

The group concluded that the question of SAI independence is of importance and should be considered further with these comments and suggestions in mind. It recommends that the issues be discussed by the wider SAI community, accordingly.

2. Report of Working Group 2

(Report of the English Working Group 2)

Introduction

The Working Group was comprised of delegates from Australia, Bahrain, Botswana, Gambia, Ghana, India, Malaysia, Saudi Arabia, and Trinidad and Tobago. The Group had Ghana as the chairman and Gambia as the Secretary. The group's task was to provide views of any problems or difficulties that impacted on the various core principles of SAI Independence.

The group noted that any statement on independence should recognise the different stages of development of various SAIs which has implications for the successful implementation of SAI independence. The intention should not be to create a homogeneous community of SAIs but to provide some broad guidance which can then be applied to the situation of individual SAIs. Consideration should also be given to the implications of “new world“ realities in the areas of globalisation, information technology, the changing public sector environment and how these broadly impact on the Independence of SAIs (see suggested approach in the attachment).

The group emphasised that independence must not only be viewed as what SAIs could demand in legislative or other arrangements but also in terms of what SAIs are able to deliver to gain public confidence and enhanced image, which would assist in closing the apparent audit expectation gap.

Some areas of indicative concern raised by the group that should be kept in view within the context of protecting and enhancing SAI independence are as follows.

1. Requests by parliamentary committees for SAI staff to review audit reports.
 - the group considers that an SAI should be seen to be helpful to the parliament but suggested that such staff should be on secondment to the committee.
2. Delayed responses by auditees to draft audit reports and constrained provision of information and records which impact on both the quality and timeliness of SAI reports.

3. Mandate (lack of) to do value for money or performance auditing in general or on public business enterprises in particular.
4. Audit of budget estimates. The need for clarity as to what the auditor should be reviewing as far as those estimates are concerned, including the standards to be used but avoiding policy issues.
5. Sustainability Reporting-issues concerning the basis for reporting and standards to be used, as apposed to such reporting provided by other agencies and bodies.
6. Use of private sector auditors
 - how do we deal with their provision of assurance and audit services to protect against criticisms of conflict of interests and questions of independence such as rotation of private sector auditors and their undertaking non-audit services.
7. Establishing an appropriate basis for undertaking joint audits (eg by donor and donee countries)
8. Adequate resourcing for SAIs, ageing of staff, turnover issues, changing skills base, appropriate staff numbers and mix of skills for SAIs to be competent and maintain SAI independence.
9. Determining appropriate relationships with state corporations that operate in the competitive markets and yet are subject to the rigour of public sector auditing.
10. Effectively handling issues of non-compliance with SAI recommendations
11. Issues of communication with the media to reinforce the presence and image of SAIs and also to continuously inform the public about the role and functions of SAIs.

3. Report of Working Group 3 (Report of the French Working Group)

Introduction

The Working Group was comprised of representatives of the SAIs of Morocco, Cambodia, Rwanda, Cameroon, Mali, Togo, Portugal, Chad, and Canada.

There was unanimous agreement among the group that the eight core principles already adopted by INTOSAI were relevant and important. However, the Working Group members stressed the need for patience in the implementation of those principles.

Fundamental problems and difficulties of meeting the independence principles

The group recognizes the need for an appropriate and effective constitutional or legal framework and of *de-facto* application provisions of this framework (first core principle of independence). In terms of checks and balances, members insisted on the need to spell out the level of audit: audits of financial operations and audits of quality, audits in respect of SAIs, or other audits within the state. Members emphasized that, in addition to SAI audits, there should be other forms of audits. Two members of the group mentioned that their SAIs subjected themselves to an external review, including a review of the quality of the SAI's audit process.

The members equally agreed that the existence of a democratic society contributes to strengthening the independence of SAIs.

The group recognized the importance for SAI heads to be independent, including security of tenure and legal immunity, in the normal discharge of their duties (second core principle). One member emphasized the importance of defining the meaning of the term « normal ». The meaning of this term, in fact, is not clear; there was a risk that its use may weaken the protection granted to SAI heads.

The third core principle speaks of the need for a sufficiently broad mandate and full discretion in the discharge of SAI functions. Several members of the group mentioned that, in general, the audit of revenues carried out by SAIs was very limited and not given the attention that was accorded to the audit of government expenditure. In

many instances, this reality is attributed to insufficient means being accorded to the audit of revenues. Members underlined the importance of justifying the need for revenue auditing as strongly as that of expenditure auditing, i.e. auditing revenues with as much profundity as expenditure. One member outlined that it was important to change ways of thinking so as to give the necessary attention to this aspect.

The members fully recognized the importance of having access to information (fourth core principle) and of the right and obligation to report on their work (fifth core principle).

SAIs should equally have the freedom to decide on the content and timing of their reports and to publish and disseminate them (sixth core principle). Several members mentioned that their reports were published on their websites after having been submitted to Parliament or to the head of state. The question as to the right timing for the publication of reports was raised by one participant. In fact, the law governing that SAI stipulates that SAI reports must be submitted to the legislative assembly, without providing for deadlines within which the assembly must deal with the report and make it public. In some cases, reports are neither deliberated nor published. Hence, the citizens do not have access to the work of SAIs.

The Working Group members recognized the importance of having effective follow-up mechanisms on SAI recommendations (seventh core principle). The majority however did not believe that it was a task for SAIs to follow up on the implementation of recommendations made by the legislative assembly.

Whereas the Working Group members fully agreed that it was important to ensure the availability of adequate human, material and financial resources, it was divided on the question of financial, administrative and managerial autonomy of the SAI (eighth core principle). On the issue of the budget, several members pointed out that, while it was desirable to have the SAI budget being subjected to objective evaluation, it was unrealistic to demand its not being subjected to the control of the Executive for the time being.

The Working Group members stressed that the World Bank practice of releasing funds for SAIs through their respective governments carried the risk of undermining SAI independence.

The group also discussed whether it was pertinent to award bonus payments to SAI staff if they identify cases of fraud or mismanagement of public funds. The group members unanimously concluded that this practice could be perilous and that it was preferable to grant performance-related bonuses to motivate staff. Evidently, SAIs

should be able to assure a correct remuneration of their staff to promote a strong sense of ethics and to be able to set an example.

It is a genuine challenge to hold Parliament responsible for ensuring that the SAI has sufficient resources to fulfil its mandate. Parliament must have the capacity to fulfil this role and assess whether the SAI budget is sufficient or not. The members stressed the importance of their relations with Parliament and that this was an opportunity for the SAI to express its actual needs. The members noted however that the support by a commission of Parliament which an SAI enjoys might not always be enough for convincing the Minister of Finance to allocate more funds to the SAI.

Finally, several members of the group pointed out that demanding the right of SAIs to directly appeal to the legislative assembly if the resources provided are insufficient could place the SAI in an awkward position vis-à-vis the executive.

4. Report of Working Group 4 (Report of the Spanish Working Group)

Introduction

The Spanish Working Group, made up of the representatives of the SAIs of Brazil, Ecuador, Nicaragua, Uruguay and Venezuela, first of all wishes to emphasize the significance of the topic of independence of SAIs which we have been considering at this seminar, independence representing one of the main columns for the work of an SAI.

General comments

The group agreed in the workshop discussions to make the following comments:

The group would like to underline that all SAI should dispose of an appropriate and effective constitutional, legal and statutory framework and of de facto application provisions of this framework.

The Group considers the criteria of the independence of the SAI heads (and members in collegial institutions), including security on tenure and legal immunity in the normal discharge of their duties of fundamental importance and in particular that of the immunity of the heads of SAIs to legal prosecution for any act past or present that results from the discharge of their duties.

With regard to the term of appointment of heads of SAIs, the Group agrees that the appointment should be for a sufficiently long and fixed term, as formulated in the first draft. However, we consider it necessary to ensure that the term of appointment does not coincide with the constitutional term of office of the government.

As well, the Group wishes to stress that it would be important to clearly establish the basic requirements to be fulfilled by candidates for the position of head of an SAI (or for members in collegial institutions).

Thus the group believes that it is not only important to consider who appoints the heads of SAIs but also who is appointed.

The Group considers a sufficiently broad mandate and full discretion in the discharge of SAI function to be of vital significance for ensuring the independence of SAIs. Indeed, it should be emphasized that wherever monies or assets are “public” (regarding either their source or the use to which they are put), and irrespective of the amount, they should be audited by the SAI.

The Group also noted that some SAIs in the region do not carry out performance (value-for-money) audits. While this does not affect the independence of these SAIs, it does limit their function.

Moreover, the Group took note of individual problems for SAIs in discharging their functions, especially in situations where their mandate has been curtailed. In one case, for instance, an SAI saw its audit powers limited in connection with new forms of activity by the State, especially where it relied on commercial enterprises in the private sector.

As regards the relationship of SAI personnel with the entities they audit, the Group considers highly important that the auditors should not develop any relationship with the audited entities other than that necessary for the proper discharge of their duties.

For the proper discharge of their duties, SAI should have adequate powers to obtain unfettered, direct and free access, on a timely basis, to all the documents and the information necessary for the proper discharge of its statutory responsibilities.

After detailed discussions in the group it wishes to point out the necessity of the right of SAI to report on their work and the freedom to decide on the content and timing of their reports and to publish and disseminate them. In this context the fact was also discussed that there are difficulties in the relationship between the SAIs and the mass media.

The Group considers it necessary that SAI have available necessary and reasonable human, material and monetary resources and that access to these resources is not under the control or the direction of the Executive. It also considers it necessary to give more importance to the topic of human resources. In the opinion of the Group, a high degree of professional and technical expertise of the auditors contributes to the independence of SAIs. It is therefore suggested to place greater emphasis on training and human resource development.

Workshop participants brought up individual situations in which the human resource management of SAIs has been affected by legal provisions limiting the free assignment of staff within the organization. There have also been cases in which legal

provisions have curtailed the power of SAIs to establish their own remuneration system.

The Group considers it important to remember and express that the fact that an SAI prepares its own budget contributes significantly to its independence.

Conclusion

Notwithstanding the comments presented earlier and in conclusion of the debate of the seminar the principle of the independence should be maintained consistent with the Lima Declaration of the year 1977 and enriched by the comments and suggestions made at this meeting. It is suggested to strengthen the independence principles in each and every INTOSAI member country so that independence does not remain just independence on paper but be realized in reality.

ATTACHMENTS

I. Application Provisions of the Core Principles of SAI Independence

DRAFT APPLICATION PROVISIONS OF THE CORE PRINCIPLES OF SAI INDEPENDENCE

The subject of SAI Independence is treated at the conceptual level in Parts II, III, and IV of the Lima Declaration of Guidelines on Auditing Precepts (1977) and also covered in the INTOSAI Code of Ethics and Auditing Standards that are derived from the Declaration. The following core principles find their basis in those documents and in the various declarations on the topic of SAI independence that have resulted from INTOSAI and regional groups congresses over the years.

These core principles are generally recognised in the SAI community as essential requirements of proper public sector auditing by SAIs.

Core Principles

1. The existence of an appropriate and effective constitutional/statutory/legal framework and of *defacto* application provisions of this framework.
2. The independence of the SAI Heads and “Members” (in collegial organisations), including security of tenure and legal immunity in the normal discharge of their duties.
3. A sufficiently broad mandate and full discretion in the discharge of SAI functions.
4. Unrestricted access to information.
5. The right and obligation to report on their work.
6. The freedom to decide on the content and timing of their reports and to publish and disseminate them.
7. The existence of effective follow-up mechanisms on SAI recommendations.

8. Financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources.

Application Provisions

The Application Provisions constitute a vision and a goal that SAIs should strive to achieve.

1. **The existence of an appropriate and effective constitutional/statutory/legal framework and of *de facto* application provisions of this framework.**

Adherence to this principle can be demonstrated as follows:

- 1.1 SAI independence should be firmly rooted in the constitution and legislation of the country. It can only exist within the confines of the mandate granted to SAIs. The constitutional provisions provide the basis for legislation that spells out in detail the extent of SAI independence and powers. These do not exempt SAIs, however, from adherence to the laws that govern the environment that they operate in.
- 1.2 This can take different forms, depending to a certain extent on the various cultural audit traditions that are present. For example, certain courts of accounts are « supreme » in the sense that they are independent of the three branches of government (legislative, executive and judiciary); certain audit boards are independent as a whole but representative of the political spectrum that they are based on; whereas in some Westminster-inspired parliamentary systems, the head of the audit institution is an officer of Parliament and reports to the Legislature.
- 1.3 However, the constitutional/statutory guarantees of independence are meaningless if they are not enacted in practice. Indeed, *de facto* SAI independence is a function of the extent to which constitutional/statutory guarantees are “operationalised” and of the extent to which sufficient human, material, and monetary resources are available.
- 1.4 Moreover, the interpretation and effective application of the concept of SAI independence and of related constitutional/statutory guarantees are very much affected in practice by the particular political and civil society structures and systems of countries within which SAIs operate. For example, SAI independence has little meaning in an environment where proper checks and balances do not exist or are severely limited. It is also

dependent, to a considerable extent, on the degree of democratisation of the environment in which SAIs evolve.

2. The independence of SAI Heads (and “Members” in collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties.

Adherence to this principle can be demonstrated as follows:

- 2.1 Heads of SAI (and “Members” in collegial institutions) should be appointed, re-appointed or removed by the Legislature or by the Head of State on approval of the Legislature. Conditions for their appointment, re-appointment, employment, retirement and removal should be specified in the constitution, statutes or applicable legislation.
- 2.2 The appointment should be for a sufficiently long and fixed term to allow Heads of SAIs (“and Members”) to carry out their mandates without fear or retribution.
- 2.3 Current and former heads of SAIs (and “Members”) should be immune to legal prosecution for any act past or present that results from the normal discharge of their duties.

3. A sufficiently broad mandate and full discretion in the discharge of SAI functions.

Adherence to this principle can be demonstrated as follows:

- 3.1 SAIs should be empowered to investigate the use of public monies or assets by a recipient or beneficiary regardless of its legal nature, as well as the collection of revenues owed the government. These powers should include the audit of the legality and regularity of government accounts and entities, the quality of financial management and reporting, the economy, efficiency, and effectiveness of government operations as well as the fulfilment of their jurisdictional control responsibilities where applicable.
- 3.2 Except when specifically required to do so by legislation, SAIs should not audit government policy but restrict themselves to the audit of policy implementation and to the issuance of audit observations, conclusions, advice and recommendations.

- 3.3 Although they must be respectful of laws enacted by the Legislature which apply to them, SAIs should be free from direction and interference by the Legislature and by the Executive in the selection of audit issues as well as in the programming, planning, conduct, reporting, and follow-up of audits.
- 3.4 SAIs should also be free from direction and interference from the Legislature and the Executive in the organisation and management of their offices.
- 3.5 SAIs should avoid all cases or appearances of conflict of interest in their relationships with audited organisations. They should not be involved or be seen to be involved, in any manner whatsoever, in the management of audited organisations. They should ensure that their personnel do not develop too close a relationship with the entities they audit.
- 3.6 It is recognised, however, that although SAIs should have full discretion in the discharge of their responsibilities, they should be responsive to the interests and wishes of the legislature and should co-operate with governments that pursue improvements in the use and management of public funds.
- 3.7 SAIs should apply the same standards to their own operations that they apply to organisations that they audit if they are to establish and maintain their reputation and credibility. To this effect, they should:
 - 3.7.1 Use appropriate work and audit standards, as well as adhere to a code of ethics, all of which are based on INTOSAI official documents.
 - 3.7.2 Provide evidence of the economy, efficiency, and effectiveness of their operations.
 - 3.7.3 Establish an appropriate internal audit function.
 - 3.7.4 Be prepared to voluntarily submit themselves to some form of review of their performance, and independent audit of their accounts, appropriate to their environment and respectful of their independence.
 - 3.7.5 Submit an annual activity report to the Legislature and to other state organs as required by the constitution, statutes or legislation and make this report available to the public.

4. Unrestricted access to information

Adherence to this principle can be demonstrated as follows:

- 4.1 SAIs should have unfettered, full, direct, and free access, on a timely basis, to all the documents and the information necessary for the proper discharge of their statutory responsibilities.
- 4.2 SAIs should have adequate powers to obtain these documents and information from the persons or entities that have them.

5. The right and obligation to report on their work

Adherence to this principle can be demonstrated as follows:

- 5.1 SAIs should not be restricted from reporting the results of their audit work.
- 5.2 SAIs should be required by law to report annually on the results of their audit work.

5. The freedom to decide on the content and timing of their reports and to publish and disseminate them.

Adherence to this principle can be demonstrated as follows:

- 6.1 SAIs should be free to decide on the content of their audit reports and to make observations and recommendations, taking into consideration, as appropriate, the views of audited entities. However, legislation should specify minimum audit reporting requirements by SAIs, where appropriate, as well as specific matters that should be subject to a formal audit opinion or certification.
- 6.2 SAIs should be free to decide on the timing of their audit reports except where specific reporting requirements are prescribed by law.
- 6.3 SAIs should co-operate to the extent possible to accommodate specific requests for investigations or audits by the Legislature as a whole (or a commission thereof) or by the government.
- 6.4 SAIs should be free to publish and disseminate their reports once they have been formally tabled as required by law. These reports should include, as appropriate, the views of audited entities.

7. The existence of effective follow-up mechanisms on SAI recommendations.

Adherence to this principle can be demonstrated as follows:

- 7.1 SAIs should submit their audit reports to the Legislature (or a commission thereof) or Governing Board at the auditee, as appropriate, for review and for follow up with specific recommendations for corrective action by the Executive or Management.
- 7.2 SAIs should have their own internal system of follow-up to ensure that their observations and recommendations as well as those of the Legislature (or commission thereof) or Governing Board at the auditee, as appropriate, have been properly addressed by audited entities.
- 7.3 SAIs should submit their follow-up reports to the Legislature or Governing Board at the auditee, as appropriate, for its consideration, and for its action even where they have their own statutory power for follow-up and sanctions.

8. Financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources

Adherence to this principle can be demonstrated as follows:

- 8.1 Access by SAIs to necessary and reasonable human, material, and monetary resources should not be under the control or the direction of the Executive.
- 8.2 The Legislature (or a commission thereof) should be responsible for ensuring the proper resourcing of SAIs, to enable them to fulfil their mandate.
- 8.3 SAIs should prepare their own budget and submit it directly to the Legislature (or a commission thereof) for approval.
- 8.4 SAIs should manage their own budget and be free to allocate it as appropriate.
- 8.5 SAIs should have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfil their mandate.

- 8.6 Heads of SAIs should be free to determine the organisation of their office, including personnel and contract management systems and material acquisition/disposal policies and procedures.
- 8.7 SAIs should be free to determine their own personnel policies, including the selection, recruitment, training, remuneration, promotion, discipline, and dismissal of staff and contract personnel.

The above conditions do not preclude SAIs from entering into arrangements with executive government agencies with regard to industrial relations, personnel management, property management, or purchasing of equipment and supplies, inasmuch as these arrangements do not infringe in any way upon the independence of SAIs. In this as in other cases, SAIs must observe the laws that apply to them.

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Canada
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Portugal
Saudi Arabia
Tonga
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II. List of Papers

1. *Country papers by Supreme Audit Institutions*

Bahrain	Ecuador	Nicaragua
Botswana	Greece	Portugal
Brazil	India	Rwanda
Cambodia	Kazakhstan	Saudi Arabia
Cameroon	Korea	Togo
Chad	Latvia	Trinidad and Tobago
China	Malaysia	Venezuela
Czech Republic	Mali	Yemen

2. *Presentations by Supreme Audit Institutions*

Author	Country	Title
Dr. Gertrude Schlicker	Austria	The Position of the Austrian Court of Audit with respect to its Independence
Mrs. Sheila Fraser, FCA Mr. Jean Ste-Marie	Canada	Presentation of the Chair of the Sub-committee on SAI Independence
Mr. Edward Dua Agyeman	Ghana	Situation of Independence of the SAI of Ghana and the AFROSAI Region
Mr. Ahmed El Midaoui	Morocco	The Status of Independence of SAIs from the Perspective of an Arab SAI
Mr. Robert Buchanan	New Zealand	The Independence of the Supreme Audit Institutions of New Zealand and other Pacific and Asian states
Dr. Santiago Fonseca Muñoz	Uruguay	Status of Independence from the Perspective of a Latin American SAI

3. *Papers by other organizations*

Author	Organization	Title
Mrs. Esther Stern	United Nations	Capacity-building in Independent Auditing of the Millennium Development Goals
Mr. Paul Bermingham	World Bank	World Bank Support for SAI Independence

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