Business School

A TRANSACTION COST APPROACH TO THE CHOICE OF OVERSIGHT GOVERNANCE STRUCTURES AT THE UNITED NATIONS: THE CASE OF THE INQUIRY COMMITTEE INTO THE OIL-FOR-FOOD PROGRAMME SCANDAL

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DEDICATION

To my parents, Augusta and Ezequiel that have been always present with their unconditional and incommensurable love and endless support to all endeavors and difficulties in my life.

To my husband, Salvatore, who with his love, patience, and continued faith in my ability to complete this work, instilled in me ideas and stimulus.

With love for all people of this world united in the faith and in the hope that it is possible to flourish a humanly world.

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ABSTRACT

A scandal of fraud and corruption in the management of the Oil-for-Food Programme for Iraq unfolded in early 2004 at the United Nations. The Secretary-General Annan, terminated the ongoing investigation of the scandal by the extant Office of Internal Oversight empowered by the General Assembly, and, with the endorsement of the Security Council, contracted out an Inquiry Committee to investigate the administration and management of the Programme. The lack of reasonable number of studies about internal audit in its natural settings (Lee, 2004), aggravated by the gaps found in the literature about the impact of pathological behavior in international organizations (Barnett and Finnemore, 1999), stress the research opportunity. A longitudinal historical narrative analytical case based research applying first time Williamson's (1999) Transaction Cost Economics theory to explore "probity" and "independence" transactions' attributes enhanced with the "virtues ethics" McCloskey's (2006) framework, is developed to respond to the questions i) Has the inquiry worked? ii) Has Transaction Cost Economics' discriminating alignment hypothesis been verified in the case of the Oil-for-Food scandal inquiry? The inquiry, which contains "sovereign" as well as "quasi-judiciary" transactions elements, and though lack the "authority of the sovereign" and the "independence" of the judiciary attributes, did not work. Transaction Cost Economics alignment hypothesis did not verify and "probity" hazards – "ethics" – cannot be relieved by governance structures, i.e., incentives. I argue that Transaction Cost Economics should be modified to include McCloskey's "virtues ethics" behavioral dimension as a transaction costs' reduction device and an explanatory framework for bureaucratic ethical failures.

Key words: Transaction Cost Economics; United Nations; Oil-for-Food Program; International Organizations; Public Sector; Internal Oversight; Internal Audit; Ethics.

JEL Classification: A13; D23; F53; H83; M14; M40; M42.

RESUMO

Um escândalo de fraude e corrupção na gestão do *Oil-for-Food Programme* para o Iraque eclodiu em 2004 nas Nações Unidas. O Secretário-Geral Annan terminou a investigação em curso dos Serviços de Supervisão e Inspeção Interna que atua com poderes delegados pela Assembleia Geral e, com o aval do Conselho de Segurança, contratou uma comissão de inquérito independente para investigar. Insuficiência de estudos sobre os contextos em que a auditoria interna funciona (Lee, 2004), agravada pelas lacunas encontradas na literatura sobre o impacto de comportamentos patológicos em organizações internacionais (Barnett e Finnemore, 1999) justificam a pesquisa. Um método investigação de estudo de caso longitudinal suportado por uma análise de narrativa histórica, aplicando pela primeira vez a teoria Económica do Custo de Transação de Williamson (1999) para explorar os atributos da "probidade" e da "independência" das transações, é desenvolvido para responder às perguntas: O inquérito resultou? Verificou-se a hipótese de alinhamento discriminante da teoria Económica do Custo de Transação no caso da contratação do inquérito externo? A investigação, com elementos das transações de auditoria e das judiciais, faltando-lhe, todavia, a autoridade soberana e a independência dos atributos judiciários, não resultou nem a hipótese de alinhamento da teoria Económica do Custo de Transação se verificou porque os riscos de probidade – ética – não podem ser mitigados através de incentivos de estruturas de governação. Defendo que a Economia dos Custos de Transação deve ser modificada para incluir a dimensão comportamental da ética das virtudes de McCloskey como um instrumento de redução de custos de transação e um quadro referencial explicativo para falhas de ética em organizações burocráticas.

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ABBREVIATIONS

ACABQ	Advisory Committee on Administrative and Budgetary Questions
BOA	Board of Auditors
CCP	Committee for Programme and Coordination
CEU	Central Evaluation Unit
C/IAIS	Chief Internal Audit and Investigation Services
CPA	Coalition Provision Authority
DAM	Department Administration and Management
GAO	Government Accountability Office United States
IAAC	Independent Audit Advisory Committee
IAD	Internal Audit Division
IAEA	International Atomic Energy Agency
FAO	Food and Agriculture Organization
IAAC	Independent Advisory Audit Committee
IAEA	International Atomic Energy Agency
ID/OIOS	Investigation Division of the Office of the Internal Oversight Services
IIA	Institute of Internal Auditors
IIC	Independent Inquiry Committee into the Oil-for-Food Program
INTOSAI	International Organization of Supreme Audit Institutions
IO	International Organization
IOs	International Organizations
ITU	International Telecommunications Union
JIU	Joint Inspection Unit
MAS	Management Advisory Service
MOU	Memorandum of Understanding
OFFP	Oil-For-Food Program
OII	Office Inspections and Investigations
OIOS	Office of the Internal Oversight Services
OIP	UN Office of the Iraq Program

TCE	Transaction Cost Economics
SG	Secretary-General
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational Scientific and Culture Organization
UNGA	United Nations General Assembly
UN-Habitat	United Nations Human Settlements Programme
UNICEF	United Nations Children's Fund
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UNOHCI	UN Office of the Humanitarian Coordinator in Iraq
UNOPS	United Nations Office for Project Services
UNSC	United Nations Security Council
UNOHCI	United Nations Office of the Humanitarian Coordinator in Iraq
USA	United States of America
USG	Under Secretary-General
UK	United Kingdom
WFP	World Food Programme
WHO	World Health Organization
WMO	World Meteorological Organization

CHAPTER I – INTRODUCTION

I.1. The Case and the Problem

A scandal of fraud and corruption in the management of the Oil-For-Food Programme (OFFP) unfolded at the United Nations (UN) in early 2004. The UN's Secretary-General Kofi Annan, with the endorsement of the United Nations Security Council, appointed "an independent high level inquiry committee to investigate the administration and management of the OFFP in Iraq" (Appendix E). The UN Office of Internal Oversight Services (OIOS) was not involved in this inquiry into the alleged corruption and mismanagement of the OFFP although it has the mandate to do so.

These humanly designed constraint function in governing the UN economic and political life is not inconsequential. Thus, understanding why certain institutions evolve, how they operate in terms of providing incentives, how they define and shape property rights attached to decision making, how control is exercised and what factors induce institutional change is key (Hodgson, 2007). Studying these economic institutions offers a range of handful insights into how the rules of the UN are shaping the way we think about economics and management in international organizations. Actually, the UN is a set of institutions, and their subtle, but important influence on global governance activity is the concern of this research.

The United Nations is a construction instilled by the aftermath of an extreme humanity struggle for survival, the World War II. As this thesis is being drafted under the fresh memory of Nelson Mandela's recent death (5 December 2013), the historical fact underneath the United Nation's Charter (Appendix A) as put forward by Mark Mazower in his book *No Enchanted Palace - The End of Empire and the Ideological Origins of the United Nations* (2009, pp. 19 and 29) is disturbing, to say the least:

> My starting point is a question: What to make of the fact that Jan Smuts, the South African statesman, helped draft the UN's stirring preamble? How could the new world body's commitment to universal rights owe more than a little to the participation of a man whose

> segregationist policies back home paved the way for the apartheid state? Smuts, exponent of racial superiority, believer in white rule over African continent, casts an enigmatic shadow over the founding of the new United Nations Organization at the end of the Second World War.
>
> […] Smuts had only one reservation: 'The new Charter should not be a mere legalistic document for the prevention of war'. Rather it should contain at its outset a declaration articulating the lofty values that had sustained the Allied peoples in their bitter and prolonged struggle. This had been above all a moral struggle, of 'faith in justice and the resolve to vindicate the fundamental rights of man'.

At times when politicians, in their public speeches, very often use the dichotomy "to trust" or "not to trust" or "to believe" or "not to believe" in "institutions", I find it time to explore the *ad hoc* appointment by the United Nations Secretary-General of an Independent Inquiry Committee (IIC) to inquiry the scandal of the Oil-for-Food Programme (OFFP) at the United Nations, what could have well represented one of the most critical moments regarding the future evolvement of the role and survival of the United Nations.

The outsider *ad hoc* inquiry committee was appointed and contracted out having been given a specific mandate to inquire the management of the Oil-for-Food Programme but outside the remit sphere of responsibility and mandate of the existing oversight governance structure (see Appendix E), the United Nations Office of the Internal Oversight Services (OIOS) which was established in 1994 upon the United Nations General Assembly (GA) Resolution A/RES/48/218 B of 12 August 1994 (see Appendix D). At the time the Office of the Internal Oversight Services had already started an investigation into the alleged involvement of UN officials and outside contractors in fraud and corruption practices in connection with the UN Oil-for-Food Programme for Iraq. All of a sudden the Secretary-General Annan terminated the ongoing Office of Internal Oversight Services' investigation and appointed the Independent Inquiry Committee in April 2004. The three-member inquiry was chaired by former Federal Reserve Chairman Paul Volcker and included South African Justice Richard Goldstone and Swiss Professor of Criminal Law Mark Pieth. Mr. Paul Volcker called for a Security Council-backed inquiry into the Oil-for-

Food scandal, and the United Nations Security Council agreed to pass a resolution supporting an independent-high level inquiry into the administration of the Oil-for-Food Programme. The Inquiry Committee's 70-member staff, which included three support personnel on loan from the UN, operated on a $30 million budget drawn from the UN Oil-for-Food escrow account (Meyer and Califano, 2006; Gardiner, 2005).

The empirical problem is to know whether the inquiry worked; it concerns the effectiveness of a major decision taken at the UN, an international organization that exists on the basis of around the world tax payers' money contributions to fulfill an invaluable public interest mission, i.e., to maintain worldwide peace and to foster the economic and social developments (UN Charter, Appendix A). The impact of dysfunctional behavior requires further research. Barnett and Finnemore (1999, p. 699) suggest that "research has paid little attention to how International Organizations (IOs) actually behave after they are created. Understanding how this is so requires a reconsideration of IO's and what they do".

I.2. The Literature

There exists little study and evidence about the interlocking context where the internal oversight operates, much less in the context of an international organization such as the UN. The academic literature shows what has been studied about auditing functions in the context of organizations that collapsed in the aftermath of serious and large fraud and corruption cases. A few case studies were found and reviewed, most focused on the private sector, and just a few focused on the public sector (Graaf and Huberts, 2008; Grigorescu, 2008; Heath and Norman, 2004), and an experiment case (Norman et al., 2010) about the independence of the internal audit while reporting and assessing fraud risk; a few theoretical studies (Guenin-Paracini and Gendron, 2010; Carnegie and Napier, 2010; Gendron and Spira, 2009; Power, 2003, 2000, 1999, 1997, 1996, 1995, 1994, 1993) theorizing about the external audit processes and paradoxes involving the auditing function's role were also reviewed.

Given the UN Secretary-General's decision and solution adopted to investigate the Oil-for-Food Programme scandal, i.e., to opt for an "Independent Inquiry Committee", finding out the rationale underlying explanations and whether the inquiry into the Oil-for-

Food program scandal worked, remained open questions to which I should attempt to find a theoretical founded answer. In the New Institutional Economics (hereafter NIE) literature such a problem is assimilated, on the one hand, to a vertical integration decision problem, or as it is most known a "make or buy decision", and, on the other hand, to a contractual problem. The first is the archetypal problem most studied since the 1970 Oliver Williamson's Transaction Cost Economics (hereafter TCE) theory, a branch of the NIE theories (David and Han, 2004; Gibbons, 2010; Klein, 2008; Macher and Richman, 2012; Masten 1996a), that seeks to explain the variety and the organizational arrangements societies adopt to govern economic life. For Williamson (1979, p. xii), the founding father of the TCE "any issue that either arises as or can be recast as a problem of contracting is usefully examined in transaction cost terms", and by the early 1980s, contracts had become at least as central to TCE as vertical integration (Gibbons, 2010, p. 13). As Buchanan (1975, p. 229) argued "economics comes closer to being a 'science of contract' than a 'science of choice".

"Transaction cost" is the construct first used by Commons (1924), and then by Coase (1937) followed by Williamson (1967, 1971), to describe the impediments to reaching and enforcing agreements or "the costs of running the economic system" (Arrow, 1969, p. 60). These costs derive from activities such as bargaining, contracting, and monitoring performance, activities that are not directly productive but which are engaged in only as a consequence of the need to coordinate activities among transactors (Masten, 1996a).

The central hypothesis of TCE theory is supported on the rationale that, in a given situation, when a decision to complete a particular task warrants, a firm has available a range of possible options. This range of options includes contracting the task outside in the market to external agents or partners or contracting the task inside to the staff under a certain hierarchical control. The latter alternative allows more control but at higher integration or internalization costs. The governance structure – market, hybrid, hierarchy - or the "institutional matrix in which the integrity of a transaction is decided" (Williamson, 1996a, p. 378), will depend largely on the costs of a specific transaction; that is, an economizing result considering the relative costs of integration versus the relative costs of

external contracting. Transaction costs entail the costs of engaging in a contract, including drafting, negotiating, monitoring, and enforcing contracts and the possible opportunity costs of inadequate governance structures. There may be inconveniences for market transactions governed by the price system - the market, but, if an organization exists to reduce costs, then why is there any market transaction at all (Williamson, 1985)? Organizations seek to minimize the total costs of production and thereby achieve organizational structural efficiency and may minimize opportunity costs by buying services/commodities versus developing them themselves. The assumption that all activities are within the direct control of the organization is challenged by the contracting out option which raises new control issues for the organizations as far as the redesign of internal traditional management control systems is concerned (Langfield-Smith and Smith, 2003). In case the services/commodities are not standardized and uncertainty and ambiguity exist concerning acceptable supply performance, more complex contracts may be necessary causing higher transaction costs whereas, despite that the internal costs of production might be higher than contracting out, the decision to internalize production is preferable in terms of economizing end result, i.e., the remediableness criterion applies (Williamson, 1985).

Governance structures govern transactions. TCE theory is built on the basis of a central hypothesis in which the efficiency of alternative modes of organization – markets, hybrids, hierarchies, public bureaus – are examined in relation to and aligned with attributes of transactions and whereas different governance structures, which differ in their cost and competencies, have their own discriminating way to organize, monitor and control transactions (Williamson, 1996, p. 327). Governance is also described by Williamson (1996, p. 10) as an exercise in assessing the efficacy of alternative modes (means) of organization, and because order is accomplished through governance, consequently it is necessary to identify the principal dimensions on which governance structures differ, so that the predictive power of economic theory, can indicate which transactions will be organized and how.

Williamson developed the TCE theory namely exploring private sector reality as the above shows. It was only in or about 1997 that Williamson started to theoretically extend TCE to political organizations and government activities to study the provision of public

services and of the choices that public bureaus must make between providing a service themselves or contracting it out through contractual arrangements. In 1999 Williamson published *Public and Private Bureaucracies: A Transaction Cost Economics Perspective* article to answer to the questions "For which transactions is the public agency well-suited and why? Where does the public agency fit into the overall scheme of economic organization?" (p. 307). As far as I could go, this was Williamson's first and last attempt to draw the theoretical implications of applying TCE to the public sector. Through this exercise Williamson examined public bureaucracy through the lens of TCE, according to which the public bureaucracy (public bureau), like other alternative modes of governance, is well suited to some transactions and poorly suited to others.

Likewise, private governance structures, public sector governance structures are characterized by features such as incentive intensity, administrative controls – bureaucratization, performance attributes and contract law with differences in terminology. Contract law in the public sector assumes a different set of complex attributes, namely the employment relation consisting of executive autonomy and staff security, and legalistic dispute settlement (Williamson, 1999, p. 336).

"Public Agency" is the governance mode option opposing the polar extreme of "Privatization" mode of governance in the string of potential alternatives as far as governance structures attributes are concerned: it has the weakest incentives and the strongest bureaucratization (administrative controls); it has the weakest propensity to behave autonomously (display enterprise and behave adventurous); it has the strongest propensity to comply; it has no autonomy to appoint its executives; it affords the highest degree of security of staff employment; and it works within a forbearance dispute settlement. This governance mode displays public sector contract law and appears defined in terms of the employment relation consisting of lack of executive autonomy, staff employment security, and employment dispute settlement internal mechanisms. Public agency or bureaucracy is the candidate efficacious mode of governance structure for public sector transactions such as sovereign, judicial, procurement, redistributional, regulatory, and infrastructure (Williamson, 1999, pp. 307-308 and 319).

Williamson (1999, p. 321) thesis is that, as compared with alternative feasible forms (all of which are flawed), the public bureaucracy is the most efficient mode for organizing sovereign transactions. Public agencies display an advantage in providing goods that require a high degree of probity and communal commitment in presence of highly incomplete contracts when compared with full privatization. These types of public sector transactions are, so far, those that Williamson explored to develop TCE as an application to public sector economics. On doing so, he made explicit the fourth dimension of transactions – "probity", i.e., "the loyalty and rectitude with which the … transaction is discharged" (Williamson, 1999, p. 321-322) which is attached to sovereign transactions developed in the context of public bureaucracies and requiring the security of the state although, he recognizes, this dimension is also observable in the private sector transactions. Sovereign transactions are embedded with a specific form of "hazard", insofar as a lack of loyalty and integrity can place the organization and the public system at risk even though "probity" is an issue arising in "extreme instances" such as sovereign transactions/foreign affairs. "Probity" is defined as an attribute of transactions only without any behavioral ethical referential framework. Extreme instances seem to be linked with leadership and management behavioral events whereas "probity concerns will be relieved by governance structures to which reliable responsiveness can be ascribed" (Williamson, 1999, pp. 322-323). How to identify "extreme instances" in TCE model is not clear. The powers to appoint and remove the leadership of an agency are taken as an important element in both responsiveness and communication respects. Absent the behavioral ethical assumptions of which "probity" attribute is a function, as recognized by Williamson (1999, p. 340) – "But while probity seems to resonate, it is also vague. Applications need to be delimited. Operationalization is wanting" – its operationalization requires a behavioral ethical referential framework.

As it stands in TCE, "probity" attribute definition is in sharp contrast with McCloskey's (2006) seven "bourgeois virtues" which, as she puts it, allows humans to flourish and live as ethical beings by systematically and routinely (not only in the extreme) practicing them: hope, faith, love, justice, courage, temperance and prudence. McCloskey's seven virtues could be incorporated as the ethical referential framework within Williamson's TCE model advantageously in order to substantiate the "probity" as an ethical

attribute of transactions and render it universally applicable to all type (private and public) and all time transactions. This implies for TCE to abandon the causation effect between extreme events and "probity" recognizing that ethics is a matter of constancy and is not dependent on extreme circumstances, although ethical virtues may display subtle cultural variations according to geography, a twist recognized by Williamson (1985, p. 22): "The social context in which transactions are embedded – the customs, mores, habits, and so on – have a bearing, and therefore need to be taken into account, when moving from one culture to another". Moreover, according to Aristotle (*Nicomachean Ethics*, 1144, 5-10) "Prudence as well as Moral Virtue determines the complete performance of man's proper function: Virtue ensures the rightness of the end we aim at, Prudence ensures the rightness to the means we adopt to gain that end" suggesting that all moral virtues are necessary so that "probity" can verify, i.e, yields a positive result.

There are a reasonable number of empirical applications of TCE theory to the provision of public services, but none of these applied Williamson's 1999 transaction cost perspective to study sovereign transactions type. There are a few empirical academic papers focusing on the internalization *versus* externalization of the accounting and the internal audit function, namely in the private sector, whereas, in general, those studies applying TCE framework (Aman et al., 2012; Everaert et al., 2010; Speklé et al., 2007; Subramaniam et al., 2004; Morrill and Morrill, 2003; Selto and Widener, 1999) concluded that asset specificity and frequency were driving factors for externalization corroborating TCE central hypothesis, but none of these studies applied the TCE framework to any international organization internal oversight function. None of these studies explored and/or applied Williamson's (1999) TCE extension to "sovereign" transactions type and to "probity" transactions attribute. None of these studies tested opportunism transaction's attribute. None of these studies tested the effectiveness or performance of the decisions to contract out or, the contrary, to insource.

The International Standards for the Professional Practice of Internal Audit 2013, issued by the Institute of Internal Auditors (IIA) namely attribute standards establish "independence" as a critical central attribute attached to the output for the internal audit activity (IIA website - http://www.theiia.org/guidance/standards-and-guidance/ippf).

Surprisingly, this attribute was not considered at all in any of the above studies. This "independence" attribute is maybe one new attribute of transactions that should be added to Williamson's (1999, p. 339) TCE framework for certain transactions such as internal oversight as suggested in this thesis.

Williamson (2013, pp. i-xx) expressed his view of the state of the art of the progression of TCE theory hitherto as follows:

> TCE, moreover, is a work in progress … TCE should also help us to better understand the difficult implementation problems that await 'promising' new projects in both the public and private sectors. Because, moreover, our understanding of bureaucracy is severely limited, many of the potential benefits and avoidable errors of bureaucracy go unrecognized. This condition should be corrected…. Deep and systematic treatments of bureaucracy remain a huge challenge to the social sciences to this day…. Being of the belief that our understanding of hierarchy in business and in public bureaus in the United States and as between nation states is vital to our future and the future of others, this very difficult subject warrants examination of a modest, slow, molecular, definitive kind.

Other academics had underscored the TCE' empirical application areas that are understudied or underdeveloped (David and Han, 2004; Carter and Hodgoson, 2006; Klein, 2008; Gibons, 2010; Macher and Richman, 2012; Ménard and Shirley, 2012). Little scrutiny of the frequency transactions' attribute and the performance of governance structures are being considered critical insofar as while there is evidence that asset specificity leads to the choice of hierarchy any tests of whether hierarchies outperform markets when both asset specificity and uncertainty are high or, conversely (David and Han, 2004; Macher and Richman, 2012). Moreover it has been noted that "empiricists have not taken sufficient advantage of the possibilities for longitudinal work in TCE, they paid little consideration. Not only can TCE be applied across contexts, it can also be applied across time. Longitudinal work would serve to sharpen the core theory" (David and Han, 2004, p. 55). David and Han (2004, p.55) point out the strengths of "[a] shift from a highly

quantitative analysis, in which equilibration at the margin plays a central role, to a more qualitative analysis in which discrete structural alternatives are compared" and Gibbons (2010, p. 6) to the need to include in the study not only the boundaries of the firm but also the internal organization. Macher and Richman (2012) also refer to the dearth of empirical applications of the TCE to the accounting field.

I.3. Objectives of the Study and Contributions

Internal oversight structures and mechanisms have been in the frontline of consecutive attempts to reform the UN Secretariat management practices anytime crisis unfolded at the UN. On the aftermath of the Oil-for-Food Programme scandal these pressures increased once again (Grigorescu, 2008; Congress Research Service – USA, 2007).

There is considerable debate on the issue of whether (and to what extent), in fact, oversight reforms at the UN are emerging or whether we witness a process of redefining "governance" as symbolic changes. These issues may be defined as the problem of empirical identification and it touches, among other things, on the issue of to what extent it is feasible, in an analytically sensible manner, to explore, interpret and explain observable new empirical phenomena with the help of the conceptual tools of the TCE theory.

Bringing to light the very reasons why the Office of Internal Oversight Services maybe "locked in a trap" as far as its positioning in the UN Secretariat governance system is concerned, can potentially open the door for improved awareness of the problem and open the debate about the UN governance system although there is no consensus on which set of phenomena can properly be grouped under the title "governance" and which new control institutions and mechanisms do we see emerging.

My interest on researching the specific case of the institutional impact of the Oil-for-Food Programme scandal inquiry on the UN Secretariat's governance system and, in particular, on the Office of Internal Oversight Services' evolvement as a consequence, emerged as soon as the first news about the scandal were brought to light in the international media in 2004. At that time, I was the Chief Internal Audit and Investigation Service at the World Meteorological Organization, a position which mirrors that of the head

of the Office of Internal Oversight Services at the UN Secretariat in the UN headquarters in New York (Grigorescu, 2008), and was carrying out a very material and critical investigation into a fraud and corruption case involving the high ranking officials at the World Meteorological Organization.

Considerable challenges emerged from the case I was investigating, namely connected with the independence and authority of the Chief Internal Audit and Investigation Service in the organization's governance system and later even led to questions about the Internal Audit and Investigation Services' legitimacy. This context drew my special attention to the events and the high profile case of the Oil-for-Food Programme being contemporarily investigated at the UN headquarters in New York by an *ad hoc* Inquiry Committee specifically created and mandated to investigate the Oil-for-Food Programme scandal, instead of the Office of the Internal Oversight Services as one could expect. The Office of the Internal Oversight Services is entrusted by the UN supreme legislative body, the United Nations General Assembly, with the statutory mandate and authority to carry out such kind of inquiries and investigations. Since then, I have persistent questions in mind for which I thought I would investigate the answers: Why was an *ad hoc* Inquiry Committee mandated in 2004 by the UN Secretary-General Kofi Annan with the United Nations Security Council's endorsement to investigate the Oil-for-Food Programme alleged corruption instead of the Office of the Internal Oversight Services? Has the inquiry worked? Ultimately, what was the impact the events have had and may still are having in the evolvement of the United Nations governance system and in the Office of the Internal Oversight Services functioning?

My aim is not only to search an answer to the persistent above mentioned questions reaching an understanding and explanation of the phenomena underlying such events, but also to use reality to improve existing theory.

On the one hand, considering that the UN represents the larger international organization of the UN system constellation, and most probably one of the largest bureaucracies in the world, and, on the other hand, considering that a majority of international organizations within the UN system as well as elsewhere in the multilateral financial institutions (so called Bretton Woods organizations), the governance system

model concerning the internal oversight mechanisms, have all been mirrored from the USA's administration system and are therefore similar (Grigorescu, 2008), it turns that by studying the UN Office of Internal Oversight Services case within the UN system, it will constitute an instrumental representative case study for the UN system as a whole (Stake, 2005, 1995).

The UN is an international organization and the Charter (Appendix A) is the UN's founding formal institution that sets the "rules of the game" and the UN organizational Organs: delegating and distributing power, framing and constraining the decision making, defining the governing bodies and the organizational structure, shaping the relationships between the organizational structure and the member countries. In the economic literature these instances of organizational life have been often studied within the TCE (Buchanan, 1975; North, 1990a; Williamson, 1999).

All the above considered, the ultimate aim of this thesis is to explore and explain the case of the UN Secretary-General's decision to contract out an *ad hoc* inquiry committee into the Oil-for-Food Programme scandal while moving aside the extant UN internal oversight governance structure, the UN Office of the Internal Oversight Services, suddenly terminating an undergoing investigation conducted by the Office of the Internal Oversight Services, in light of New Institutional Economics theories namely the Transaction Cost Economics theory concerned with the study of alternative governance structures to administer transactions within the public sector context (Williamson, 1991 and 1999). While finding out how far this multidisciplinary theory can provide good explanations of the case, it is also aimed to further the potential need of radical consideration and change of same (Merino and Mayper, 2001; Tinker, 2001; Llewellyn, 1996; Humphrey, 2001; Humphrey and Scapens, 1996). Hence, this thesis aims to contribute to fill in an important number of gaps in the Transaction Cost Economics literature.

The first contribution is empirical. To my best knowledge, this is the first TCE empirical application to a public bureaucracy case following Williamson's (1999) study of the USA State Department, foreign affairs transactions. I am to study internal oversight transactions in an International Organization context, and, in so doing, testing for first time the validity of "sovereign transactions" definition and the "probity" of transactions

attribute. This is the first study where the organization, the UN, explicitly has in place a specific governance structure to carry out audit, and investigation services and decides to contract out one such specific transaction.

I am also seeking to contribute to extend the applicability and predictive power of the TCE theory by investigating to what extent the decision of the UN Secretary-General regarding the contracting out the *ad hoc* Inquiry Committee into the Oil-for-Food Program scandal was instilled by opportunism; by attempts to gain, maintain and/or repair reputation, or, if it was instilled by the choice of specific tactics to reduce the hazards surrounding the contractual relations among the actors engaged in oversight at the UN.

Hence, the scientific contribution resides on the one hand on the application and testing of Williamson's (1975, 1995, 1999, 2010) TCE framework to an International Organization context in connection with an "extreme event" such as the unfolding of a significant scandal of corruption and the subsequent decision to inquiry it, and, on the other hand, a theoretical contribution to extend/change the applicability and predictive power of the TCE theory as far as an ethical behavioral dimension is concerned by adding McCloskey's (2006) virtues ethics framework to operationalize "probity" of transactions attribute.

I.4. Research Questions and Methodology

The central question of this research is therefore "Why was an *ad hoc* Inquiry Committee mandated in 2004 by the UN Secretary-General Kofi Annan with the United Nations Security Council's endorsement to investigate the Oil-for-Food Programme scandal instead of the UN Office of the Internal Oversight Services? Has the inquiry worked? Or put another way,

> *Does TCE's discriminating alignment hypothesis verify in the case of the OFFP scandal inquiry?*

The following set of sub-questions was devised to help addressing the above main question:

1. How far the UN Secretary-General's contract of the Oil-for-Food Programme scandal Inquiry Committee was crafted to economize on bounded rationality while simultaneously safeguarding the effectiveness of the inquiry against the hazards of opportunism?

2. What attribute is attached to the UN Secretary-General's opting out transaction? Is it a "sovereign" type or a "judiciary" type transaction? Is there any specific and determinant attribute so that the decision taken maximized the efficiency and the outcome of the inquiry?

3. What hazard is implicated on UN Secretary-General's option for the Inquiry Committee instead of an internal governance structure, the Office of Internal Oversight Services? Was it a failure of "probity"?

4. Was the Inquiry Committee the most efficient governance structure to provide the investigation service to the UN Secretary-General and to the UN General Assembly?

In order to answer these research questions, a qualitative research design was adopted. In this circumstance according to Miles and Huberman (1994) and Mason (2002) qualitative research is appropriate because the aim of this investigation is to obtain a holistic, integrated understanding of social phenomena, on the basis of rich, contextual data.

Thus, an in-depth intensive longitudinal, across context and across time, analytical historical case study was designed and then developed whereas TCE theory provides the theoretical perspective. To apply the TCE theory, and since any contracting problem can be usefully studied in transaction cost economizing terms (Williamson, 1995, p. 225), to examine the context, the "why", the "how", requires considering two sets of units of analysis: i) the provision of internal oversight services at the UN; ii) the institutional relationships embed in "incomplete" oversight contracts.

I.5. Outline of this Thesis

The remainder of this thesis is organized into six chapters. Following this introductory chapter, Chapter II introduces the importance of institutions in the economics

literature, and thereon Chapter IIII discusses the TCE theoretical background and its relevance to frame the study of "make-or-buy" type of decisions such as those found in the present case study. In this regard, it namely discusses the TCE framework developed by Williamson to be applicable to public bureaucracy puzzles. In Chapter IV, I present the research design as well as the operationalization of the TCE framework as it applies to the case study at issue in this thesis. Chapter V presents and explores the United Nations institutional macrolevel of analysis, the Charter and the Convention on Privileges and Immunities, and proceeds to introduce the microlevel of analysis to describe and analyze the internal oversight extant governance structures as they existed until the mid of 1993. Chapter VI brings the history of the reforms introduced in the internal oversight structures since 1994 through to 2010 and the consequences and impact thereon. Finally, Chapter VII summarizes the research and puts forward resulting theoretical and practical contributions to conclude with suggestions for future research.

CHAPTER II – THE THEORETICAL BACKGROUND

II.1 – How Do Institutions Matter in the Literature

"By means of the old, we come to know the new".
-Confucius

Politicians, in their public speeches, very often use the dichotomy 'to trust' or 'not to trust' and/or 'to believe' or 'not to believe' in 'institutions'. Why do institutions matter so much to politicians and to citizens in general? In the academic arena institutions and institutionalism have gone a long way of debate at least since late 19th century. In the early 20th century Max Weber stressed the ways bureaucracy and institutions were coming to dominate capitalist society with his notion of the Iron Cage – a dominant position and role in modern societies: "through its technical superiority over all other forms of administrative organization and management; through its cultural power and ubiquity as an overarching cognitive framework informing all forms of social action; and, through its in-built capacity to integrate administrative, cultural, and political power in one organizational form and mechanism" (Reed, 2005, pp. 119-120).

The academic community views Thorstein Veblen, Wesley Mitchell, and John Commons as the 'founders' of institutionalism (now designated in the literature as the old institutional economics – OIE), i.e., the first attempt to study with an economics framework the insight of the 'veil' and the 'particles' of institutional and organizational systems which human agents 'wear' and 'embody' permeating their actions in their economic interactions. They are all American scholars. These scholars were active during a period of more than fifty years starting in 1918 through to 1950s having in the meantime experienced and witnessed two extreme events for the world – World Wars I and II (Hodgson, 1998).

For them institutions were more than merely constraints on individual action, but embodied generally accepted ways of thinking and behaving, therefore shaping individual's preferences. Veblen, in particular, was concerned to what he perceived as systemic failure of 'business' institutions to channel private economic activity in ways consistent with the public interest (Rutherford, 2001).

Common's book *The Legal Foundations of Capitalism* (1924) led to his inclusion as an institutionalist scholar. At the micro level, he developed the concept of transaction as the basic unit of analysis insofar as the terms of transactions were determined by the structure of "working rules", including legal rights, duties, liberties, and exposures, and by economic (bargaining) power. More generally, other strands of this institutionalism movement had significant interest in law and economics covering topics such as the evolution of property rights, the legal context of transactions, intangible property and goodwill, valuation of public utilities, rate regulation, and many issues in labor law, collective bargaining, health and safety regulations, and consumer protection. He conceived organizations as "going concerns" engaging in "routine" and "strategic" transactions and specifically distinguished between the interchangeable bargaining transactions (market transactions) and managerial transactions (hierarchy). He also provided a theory of the behavior of legislatures based on "log-rolling" and a theory of judicial decision-making based on the concept of "reasonableness" (later assimilated by Williamson´s "remediableness" criterion), a concept that included, but was not limited to, a concern with efficiency (Commons, 1932, pp. 24-25; 1934, pp. 751-755). Market transactions were conceived of as a transfer of rights, not as a transfer of physical goods, and a transfer that takes place in a context of legal and economic power, and always involving some degree of "coercion", in the sense of some degree of restriction upon alternatives (Commons, 1932; Samuels, 1973).

Some economists (such as Coase, Matthews, Stigler) are of the view that 'older style' institutional economists in the United States became consumed with methodological objections to orthodoxy without a convincingly positive research agenda (Williamson, 1997, p. 19). On the contrary, Hodgson (1998) asserts that it is widely and wrongly believed that the 'old' institutionalism was essentially anti-theoretical and descriptive. To support his argument he refers the example of Veblen, who was the first social scientist to attempt to develop a theory of economic and institutional evolution along essentially Darwinian lines, much like later attempts by economists to use evolutionary metaphors from biology by Armen Alchian, Friedrich Hayek, Kenneth Boulding, and Nelson and Sidney Winter. Notwithstanding these developments, institutionalism failed because it was partially disabled by a combined result of the profound shifts in social science in the thirty

year period between 1910 and 1940 and of the rise of a mathematical style of neoclassical economics in the 1930s depression stricken.

Taking an intermediate stand Rutherford (2001) posits that the the institutional movement was then unable to evolve its theories of social norms, technological change, legislative and judicial decision-making, transactions, and forms of business enterprise (apart from issues of ownership and control) much beyond the stage reached by Veblen and Commons. Underlying reasons pointed for this failure are the lack of clear phychological foundations to their premises as well as because they missed to put in their agenda the pressing policy issues emerging after the World War I like business cycles and utility regulation. Furthermore, in the early 1920s, the sociology discipline got autonomous from economics not only establishing itself in separate departments in American universities but, above all, taking over the research issues related to norms and institutions.

The reborn of the institutionalism thought came about with the label of New Institutional Economics – NIE around the 1970s (Williamson, 1997). What has been since then at the center of this field of social science research? Despite the fact that there is no single answer to this question within the academic community, Hodgson (1998, p. 176) puts forward his answer:

> The characteristic 'new' institutionalist project is the attempt to explain the emergence of institutions, such as the firm or the state, by reference to a model of rational individual behavior, tracing out the unintended consequences in terms of human interactions. An initial institution-free 'state of nature' is assumed. The explanatory movement is from individuals to institutions, taking individuals as given.

Actually, economists have now recognized that neoclassical economic models of the firm are unable to explain organizational boundaries and bear little resemblance to firms in the real world (Hart, 1990). As a result, the theory of the firm has become more sophisticated in an attempt to explain real-world economic phenomena, such as the decision to outsource.

Eventually NIE, which began to develop as a self-conscious movement in the 1970s (Williamson, 1997), traces its origins to Coase's analysis of the firm (Coase, 1937), Hayek's writings on knowledge (Hayek, 1937, 1945) and Chandler's history of industrial enterprise (Chandler, 1962), along with contributions by Simon (1947), Arrow (1963), Davis and North (1971), Williamson (1971, 1975, 1985), Alchian and Demsetz (1972), Macneil (1978), Holmström (1979) and others. Its best-known representatives are Coase, Williamson and North (Klein, 2000, p. 457).

The NIE was built up on the basis of a three level construction: the institutional environment at the top level where the rules of the game are defined (rules, laws and constitutions) as well as informal constraints (norms of behavior, conventions, and self-imposed codes of conduct) and their enforcement characteristics; the level of governance which concerns the play of the game, i.e., where the alternative modes of governance – markets, hybrids, firms, bureaus – are described and the alignment of transactions to governance structures is accomplished; the level of the individual where the behavioral assumptions are defined. NIE is concerned with the study of both the institutional environment (or rules of the game – the polity, judiciary, laws of contract and property (North, 1990a), and the institutions of governance (or play of the game – the use of markets, hybrids, firms, bureaus). Within this framework, Williamson (1998b and 1997) operationalized TCE at the governance level – "play of the game", following Coase's 1937 *The Nature of the Firm* where the firms and markets are defined as alternative means for doing the same thing and Coase's questions "Should a firm make or buy?" and "Which transactions go where and why?" are posed, and, on so doing, the firm was reconceptualized as a governance structure, which is an organizational construction.

Brosseau and Glachant (2008) posit that to NIE scholars (economic) agents use resources and play games on the basis of rights of decision. Those rights are defined, allocated, and reallocated by various types of devices, in particular contracts, organizations, and institutions. The strength of NIE lies in its proposal to analyze governance and coordination in all sets of social arrangements: a vision in terms of design and enforcement systems of rights (of decision, of use, of access) which results in the implementation of orders allowing agents to coordinate when using or producing resources. This vision has

two methodological consequences: i) NIE is built from an applied perspective from facts of complex problems leading scholars to focus on decision making issues; ii) NIE is open to a varied literature and different set of contributions, including in-depth case studies (with important benchmarks by Coase and Williamson), historical analysis (North, Greif, Weingast), econometric tests (Joskow, Masten), experiments (Smith, Fehr), and modeling (Kreps, Milgrom, Hart) and so forth resulting in a certain degree of heterogeneity.

The large part of NIE consists in attempts to extend the range of neoclassical theory by explaining the institutional factors traditionally taken as givens, such as property rights and governance structures and in so doing "breath operational content into the study of institutions" unlike the old institutionalism, not as an attempt to replace the standard theory (Eggertson, 1990; Furubotn and Richter, 2005; Rutherford, 2001; Williamson 2008).

Williamson (1975) was determinant to the development of the new economics organization by arguing that agents create institutions to reduce the risks and the transaction costs by developing arrangements and modes of organization that provide different incentives to control the environment (Ménard and Shirley, 2008).

The development of the TCE strand goes far beyond attempting to explain why corporations exist and why people integrate an organized production structure rather than buy inputs on the open market studying the effects of transaction costs arising from imperfect information and incomplete contracting on economic organizations, mostly the research concerns of Coase and Williamson. Others such as Barzel, Alchian, and Demesetz, focused their research efforts on the economic effect of different kinds of property rights. Political economists such as Mancur Olson dedicated to explore collective action problems, political scientists such as Elinor Ostrom elaborated on the problem of the management of common pool resources (Myers, 2002), and James Buchanan developed the so called 'constitutional political economy' studying constitutions as a "set of rules which constrain the activities of persons and agents in the pursuits of their own ends and objectives", broadening the standard research program of economics and assuming rules to be exogenously rather than endogenously given and fixed (Voigt, 2011).

Williamson (1995, p.183) asserts:

> The New Institutional Economics, of which transaction cost economics is a part, does not consist primarily of giving new answers to the traditional questions of economics – resource allocation and degree of utilization. Rather it consists of answering new questions, why institutions have emerged the way they did and not otherwise; it merges into economic history, but brings sharper nanoeconomic…('nano' is an extreme version of 'micro') reasoning to bear than has been customary.

The meaning of institution or institutionalism has been used in rather different contexts and disciplines (Nelson and Sampat, 2001). Institutions are regarded as general regularities in social behavior or "Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction" (North 1990a, p. 3) or "as a relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations" (March and Olsen, 1988, p. 958) or "is manifested in a long-standing historically determined set of stable, abstract and impersonal rules, crystallized in traditions, customs, or laws, to implement and enforce patterns of behavior governing the relationships between separate social constituencies" (Ménard, 1995, p. 167), and also "sets of rules that stipulate the ways in which states should cooperate and compete with each other" assuming these rules are typically formalized in international agreements and are usually embodied in organizations with their own personnel and budgets (Mearsheimer,1994, p. 8-9). Also relevant is Elinor Ostrom's definition which encompasses "who is eligible to make decisions concerning transactions, what actions are allowed or constrained, what aggregation rules will be used, what procedures must be followed, what information must or must not be provided and what payoffs will be assigned to individuals dependent on their actions*"* (Furubotn and Richter, 2000, pp. 5-6). So, governance structures settle the role, rights, duties, and expectations of transaction partners.

Hodgson (1998) advocates the institution concept which is most used across the literature by 'old' and "new" institutionalists is broad, which is consistent with long-standing practice in the social sciences, often including not only organizations - such as corporations, banks, and universities - but also integrated and systematic social entities such

as money, language, and law. In a strict sense, organizations may be defined as a special subset of institutions, involving deliberate coordination, and recognized principles of sovereignty and command. Language is an example of an institution that is not an organization. A business corporation or an international organization is an institution and also an organization. All such entities, institutions and organizations, exhibit five common characteristics: i) all institutions involve the interaction of agents, with crucial information feedbacks; ii) all institutions rest on common conceptions and include persistent routines; iii) institutions sustain, and are supported by, shared conceptions and expectations; iv) although they are neither immutable nor immortal, institutions have relatively durable, self-reinforcing, and persistent qualities; v) institutions incorporate values, and processes of normative evaluation, in particular, institutions reinforce their own moral legitimation: that which endures is often seen as morally just.

The same circumstance occurs in relation to the term 'international institution' which during the last few decades has been used in the literature to refer to a variety of phenomena in the international arena, notwithstanding that it was most used in the aftermath of the World War II and of the recreation of the UN to refer to formal International Organizations, usually connected with organs or branches of the UN (Simmons and Martin, 2001).

Many disciplines in academia have devoted considerable attention to institutions and their studies, mainly economics, public administration, sociology, and political science. These various fields have attempted to answer the same set of questions: What are institutions? Why do institutions exist? How do they emerge or arise? What purpose do they serve? How are they maintained? What is their economic impact and what makes them adapt, change, survive or die?

Hall and Taylor (1996) recollected three different analytical approaches regarding 'new institutionalism: historical institutionalism, rational choice institutionalism, and sociological institutionalism. Each of these branches developed differently: the historical analytical approach considers institutions as the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy; the rational choice analytical approach built on the tools of the "new economics

organization" (Williamson, 1995, p. 9), i.e., property rights, rent-seeking and transaction costs to study the operation and development of institutions; the sociological analytical approach defines institutions not just as formal rules and procedures or norms, but also including symbol systems, cognitive scripts, and moral templates that provide the "frames of meaning" guiding human action putting the emphasis on the cognitive side of the interactions and actions to analyze the influence institutions have on behavior (Di Maggio and Powell, 1993; Scott, 2008; Meyer and Rowan, 1991).

The issue here is also to know what theory and approach is most fit to study this case which concerns the institutional impact of the opting out decision of the UN Secretary-General to enter a 'contract' with an outsider *ad hoc* inquiry committee to investigate the scandal of the Oil-for-Food Programme, while disregarding the possibility of the internal provision of such services by the already existent and well established Office of Internal Oversight Services governance structure, hierarchically reporting to both the UN General Assembly and to the UN Secretary-General.

To help us exploring and interpreting this case we could approach it through the theoretical lens of a variety array of approaches within the social sciences such as, bureaucracy theories, public administration theories, organization theories, auditing theories, international relations theories, law theories, anthropology theories, sociology theories, economic theories, etc., but the case at hand requires to be framed with theories which are built upon a broader, interdisciplinary, perspective – the NIE branch of social sciences, it seems, is at present the solely attempting to respond to this endeavor.

In Hall's and Taylor's (1996, p. 943) view

> […] the rational choice institutionalists in political science drew fruitful analytical tools from the 'new economics of organization' which emphasizes the importance of property rights, rent-seeking, and transaction costs to the operation and development of institutions. Especially influential was Williamson's argument that the development of a particular organizational form can be explained as the result of an effort to reduce the transaction costs of undertaking the same activity without such an institution. North applied similar arguments to the history of political institution. And theories of agency, which

> focus on the institutional mechanisms whereby 'principals' can monitor and enforce compliance on their 'agents', proved useful for explaining how Congress structures relations with its committees or the regulatory agencies it superintends.

Williamson (1995, p. 3), going along with Matthews (1986, p. 903), holds that institutions matter in the New Institutional Economics and are susceptible to analysis using economic concepts, and is different from, but not hostile to orthodoxy, and is an interdisciplinary combination of law, economics, and organization in which economics is the first among equals.

The UN Secretary-General's decision and solution to investigate the Oil-for-Food scandal, i.e., to opt out for an 'Independent Inquiry Committee', is a problem assimilated in the institutional economics literature on the one hand, to a vertical integration decision problem, or 'make or buy decision', and, on the other hand, to a contractual problem. The first is the archetypal problem most studied since the 1970's when Williamson started developing theoretically the TCE framework. As Williamson (1979, p. xii) puts it "any issue that either arises as or can be recast as a problem of contracting is usefully examined in transaction cost terms" and by the early 1980s, contracts had become at least as central to TCE as vertical integration (Gibbons, 2010, p. 13). As I noted, Buchanan (1975, p. 229) argued "economics comes closer to being a 'science of contract' than a 'science of choice".

In this vein Williamson (2005, p. 41) supports:

> As against neoclassical economics, which is predominantly concerned with price and output, relies extensively on marginal analysis, and describes the firm as a production function (which is a technological construction), transaction cost economics (TCE) is concerned with the allocation of economic activity across alternative modes of organization (markets, firms, bureaus, etc.), employs discrete structural analysis, and describes the firm as a governance structure (which is an organizational construction).

Later on, in 2008, in his "foreword" to Brousseau and Glachant NIE guidebook Williamson goes further in his provocative vein stating:

> […] the new institutional economics is a boiling cauldron of ideas. Not only are there many institutional research programs in progress, but there are competing ideas within many of them.

Governance is yet one other of the concepts implicated by NIE and TCE, but which has not been clearly defined within them. Williamson (1996a, p. 378) defines "governance structure" as the institutional matrix in which the integrity of a transaction is decided. In the commercial sector, three discreet structural governance alternatives are commonly recognized: classical market, hybrid contracting, and hierarchy. "Institutional arrangement" is defined as the contractual relation or governance structure between economic entities that defines the way in which they cooperate and/or compete. In its turn, Klein (2000, p. 458) adds that business firms, long-term contracts, public bureaucracies, nonprofit organizations and other contractual agreements are examples of institutional arrangements.

Elsewhere in the literature, governance concept is defined in a variety of different ways hence it is crucial to make it clear here to which paradigm I refer. Treib et al. (2007) recollected in the literature three different understandings for this concept which are used in both restrict and broad ways: politics, polity and policy. "Politics" relates governance to the process of policy-making. "Polity" encompasses the institutional pronged system of rules that shapes the actions of social actors within a variety of modes of governance comprised in a large range of possibilities and combinations between the two most classical formats, i.e., markets and hierarchies. "Policy" considers governance as a mode of political steering towards determining the policy goals that shall be achieved. In this study I am concerned with the broad "polity" paradigm of governance.

The "polity" governance paradigm is related to the idea that institutions matter insofar as societies developed rules and laws to govern economic transactions; they are the framework within which the principals and the agents in any type of setting must operate efficiently at minimal transaction cost (Williamson, 1998b). Williamson (2005) tells us how TCE tackles governance problems:

> The TCE theory of the firm as governance structure places special emphasis on the problems that attend ex post governance, which is to be contrasted with other theories of contract that focus on ex ante incentive alignment. Whereas the latter is neglectful of contractual breakdowns in the *ex post* contract implementation interval, TCE avers that maladaptation during contract execution is where much of the analytical action resides. This entails going beyond the derivation of an 'efficient rule' to ask whether this rule will be implemented in the manner intended — by looking ahead, identifying contractual hazards, uncovering the mechanisms, and factoring these into the choice of governance/contractual design. Both the microanalytics of transactions and of governance structures thereby come under scrutiny.

Within the NIE, there has also been growing appreciation of the fact that institutions that could generate social benefits may not emerge, and that inefficient institutions may emerge and survive (Rutherford, 2001). In contrast with North (1990b) who argues that the reason for inefficient institutions is inefficiencies of political markets - "democracy in polity is not to be equated with competitive markets in the economy", Williamson (1981) "takes the position that institutions are expressly designed to reduce transaction costs and that, in competitive markets, those that fail to do so will not survive". How does the UN fit in this preoccupation? The answer to this question is attempted in chapters V and VI below.

I proceed by exploring what Transaction Cost Economics is about and which economic models it brought about that may help building an understanding of the events surrounding the case of the opting out decision of the UN Secretary-General to 'contract' an outsider *ad hoc* inquiry committee to investigate the Oil-for Food scandal moving aside the Office of Internal Oversight Services.

II.2 – Transaction Cost Economics (TCE)

II.2.1 – Overview of the TCE framework

In tackling Transaction Cost Economics I shall start by the origins and routes of the approach at source of this field of academic research in economics which leads us back to Commons (1931, 1934, p. 58):

> An institution is defined as collective action in control, liberation and expansion of individual action…. But the smallest unit of the institutional economists is a unit of activity — a transaction, with its participants. Transactions intervene between the labor of the classic economists and the pleasures of the hedonic economists, simply because it is society that controls access to the forces of nature, and transactions are, not the 'exchange of commodities', but the alienation and acquisition, between individuals, of the rights of property and liberty created by society, which must therefore be negotiated between the parties concerned before labor can produce, or consumers can consume, or commodities be physically exchanged.

Following Commons, Oliver Williamson, the TCE founding father, adopted the transaction as unit of analysis to develop the TCE framework and to which he applies the lens of contract/governance inasmuch as he views it as the means by which order is administered, thereby capable to mitigate conflict and enable mutual gains. He advocates that TCE is an effort to better understand complex economic organization by selectively joining law, economics, and organization theory. TCE is concerned with the allocation of economic activity across alternative modes of organization (markets, firms, bureaus, etc.), employs discrete structural analysis, and describes the firm as a governance structure (which is an organizational construction) (Williamson (2007, p. 3).

More specifically Williamson (2002, p. 191) stresses:

> The application of the lens of contract/private ordering/governance leads naturally into the reconceptualization of the

> firm not as a production function in the science of choice tradition, but instead, as a governance structure. The shift from choice to contract is attended by three crucial moves. First, human actors are described in more veridical ways with respect to both cognitive traits and self-interestedness. Second, organization matters. The governance of contractual relations takes seriously the conceptual challenge posed by the 'Commons triple' of dealing with issues of conflict, mutuality and order. Third, organization is susceptible to analysis. This last move is accomplished by naming the transaction as the basic unit of analysis, identifying governance structures (which differ in discrete structural ways) as the means by which to manage transactions, and joining these two. Specifically, transactions, which differ in their attributes, are aligned with governance structures, which differ in their cost and competencies, in an economizing way. Implementing this entails working out of the logic of efficient alignment.

The central hypothesis of TCE is therefore that aligning the attributes of governance structures with the attributes of transactions maximizes the final result in terms of economic efficiency.

As Williamson (1996a, p. 6) puts it, TCE differs from orthodoxy taking on board the following dimensions that are not dealt with by neoclassical economic models: i) behavioral assumptions borrowed from organization theory; ii) the transaction as the unit of analysis; iii) the description of a firm as a governance structure; iiii) the insistence that property rights and contract are problematic; iv) the reliance on discrete structural analysis; and v) the remediableness criterion.

Other pertinent dimensions of TCE borrowed from organization theory are those encompassed by the intertemporal process transformations: 1) the Fundamental Transformation; 2) the impossibility of selective intervention; 3) the costs (bureaucratization) and 4) benefits (which often take the form of tacit knowledge) that predictably accrue to internal organization and are a manifestation of the proposition that "organization has a life of its own"; 5) the limits of calculativeness, especially piecemeal

excess of calculativeness that have adverse systems consequences; 6) the differential efficacy of reputation effect mechanisms; and 7) the limits of natural selection (in general and as these apply to different forms of organization, such as for-profits, nonprofits, and bureaus). The first two are TCE constructions, although appeal to organization theory, and the last two are seriously underdeveloped (in TCE and elsewhere in the literature) (Williamson, 1996, p. 11).

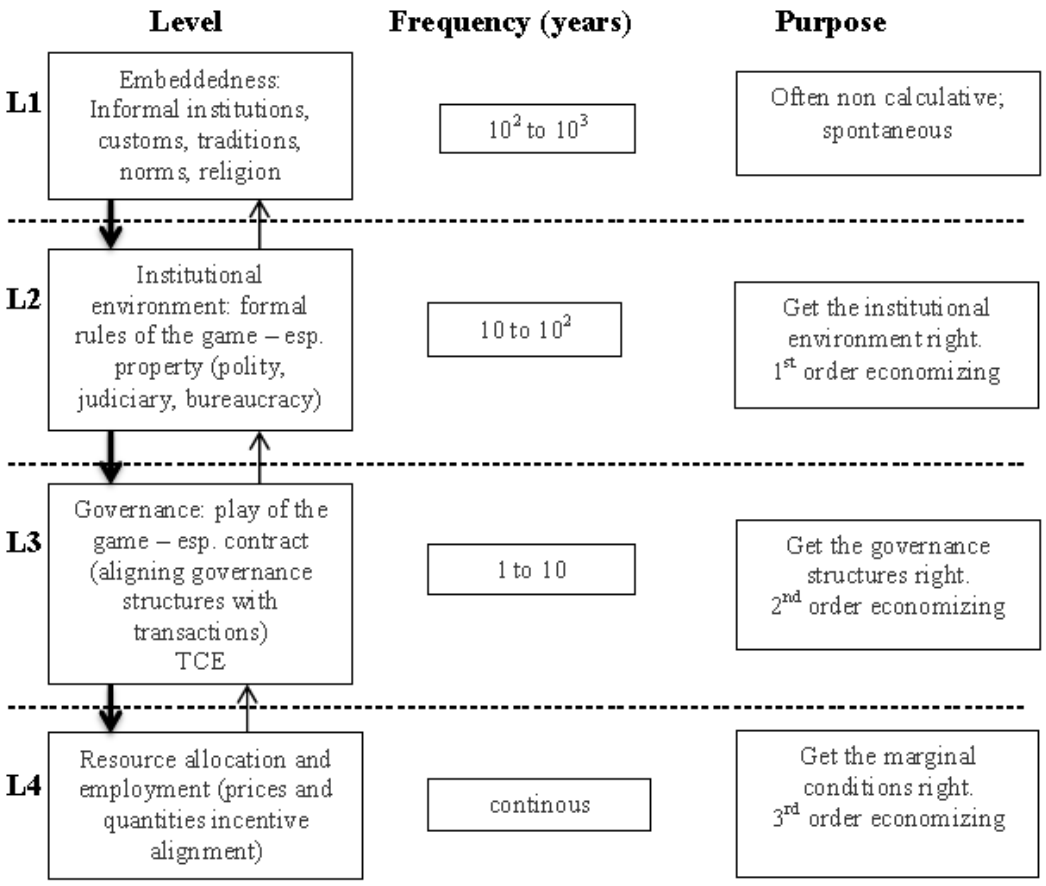
In 1998, Williamson explained how TCE works and where it was headed at the time. Actually he holds that "any issue that arises as or can be reformulated as a contracting problem is usefully examined through the lens of transaction cost economizing". The research agenda of NIE evolved in two branches: one branch dealing with the institutional environment, and the other branch dealing with the institutions of governance, i.e., the play of the game. The institutional environment branch traces its origins in Coase's 1960 paper on "The problem of Social Cost", while the institutions of governance traces its origins in Coase's 1937 paper on "The Nature of the Firm". Both branches started developing in the early 1970s supported in the work of Davis and North, Williamson, and Alchian and Demsetz progressing over the decade namely with the work of North, Williamson, Klein, Crawford, and Alchian. Demonstrating that institutions are susceptible to analysis has been the major challenge.

At this stage of theory development he reaches the point where he sees the social analysis built around a four level institutional framework: 1) social embeddedness; 2) institutional environment; 3) governance; and 4) resource allocation and employment. This framework, displayed in Figure 2.1 below, works in a loop: higher levels impose constraints on the level immediately below, while lower levels signal feedback to higher levels (Williamson, 1998, p. 25-29).

The "social embeddedness" is the 'veil' level of institutional analysis encompassing informal institutions, customs, traditions, norms, and religion. Institutions at this level change very slowly on the order of centuries or millennia and are often noncalculative, spontaneous. North (1984, p. 8) advocates that at this level institutions [also] include "a set of moral, ethical, behavioral norms which define the contours and that constrain the way in which the rules and regulations are specified and enforcement is carried out".

The "institutional environment" provides the formal rules of the game produced by politics, the laws regarding property rights – their definition and enforcement – are prominently featured, within which economic activity is organized. The polity, judiciary, and bureaucracy of government are all located here and "first-order economizing" is featured here: get institutional environment right. Cumulative change is difficult to orchestrate hence major changes in the rules of the game occur in order of decades or centuries, while extreme events may open an opportunity to effect broad sharp reforms.

Figure 2.1 The Economics of Institutions



L1: social theory
L2: economics of property rights/positive political theory
L3: transaction cost economics
L4: neoclassical economics/agency theory

Source: Williamson (2000, p. 597)

(Constraint effects are shown by the solid arrows connecting higher with lower levels and reverse dash arrows signal feedback).

The "governance" level, based upon the rules of the game of the "institutional environment" above level, deals with the play of the game, namely contract, where the second-order economizing applies: get the governance structures right – markets, hybrids, firms, bureaus. Alternative modes of organization are described as syndromes of attributes that differ in discrete structural ways. The frequency of these decisions is of the order of a year to a decade. TCE model concerns this level of analysis.

The "resource allocation and employment" level – the lowest level of institutional analysis – is the focus of neoclassical analysis, dealing with decision variables such as price and output, as well as agency theory with its emphasis on *ex ante* incentive alignment, efficient risk bearing, and multi-principal concerns. Third-order economizing prevails: getting marginal conditions right. The frequency of changes of the conditions occurring at this level is more or less constant.

Williamson devised the TCE model departing from ideas such as Coase's 1937 comparative economic organization, Lewellyn's 1931 private ordering, Barnard's 1938 and Hayek's 1945 adaptation as the central problem of economic organization, and Davis' and North's 1971 distinction between the institutional environment and the institutions of governance. His main question follows Coase's main concern searching to find out why are there so many kinds of organizations. The approach followed consisted on identifying a specific problem for research purposes, i.e., vertical integration or the make-or-buy decision. The advantage of this selection is that the attention can be focused on the attributes of the transaction and the properties of alternative modes of governance. So far, this has been the archetypal problem most studied within TCE (Williamson, 2010, p. 677):

> […] it turned out that vertical integration would become a paradigm for the study of complex contract and economic organization. The combination of incomplete contracts, bilateral dependency (contingent on asset specificity), and defection from the norm of coordinated adaptation when a contract experiences significant disturbances (for which the stakes are great) had application to a wide range of phenomena that were interpreted as variations on a theme.

TCE works explicitly with two implicated behavioral assumptions regarding human agents: bounded rationality and opportunism (self-interestedeness). These assumptions are crucial and permeate all other parameters of the model. Williamson borrows these percepts from organization theory, namely from Herbert Simon. These two behavioral assumptions support the following compact statement of the purposes of economic organization: craft governance structures that economize on bounded rationality while simultaneously safeguarding the transactions in question against the hazards of opportunism.

Bounded rationality is defined as behavior that is "intently rational, but only limitedly so" whereas Williamson follows Simon (1997). Incomplete contracting is a consequence of bounded rationality which concerns the limited ability of agents of handling large amounts of information, to process it, and to communicate it, consequently it makes it difficult to foresee all contingencies in a complex and changing environment: "[…] the crucial importance of bounded rationality for economic organization resides in the fact that all complex contracts are unavoidably incomplete" (Williamson, 1998a, p. 30–31). Economizing on bounded rationality takes two forms: one concerns decision processes, and the other involves governance structures. TCE is principally concerned with the economizing consequences of assigning transactions to governance structures in a discriminating way. Which governance structures are more efficacious for which types of transactions? Confronted with the realities of bounded rationality, the costs of planning, adapting, and monitoring transactions need to be considered (Williamson, 1985, p. 46).

"Opportunism is self-interest seeking with guile" which adds hazards to contractual relations. Hart's remarks, as cited by Williamson, help put opportunism into perspective: "neither understanding of long-term interest, nor the strength or goodness of will ... are shared by all men alike. All are tempted at times to prefer their own immediate interests.... Sanctions are … required not as the normal motive for obedience, but as a guarantee that those who would voluntarily obey shall not be sacrificed by those who would not" (Williamson 1988a, p. 569). Often involves subtle forms of deceit, but also more blatant forms of deceit, such as lying, stealing, and cheating. More generally, opportunism refers to incomplete information or distorted disclosure of information, especially to calculated efforts to mislead, distort, disguise, obfuscate, or otherwise confuse (Williamson, 1985, p.

47). Because of this phenomenon principals and third parties (arbitrators, courts, and the like) confront much more difficult *ex post* inference problems. Opportunism trumps rule governing, therefore transactions that are prone to *ex post* opportunism will benefit if appropriate *ex ante* choice of governance is made. In this regard Williamson (2000, p. 601) prompts that "Parties to a contract who look ahead, recognize potential hazards, work out the contractual ramifications and fold these into the *ex ante* contractual agreement obviously enjoy advantages over those who are myopic or take their chances".

Regarding "bounded rationality" and "opportunism" critical features of TCE, Williamson (1988a, p. 588) contends that the lessons learned lead to the following combined result: organize transactions so as to economize on bounded rationality while simultaneously safeguarding them against the hazards of opportunism.

In connection with "opportunism hazards" and the way to diminish their occurrence Karayiannis and Hatzis (2012), studying ancient Athens' social norms and the rule of law, with Aristotelian virtues ethics in the backdrop, contend that "Athenian law was pioneering in the development of rules and institutional mechanisms suitable for the reduction of transaction costs, many of them surviving in the most complex contemporary legal systems" (p. 622) where "reputation and trust was (as it is today) the most important cost-saving devices since the parties could conclude their transactions orally without written contracts and without worrying about enforcement and monitoring costs" (p. 627).

Instead, Duran and McNutt (2010) using a Kantian ethics, conclude that TCE although lacking an ethical dimension imply trust as an important determinant of transaction costs and conclude: "The tendency to behave opportunistically depends on the benefits resulting from such behavior and the disposition towards the other party to a transaction, which suggests that some people will not cheat in a transaction because it would be against their morality or ethical values. The firm can thus promote its own ethical values and in turn influence the disposition of employees towards other parties in economic exchange through a code of ethics" (p. 761). This "code of ethics" would be made in reason so that each party to the arrangement has dignity. But this philosophy would not prevent deceit to surface.

A sketch of the evolvement of the TCE model leads us to four of Williamson's milestone books: *Markets and Hierarchies* (1975), *The Economic Institutions of Capitalism* (1985), *The Mechanisms of Governance* (1996) and *The Transaction Cost Economics Project* (2013). His work focused initially on the dichotomy of market and hierarchy and then progressed up to the study of all modes of governance. In *Markets and Hierarchies* (1975), Williamson mainly pays attention to the choice between two governance structures, market and hierarchy. In *The Economic Institutions of Capitalism* (1985) he shows a broader application of TCE to markets, hierarchies and hybrid forms of governance. In *The Mechanisms of Governance* (1996) he extends the comparative analysis of economic organization and pays attention to the wide array of possible applications of TCE. Further on, in 1997 and 1999, Williamson dedicated his work on the TCE model to extend it to the study of public administration and public bureaucracies governance structures. As a result he added one more dimension for transactions to his model – "probity" which will be described in more detail below. In his last book, The *Transaction Cost Economics Project* (2013), Williamson compiles sixteen of his academic papers reflecting the evolvement of his research project along the way since his 1971 first paper *The Vertical Integration of Production: Market Failure Considerations* through to 2010. This account concludes with Williamson's views of the state of the art of the research project, the progression of TCE theory hitherto concluding that:

> TCE, moreover, is a work in progress…. TCE should also help us to better understand the difficult implementation problems that await "promising" new projects in both the public and private sectors. Because, moreover, our understanding of bureaucracy is severely limited, many of the potential benefits and avoidable errors of bureaucracy go unrecognized. This condition should be corrected…. Deep and systematic treatments of bureaucracy remain a huge challenge to the social sciences to this day.… Being of the belief that our understanding of hierarchy in business and in public bureaus in the United States and as between nation states is vital to our future and the future of others, this very difficult subject warrants examination of a modest, slow, molecular, definitive kind (pp. i - xx).

II.2.2 – The conceptual foundations of transactions in TCE

As signaled above the definition and the attributes of a transaction are at the core of NIE and TCE since Commons 1924 writings. Oliver Williamson is incontestably the founding father of TCE. Commons and Coase are unquestionably Williamson's predecessors in these fields (Hodgson, 1998; Klein, 2000; Rutherford, 2001; Williamson, 2010). What is then the definition of a transaction adopted by Williamson?

In developing TCE framework Williamson (1985, p. 41), alike Commons, considers the transaction "the basic unit of analysis". John R. Commons (1924, p. 7) eventually was the first to make this proposition in his book the *Legal Foundations of Capitalism* where he defined a transaction as

> […] two or more wills giving, taking, persuading, coercing, defrauding, commanding, obeying, competing, governing, in a world of scarcity, mechanism[s] and rules of conduct.

And later in 1932 (p. 4) Commons added

> […] the ultimate unit of activity … must contain in itself the three principles on conflict, mutuality and order. This unit is a transaction.

Hence, we can derive two consequences from Commons' definitions: a transaction is the transfer of ownership; a transaction does not materialize when the exchange occurs within a single firm. Besides the bargaining transactions that involve a transfer of ownership, he further introduced the managerial transactions, without providing a clear definition and the rationing transactions categories, i.e., the ex-post negotiations of reaching an agreement among several participants who have authority to apportion the benefits and burdens to members of a joint enterprise (Commons, 1934). The latter categories implicate concerns with the process of internal management and the proper allocation of decision-making power to reach agreements within a hierarchy, but he did not link them directly with his transaction cost notion.

Williamson (1998a, p. 36) gives his key to interpret Commons:

> The ultimate unit of activity ... must contain in itself the three principles of conflict, mutuality and order. This unit is the transaction. Not only does transaction cost economics subscribe to the idea that the transaction is the basic unit of analysis, but the triple to which Commons refers - conflict, mutuality, order - are very much what governance is all about.

In this statement Williamson links directly transaction as unit of analysis with the governance dimension of the setting where transactions occur but does not link it with the higher dimensions of the embeddedness institutional level although, as Figure 2.1 above shows, he admits that there is a loop effect, up and down, among the four institutional levels.

Ronald Coase, in his 1937 article *The Nature of the Firm* (pp. 390-395), refers to transaction as simply "the cost of using the price mechanism", without further detailing it, to approach a possible answer for the question "why does the firm exist?": "The main reason why it is profitable to establish a firm would seem to be that there is a cost of using the price mechanism". It does not go without mentioning that further on Coase lays out some of the costs of organizing transactions through a firm or through the market, such as "discovering what the relevant prices are", "the costs of negotiating and concluding a separate contract for each exchange transaction", "decreasing returns to the entrepreneurial function", and "waste of resources".

Coming after him, Williamson's (1981, p. 552; 1996, p. 379) transaction concept is as follows:

> A transaction occurs when a good or service is transferred across a technologically separable interface. One stage of activity terminates and another begins. With a well-working interface, as with a well-working machine, these transfers occur smoothly. The microanalytical unit of analysis in transaction cost economics…. Transactions are mediated by governance structures (markets, hybrids, hierarchies).

Williamson's notion of "a good or service is transferred across a technologically separable interface" carries a certain degree of unclearness on where the boundaries of separation are located (Baldwin, 2008, p. 7).

Later Williamson (1985, pp 20-21) added

> […] *ex ante* costs of drafting, negotiating, and safeguarding an agreement" and the "ex post costs of the maladaptation costs incurred when transactions drift out of alignment …, the haggling costs incurred if bilateral efforts are made to correct ex post misalignments, the setup and running costs associated with the governance structures (often not courts) to which disputes are referred, and the bonding costs of effecting secure commitments.

Summarizing, a transaction materializes in circumstances in which resources are actually transferred in the sense of 'delivery' that can occur within firms or across markets, and it is therefore possible to speak of internal and external exchanges, or, in some contexts, of the costs of intra-firm and market transactions. Instead, Commons assumes a legal sense of transfer of resources involving the transfer of sanctioned property - or even contract-rights (Furubotn and Richter, 2005).

Along the way, the construct "transaction cost" have evolved to the point where some skeptics claim it includes any cost that is convenient and elusive enough to avoid critical examination (Allen, 1991, p. 893). To illustrate the lack of consensus around the definition of transaction, let us point out some other coexistent with Commons', Coase's and Williamson's definitions. For example Demsetz (1968) refers to the "costs of exchanging ownership"; Arrow (1969) refers to the "costs of running the economic system"; Barzel (1989) refers to the "costs associated with the transfer, capture and protection of rights"; North (1990a) refers to the "costs of measuring valuable attributes of that which is being exchanged, as well as the costs of monitoring and enforcing agreements"; Allen (1991) refers to the "resources used to establish and maintain property rights".

The above shows the difficulties surrounding transaction cost classification. Since the question to be answered by Williamson's model is which alternative governance solution maximizes efficiency, thus minimizes transaction cost, despite how the concept of a transaction is defined, results that, any model routed on Williamson's concept, is going to distinguish between transaction costs and all other costs in such a way that all costs can be assigned to one of these two categories. In this regard, Williamson's (1991, p. 270) standpoint is:

> The term discrete structural analysis was introduced into the study of comparative economic organization by Simon, who observed that as economics expands beyond its central core of price theory, and its central concern with quantities of commodities and money, we observe in it …[a] shift from a highly quantitative analysis, in which equilibration at the margin plays a central role, to a much more qualitative institutional analysis, in which discrete structural alternatives are compared.

In 1996 Williamson gives a definition for transaction cost in the glossary to his book *The Mechanisms of Governance* as follows: the *ex ante* costs of drafting, negotiating, and safeguarding an agreement and, more especially, the *ex post* costs of maladaptation and adjustment that arise when contract execution is misaligned as a result of gaps, errors, omissions, and unanticipated disturbances; the costs of running the economic system.

While the lack of a clear cut categorization of types of transactions developing in the private sector persists, Williamson (1999) distinguishes clearly six types of public sector transactions: procurement, redistributional; regulatory; judicial, infrastructure, and sovereign.

Despite the above mentioned somehow imprecise definition of private sector transactions, this is surpassed by Williamson's (2010, 1999, 1985) clear identification of the critical dimensions, the transactions' attributes, with respect to which transactions differ - asset specificity, uncertainty, frequency, probity, and complexity.

Williamson (1985) acknowledging the fact that it has gained little attention in prior studies of the organization, attaches special relevance to asset specificity dimension having so far detailed six different kinds, as follows:

> Asset specificity has reference to the degree to which an asset can be redeployed to alternative uses and by alternative users without sacrifice of productive value. Asset specificity distinctions of six kinds have been made: 1. Site specificity, as where successive stations are located in a cheek-by-jowl relation to each other so as to economize on inventory and transportation expenses; 2. Physical asset specificity, such as specialized dies that are required to produce a component; 3. Human-asset specificity that arises in learning by doing; 4. Brand name capital; 5. Dedicated assets, which are discrete investments in general purpose plant that are made at the behest of a particular customer; 6. Temporal specificity, which is akin to technological nonseparability and can be thought of as a type of site specificity in which timely responsiveness by on-site human assets is vital (p. 55).

"Asset specificity" is considered the most important and distinctive dimension of transactions. It entails specific dedicated investments that are necessary to produce a product or a service. The reason asset specificity is critical is that once an investment has been realized the buyer and the seller are effectively operating in a bilateral exchange relation for a considerable time thereafter (Williamson, 1991). These assets are not reusable alternatively as it refers to the specific knowledge or specific technical skills that are necessary with regard to a certain good or service. When asset specificity is high, the transacting partners are more closely associated than when asset specificity is low. Asset specificity increases the transaction costs of all forms of governance. This is because the value of each partner's transaction specific investment is minimal outside of the arrangement. Even if redeployment is possible, investments in such assets are risky, because the assets cannot be reused without sacrifice of productive value if contracts are interrupted or prematurely terminated (Williamson, 1985, p. 54). Consequently, a high bilateral dependency exists between partners.

The second attribute of transactions is "uncertainty". In Williamson's model, uncertainty matters because it entails an assessment of adaptive, sequential decision-making caused by the variations of governance structures capacities to respond to hazards. Thus, uncertainty refers to the fact that circumstances change in unpredictable ways, and such changes may disrupt existing patterns of transactions (Williamson, 1975). Uncertainty in transactions underlines the inherent incompleteness of contracts as the greater the difficulty in foreseeing events affecting a trading relationship, the greater the uncertainty and, therefore, the greater potential for incomplete contracting and opportunistic behavior. Uncertainty is distinct from bounded rationality because while a firm may reduce or eliminate bounded rationality through a variety of mechanisms, by its very nature uncertainty can never be eliminated. Firms and decision-makers attempt to manage uncertainty by improving contractual details, inserting clauses, and insuring against the unknown; these actions do not eliminate unforeseen events. These activities to mitigate unforeseen events will inevitably increase transaction costs, and provide incentive to adopt more formal relationships (Williamson, 1985, pp. 56-60).

The third attribute is the "frequency" with which transactions take place. How often does the good or service in question get transferred? Sometimes a transaction takes place only once and the setup costs are high. Given that arranging for a governance mechanism to monitor the transaction has costs as well as benefits, the pertinent question is over how many transactions the fixed portion of these costs can be divided. Some transaction costs occur for every instance of the transaction, for example the costs of making sure that an agent received what he purchased, while others only occur the first time the agent transact, such as the costs of finding someone to transact with. The costs of setting up a governance structure, on the other hand, are overheads. The frequency of transactions is, arguably, the most straightforward of all the TCE dimensions. This dimension is a function of set-up costs, put it simply is how often the same parties transact, and reputation effects that vary according to the circumstances (Williamson, 2005a, p. 7). According to TCE scholars, the higher the frequencies of transactions, the higher the market inefficiencies because they create higher switching costs and increase the likelihood of opportunistic behavior (Klein et al., 1978; Williamson, 1975).

TCE theory has been developed namely exploring private sector reality as the above exposition shows. It was in or about 1997 that Williamson started to extend TCE theoretically to political organizations and government activities. On doing so, he made explicit the fourth dimension of transactions – "probity", i.e., "the loyalty and rectitude with which the…transaction is discharged" (Williamson, 1999, p. 321-322) which is considered as attached to sovereign transactions developed in the context of public bureaucracies and requiring the security of the state although, he recognizes, this dimension is also observable in the private sector transactions. Determining whether, or not, an institutional arrangement is a public bureaucracy is exactly what TCE is meant for; consequently, assuming that one of the model's variables is dependent on the public or private nature of the transaction, would make the model not universally applicable across the borders of public and private spheres of economic activity. More specifically "probity" is described as the high standard of integrity which includes professional excellence to be exercised in the organizational unit to which a task has been assigned.

In 2010 the "complexity" attribute of transactions was explicitly added for the first time (Williamson, 2010, p. 680), however neither the parameters of such complexity attribute have been identified, nor its interrelations with the other variables of the TCE model were derived yet at all.

As to the six types of public sector transactions referred to above, some details concerning certain of their distinguishing elements help discern the reality as follows (Williamson, 1999, pp. 319-321).

"Procurement" transactions are make-or-buy type of decisions of either mundane type (e.g., office supplies) or complex type (e.g., advanced space and weapons) and government should rarely produce for its own needs. Specialized procurement is more apt to be politicized.

"Redistributional" transactions vary from broadly based (social security) the administration of which could be contracted out, to those that are narrowly focused (specific governmental programmes) which are highly politicized and difficult to contract out.

"Regulatory" transactions are often beset with asset specificity, as with natural monopoly, or by information asymmetries, as with consumer and worker health and safety regulations and are sometimes used to promote redistributional or ideological purposes, thus can be highly politicized.

"Judicial" transactions are more and more seen as able to influence the ability of the state to infuse confidence in investment and contract.

"Infrastructure" transactions concern police, fire, roads, parks, prisons, education, etc., are mainly confined to state and local government administration.

"Sovereign" transactions are endowed with public's infeasible authority (may include tasks such as foreign affairs, the military, foreign intelligence, managing the money supply, the judiciary) (Wilson, 1989, p. 358), and according to Williamson, characterized by unifying principles such as: i) abiding respect for the mission; ii) reliable responsiveness to the president (to include the absence of adventurousness); and iii) accurate communication to counterparties of intend (which, in some cases, may be to remain ambiguous or undecided). They are embedded with a specific form of hazard, insofar as a lack of loyalty and integrity can place the organization and the public system at risk even though "probity" is an issue arising in "extreme instances" such as sovereign transactions/foreign affairs. Extreme instances seem to be linked with leadership and management behavioral events whereas "probity concerns will be relieved by governance structures to which reliable responsiveness can be ascribed" (Williamson, 1999, pp. 322-323). How to identify "extreme instances" in TCE model is not clear as it is not clear also why "probity" is defined as a function of "extreme events", and likewise, it is not defined as a function of each and every event this despite the fact that "probity is delivered through leadership and management attributes of governance…being more of the nature of sociology of organization rather than economics of organization", therefore it seems in the realm of ethics. The powers to appoint and remove the leadership of an agency are taken as an important element in both responsiveness and communication respects. These types of public sector transactions are, so far, those that Williamson explored to develop TCE as an application to public sector economics.

II.2.3 – The mechanisms and structures of governance in TCE

Transactions differ in their attributes; governance structures differ in their costs and competencies, hence, the ultimate objective of TCE is to aligning transactions - be they for intermediate product, labor, finance, final product, etc. - with governance structures in a discriminating way as to obtain the most efficient match (Williamson, 1988a, p. 588). The economics of governance is therefore an effort to implement the "study of good order and workable arrangements" and includes both spontaneous order in the market, and intentional order, of a "conscious, deliberate, purposeful" kind. Workable arrangements are meant to be feasible modes of organization, all of which are flawed in comparison with a hypothetical ideal (Williamson, 2005a). However the efficiency matching, often, does not verify since vested interests and existing political, social, and economic positions of contracting parties lead to inefficient economic outcomes (Kim and Mahoney, 2005).

TCE has contributed considerably to the reception of the notion of "governance" both in the private and public spheres (Kersbergen and Waarden, 2004). It explains the reason why firms choose a market type of governance structure (buy or outsource) as opposed to a hierarchical type of governance structure (make or insource). Williamson (1996) defines governance structure "as the institutional matrix in which the integrity of a transaction is decided", through a mechanism that helps people carry out transactions from which they can gain mutual benefit, i.e., entering into an institutional contractual arrangement between economic entities that defines the way in which they cooperate and/or compete. North (1990, p. 5) contends that governance structures are formed by individuals in order to "take advantage of opportunities offered by a given institutional framework". Dixit (2009, pp. 5-6) defines "economic governance as the structure and functioning of the legal and social institutions that support economic activity and economic transactions by protecting property rights, enforcing contracts, and taking collective action to provide physical and organizational infrastructure.… Good economic governance thus underpins the whole Smithian process whereby individuals specialize in different tasks and then transact with one another to achieve the full economic potential of the society".

Governance structures govern transactions. TCE theory is built on the basis of a central hypothesis in which the efficiency of alternative modes of organization – markets,

hybrids, hierarchies, public bureaus – are examined in relation to and aligned with attributes of transactions and whereas different governance structures, which differ in their cost and competencies, have their own discriminating way to organize, monitor and control transactions. Governance is also described as an exercise in assessing the efficacy of alternative modes (means) of organization, and because order is accomplished through governance, consequently it is necessary to identify the principal dimensions on which governance structures differ, so that the predictive power of economic theory, can indicate which transactions will be organized and how. In this connection Williamson (1996, p. 26) contends:

> Adaptation is taken to be the central problem of economic organization, to which two types are distinguished: autonomous or Hayekian adaptation (in which markets enjoy the advantage) and cooperative or Barnardian adaptation (in which the advantage accrues to hierarchy). What is distinctive about the study of governance is that it provides for both spontaneous and intentional forms of organization, the Hayekian markets and the Barnardian hierarchies.… More generally, the study of 'incomplete contracting in its entirety' implicates both ex ante incentive alignment and ex post administration (which is what governance is).

From the above excerpt we understand that governance is "*ex post* administration". What is then the administration concept adopted?

Governance structures and institutions hold a close and dynamic relationship, and give transaction costs a dynamic nature. This dynamic works in a loop: the design of an emerging governance structure is affected by an existing set of institutions; the new emerged governance structure may influence and alter the institutional framework in place in order to improve its performance (North, 1990a). This view is complemented by Ouchi's (1979) one whereas a well-designed governance structure maintains a good balance of socialization (informal control) and measurement (formal control).

Coase (1937) argued that there is not one prevalent governance structure over the others regarding efficiency. Efficiency depends on the prevailing set of institutions (North, 1990). The efficiency of governance structures can be measured comparatively in terms of their transaction costs (Coase, 1998). Different types of governance structures are set to manage different transactions in a different manner. Each type of governance structure engages its own set of mechanisms for facilitation, enforcement, and monitoring of transactions. Consequently governance structures manage some characteristics of transactions successfully, but not all of them (Coase, 1937; Williamson, 1985; Ouchi, 1980). In this connection Williamson (1996a) posits that discrete structural rather than marginal modes of analysis are therefore employed following Simon (1997) whereas is the first-order economizing (getting the basic alignments right) rather than the second-order refinements (adjusting the margins) that is featured (see Figure 2.1 above).

Governance structures have three discriminating categories of attributes: contract laws, performance adaptability (risks), and instruments (assignment of property rights) and administrative controls (reputation effects) (Williamson, 1991; Spithoven, 2012).

Each mode of governance is supported by, and in significant ways, is defined by a distinctive form of contract law. TCE works on the basis of Karl Llewellyn's notion of incomplete contract as a framework. It rather indicates roughly around which such relations vary, an insufficient guide in cases of doubt, and a norm of ultimate recourse in case the relations go astray. The primarily conflict resolution action thus takes place in the context of private ordering, and court ordering appears late, if at all. This state of affairs put in evidence that, despite the fact that many conflicts could be brought to a court straight away, they are instead resolved by avoidance, forbearance. This course of action resides on the fact that "in many instances the participants can devise more satisfactory solutions to their disputes than can professionals constrained to apply general rules on the basis of limited knowledge of the dispute. Private ordering through ex post governance is therefore where the main action resides" (Williamson, 1996, p. 10).

Williamson (1985, pp. 69-72) appeals to Macneil's (1978) distinctions among classical contractual law (conflict resolution mechanism by court), neoclassical contract law (conflict resolution mechanism by arbitration) and relational contract law (resolution

mechanism by the overall of the entire relation). Classical contract law emphasizes legal rules, formal documents, and self-liquidating transactions and supports the autonomous market form of organization: when disputes arise, contract law is interpreted in a very legalistic way giving rise to hard bargaining (Williamson, 1991, p. 271). Neoclassical contract law frees parties from strict enforcement as disputes are referred at least initially to an arbitration mechanism rather than the courts, are usually applicable to long-term contracts, incomplete contracts, where parties are bilateral dependent and the contract is mediated by an adaptive contracting mechanism to reinstate alignment and restore efficiency when beset by unanticipated disturbances (Williamson, 1991, p. 272). Relational law effect adaptation through an overhaul of the entire relation as it has developed through time. It concerns interorganizational "contracts" being forbearance the implicit contract law (Williamson, 1991, p. 274) that supports fiat. The original contract may, or may not, be considered in some degree (Williamson, 1996a, pp. 71-72) and hierarchy is its own court of ultimate appeal.

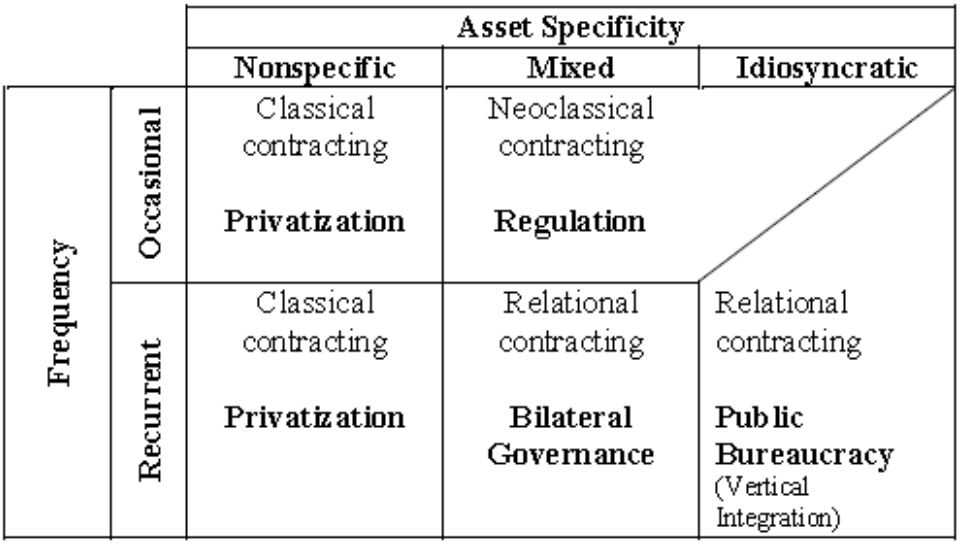
Performance adaptability is the central economic problem according to Hayek and Barnard and supported by Williamson (2010). Changes connected with time, place and circumstances require readjustments. Changes carry risks. In order to mitigate risks and reach a new equilibrium point, adaptation may be achieved through autonomous means or through cooperation. However, in case cooperative and autonomous adaptations are in balance, adaptation may be assumed to be irrelevant for the choice of governance structures (Williamson, 2008; 2010). Notwithstanding, collective adaptation involves negotiations in a conscious, deliberate, and purposeful manner, the more a governance structure relies on collective cooperation, the higher negotiation costs are (Spithoven, 2012, p. 447) because autonomous parties read and react to signals differently when confronted with failures or disturbances. Although it is always in the collective interest of autonomous parties to fill in the gaps and effect efficient realignments, of an incomplete contract, self-interested bargaining predictably obtains as opportunism plays (Williamson, 1991, p. 278). In the latter case the authority relation (fiat) has adaptive advantages over autonomy for transactions of a bilaterally (or multilaterally) dependent kind.

Instruments comprise incentive intensity and administrative controls. Incentive intensity is described as "a measure of the degree to which a party reliably appropriates the net receipts (which could be negative) associated with its efforts and decisions. High-powered incentives will apply if a party has a clear entitlement to and can establish the magnitude of its net receipts easily. Lower-powered incentives will apply if the net receipts are pooled and/or if the magnitude is difficult to ascertain" Williamson (1996a, p. 378). Administrative control concerns collection of information with regard to transactions monitoring. It may involve orientation upon possible transactions, registration of concluded contracts and performance of contracts. The market is characterized by low administrative controls, whereas public governance is characterized by rather strong controls (Spithoven, 2012).

Vertical integration is the paradigm transaction out of which TCE develops. This paradigm was explored and developed based upon a discriminating approach considering a continuum string containing initially three possible modes of governance: market governance or classical contracting ordering; trilateral (hybrid) governance or neoclassical contracting ordering; and bilateral (hierarchy) or unified governance or relational contract ordering. Using illustrative three types of asset specificity attribute of transactions, nonspecific, mixed and idiosyncratic, and in order to find out which combinations are most efficient, crossed with the frequency attribute of transactions, and considering that they can occur either occasionally or recurrently, the three above governance structures were matched for deriving conclusions about efficiency as shown in Figure 2.2 below (adapted from Williamson 1985, p. 79 to include public bureaucracy governance structure). The results are the following:

i) market governance (privatization) is best fit for nonspecific transactions of both occasional and recurring contracting;
ii) trilateral governance (regulation) is needed for occasional transactions of the mixed and highly specific (idiosyncratic) kinds;
iii) bilateral governance is the most appropriate structure whenever transactions are of the recurring type supported by investments of the mixed and highly specific kinds.

Figure 2.2 Efficient Governance



Source: Adapted from Williamson (1985, p. 79)

More specifically, market governance structure is most efficacious when recurrent transactions are completed insofar as standard acquisitions save transaction costs due to easily made available supply sources, reducing the likelihood of opportunism to materialize. Litigation of last recourse is strictly for settling claims considering that the relationship does not endure. Hybrid governance structure requires strong incentives to bring the contract through to completion because specialized investments have been undertaken with little valuable application alternatives, and highly specific transactions benefit with long-lasting relationship. Arbitration mechanism is employed in case of conflict to resolving disputes and to evaluating performance. Hierarchy (public bureaucracy) requires overtime continuity of the trading relation. Two variants are distinguished within the hierarchical governance: unified structures, where the transaction is removed from the market and organized within the bureaucracy subject to a unique authority relation (full vertical integration), and bilateral structures (partial vertical integration), where the autonomy of the trading parties is maintained. In this regard, highly idiosyncratic transactions are the ones where the human and physical assets required for production are extensively specialized, so there are no obvious economies of scale to be realized through interfirm trading that the buyer (or seller) is unable to realize himself (through vertical integration). Unified governance (hierarchy) appears to have superior

adaptive properties for idiosyncratic transactions which bear weak incentives because physical assets become more specialized to a single use, hence less transferable to other uses, and economies of scale can be as fully realized by the buyer as by an outside supplier.

The central hypothesis of TCE being the efficient alignment of transactions with governance structures in a discriminating way, then one needs to know what is the measurement criterion that can be applied to support the choice of the most effective solution. Joskow (1988, p. 97) argues that "specific institutional arrangements emerge in response to various transactional considerations in order to minimize the total cost of making transactions". The question is then to find an alternative institutional arrangement for the real situation under study that meets the efficiency objective which should not be an ideal hypothetical unfeasible solution. In this regard Coase and Williams (1964, p. 195) assert:

> Contemplation of an optimal system can provide techniques of analysis that would otherwise have been missed and, in certain special cases, it can go far to providing a solution. But in general its influence has been pernicious. It has directed economists' attention away from the main question, which is how alternative arrangements will actually work in practice. It has led economists to derive conclusions for economics policy from a study of an abstract of a market situation.... Until we realize that we are choosing between social arrangements which are all more or less failures, we are not likely to make much headway.

This problem was resolved by adding the "remediableness criterion" to the TCE model (Williamson, 1999, p. 316): "an extant mode of organization for which no superior feasible alternative can be described and implemented with expected net gains is presumed to be efficient". An examination of public governance costs in "remediableness terms" might be much more informative. This criterion takes account of government failures, among which falls the hazard of "probity". As I noted, probity refers to the loyalty and rectitude with which transactions are discharged. The efficiency presumption may be rebutted in presence of unacceptable initial conditions, unacceptable operating practices, conceptual error or even pathology (Williamson, 1999; Spithoven, 2012).

As referred above the results of Williamson's exploration and study of the provision of public services and of the choices that public bureaus must make between providing a service themselves or contracting it out through contractual arrangements, came about in 1999. As far as I could go, this was his last attempt to draw the theoretical implications of applying TCE to the public sector. Through this exercise he examined public bureaucracy through the lens of TCE, according to which the public bureaucracy (public bureau), like other alternative modes of governance, is well suited to some transactions and poorly suited to others. Table 2.1 bellow summarizes the dimensions of the governance structures and their attributes in the public sector.

Table 2.1 - Comparative Public Sector Organization
Source: Williamson (1999, p. 336)

	Governance Structure		
	Privatization	***Regulation***	***Public Agency***
Instruments			
Incentive intensity	++	+	**0**
Bureaucratization	**0**	+?	++
Performance attributes			
Adaptive autonomy	++	+	**0**
Adaptive integrity	**0**	+	++
Contract Law			
Employment relation			
Executive autonomy	++	+	**0**
Staff security	**0**	+	++
Legalistic dispute settlement	++	+	**0**

Legend: ++ = strong; + = semi-strong; 0 = weak

"Public Agency" is the governance mode option opposing the polar extreme of "Privatization" mode of governance in the string of potential alternatives as far as governance structures attributes are concerned: it has the weakest incentives and the strongest bureaucratization (administrative controls); it has the weakest propensity to behave autonomously (display enterprise and behave adventurous); it has the strongest propensity to comply; it has no autonomy to appoint its executives; it affords the highest degree of security of staff employment; and it works within a forbearance dispute settlement. In this table public sector contract law appears defined in terms of the

employment relation consisting of lack of executive autonomy, staff employment security, and employment dispute settlement internal mechanisms. Public agency or bureaucracy is the candidate efficacious mode of governance structure for public sector transactions such as procurement, redistributional, regulatory, sovereign, judicial, and infrastructure (Williamson, 1999, pp. 307-308 and 319).

Alike private governance structures, public sector governance structures are characterized by features such as incentive intensity, administrative controls – bureaucratization, performance attributes and contract law with differences in terminology. Contract law in the public sector assumes a different set of complex attributes, namely the employment relation consisting of executive autonomy and staff security, and legalistic dispute settlement (Williamson, 1999).

The central thesis is that, as compared with alternative feasible forms (all of which are flawed), the public bureaucracy is the most efficient mode for organizing "sovereign transactions". Public agencies display an advantage to provide goods that require a high degree of "probity" and "communal commitment" in presence of highly incomplete contracts when compared with full privatization. Private parties are much more focused on cost control than public agencies: to save on costs, private parties may avoid investment necessary to harness qualities that are highly recommended for the provision of collective goods, namely "probity" and a "committed staff". In the opposite extreme, the provision of private goods, which are goods that are subject to the market price mechanism (privatization), governance costs might be higher under public governance structure than under market governance structure. Notably, in the public governance structure, civil servants have to figure out who wants what and have to fully account for the spending of public money, whereas market prices mechanism provide not only information but also incentives (Williamson, 1999, p. 321). Public governance may be qualified as not being efficient to perform the provision of pure individual goods because public governance is associated with higher search and enforcement costs than the privatization mode (Spithoven, 2012, pp. 434-435). The standards against which to measure alternative arrangements for supplying some publicly funded service according to Wilson (1989, p. 349) are: efficiency, equity, accountability, and authority. In this line he questions how far

is important that the entity performing the service partake directly of the authority of the state.

Following Wilson's (1989, p. 348) "sovereign transactions" concept which he describes as transactions that "are endowed with indefeasible authority: there are certain commands that only the state ought to issue", Williamson (1999, p. 321) selected the foreign affairs transactions, and the specific case of the USA State Department, as an example of sovereign transactions to explore the application of TCE to public sector transactions based upon the 1962 Behavioral Sciences Subpanel's argument that "study of extreme instances…[will provide] important leads to the essentials of the situation". Examples of sovereign transactions include foreign affairs, the military, foreign intelligence, managing the money supply, and, possibly, the judiciary.

"Sovereign transactions" are afflicted by hazards in connection with asset specificity, above all, human assets, which involve considerable specificity, and of probity. Hazards of human asset specificity are mitigated through added security employment as an internal labor market will arise to support human asset specificity supported on the continuity of the employment relation, more fully developed information disclosure, and more refined dispute resolution mechanisms.

Regarding sovereign transactions Williamson (1999, p. 338) contends that

> […] the governance of a large number of transactions is informed by the following two propositions: (1) hazards take one or more of three forms: cost excesses, bilateral dependency, and probity; and (2) governance structures differ mainly in autonomous and cooperative adaptation respects.

"Probity" is a differentiating attribute of transactions – "loyalty and rectitude with which the foreign affairs transaction is discharged" – which surfaces more evidently in extreme instances, is delivered through leadership and management attributes of governance and it is three dimensional – vertical, horizontal, and internal – but with an interdependent "loop type" organizational dynamic. Williamson (1999, p. 322) recognizes however that leadership and management attributes of governance have been left out of the

ambit of comparative contractual analysis, as it is traditionally been dealt with by sociologists rather than the economics of organization, but should not continue to be so. As a matter of fact TCE, as it stands, lacks the ethical behavioral dimension (Duran and McNutt, 2010) of individual actors within governance structures which would link the "governance play of the game level 3" and the "embeddedness level 1" in Figure 2.1 above.

Using the foreign affairs transactions as an example, Williamson explains what he means by vertical probity hazard which may arise when the president lacks confidence in the information and assessments that are provided by the foreign affairs agency and the agency is perceived to be noncompliant (including being adventurous). This hazard is more acute when the president's near-term interests and the longer-term mission interests of the state collide. These hazards can be contravened by the choice of including mission safeguards in the design of governance structures.

"Horizontal probity" refers to the ability of the agency to deal with its agencies counterparts. Externally, when there is a perceived president's lack of authority as a consequence of weakness of expertise and lack of assured political support, the ability of the agency to deal with its counterparts is undermined. These hazards can be contravened by crafting governance structures that ascribe authority to the agency.

As to the "internal probity" distinctive features, intrinsic features of transactions, Williamson (1999, p. 324) adds

> […] are their needs for loyalty (to the leadership and to the mission) and process integrity. Because breach of contract/lapse of probity can place the system at risk, probity represents a condition of contractual hazard the mitigation of which cannot be realized through pecuniary penalty. Rather, breach against probity is better described as inexcusable incompetence or even betrayal. In the limit, such breach is punishable as treason.... Cooperation is the mechanism that may relieve the hazards of probity, a bureau to which sovereign tasks have been assigned has a special responsibility to the state to be protective of its mission.

How probity hazards are mitigated then within TCE? The answer is "Probity concerns will be relieved by governance structures to which reliable responsiveness can be ascribed" (Williamson, 1999, pp. 322-323), which indicates that the underlying assumption is that incentives work and make it unnecessary for the agents to be ethical.

Ruiter (2005), disagreeing with Williamson, views probity among the characteristics of governance structures and argues that the concept is similar to loyalty within organizations and to good faith in contract law. This stand also disregards the ethical behavioral dimension of the agents.

The case of the USA State Department transactions, diplomatic and consular activities, is analyzed to determine whether TCE can provide evidence that the public agency is the most efficient mode of governance for this type of transactions compared with alternative feasible modes of governance. The conclusion is that, as far as sovereign transactions are concerned, the public agency – in the case the USA State Department – presents the most efficacious governance structure when compared to regulation governance structure and to privatization governance structure alternatives. Arguments supporting this conclusion are: foreign affairs transactions display some human asset specificity, they also display a high degree of probity, and operating cost excesses are negligible. Probity hazards will be relieved by governance structures to which reliable responsiveness to the president – goal congruence; timely compliance; and lack of adventurousness – can be ascribed. Hence, the ethical dimension attached to the agents' behaviors is not a variable considered in the TCE model. Probity seems to be defined as an attribute that is implicated only in connection with a certain contractual organizational arrangements and positions, therefore attached to governance structures and detached from the individuals, i.e., an attribute of the transactions and not of the individuals that perform the transactions. But being it an ethical qualifier attribute it has to be linked with a behavioral assumption in the TCE model, but it is not so far.

Neither the full privatization governance structure nor the regulation governance structure meets any of the above requirements. Full privatization imply foreign affairs to be contracted out in the market, is characterized by greater cost control, greater incentive intensity, less complete administrative controls, less responsive management, unprotected

employment for staff, staff less committed to the mission and thus probity would be sacrificed. Although the regulation governance structure could probably be better suited to manage foreign affairs transactions than the full privatization governance structure, the option would not be free of problems: the nature of the 'contract' would be incomplete, while an additional level of bureaucracy, the regulatory agency, would be placed between the president and the administration increasing transaction costs and idiosyncrasy. In this setting, the regulatory agency would lack firsthand knowledge and experience to exercise proper control, the government would have problems in being adequately informed and the entrusted private firm would have difficulties in defending itself against any hazards of performance and/or disloyalty when things go wrong (Williamson, 1999, pp. 330-336).

Also Ouchi (1979) adders to the above conclusion: goal congruence of transactions becomes more important under bureaucratic structures than under market structures, as a certain level of goal congruence is required to ensure effective hierarchical relationships. When both performance ambiguity and goal congruence of transactions are moderately high, a bureaucracy structure becomes a more efficient choice of institution than a market structure (Ouchi, 1980). Formal auditing and evaluation mechanisms and loyalty gained from the long-term relationship enable bureaucratic structures to manage transactions with higher performance ambiguity than market structures.

TCE can be applied to both private and public bureaucracies (Coase, 1959; Williamson, 1999 and 2010; Ruiter, 2005; Moe, 1990; Spiller, 2008; Macher and Richman, 2008; Spithoven, 2012). In this connection political transaction costs are those associated with the provision of an organization and the public goods associated with it. This can be through an existent international organization of the political community.

Spiller (2008) developed a framework to argue that public contracting is plagued by third party and governmental opportunism, i.e., "probity" hazards: "…probity, and the suspicion of lack of probity, is what drives much of the features of public contracting" (p. 14). Reasonable institutional environments create the conditions for public scrutiny of public contracts through designated agencies, and / or interested third parties, to avoid corruption and graft. Interested third parties however, when in competition with the public agent in another (political) market, may have incentives to challenge the "probity" of a

particular public agent when by such action they may benefit. As a consequence, public contracting will not only be more complex requiring added rules and procedures but will also be more subject to litigation, hence perceived as more inefficient than private contracting. However, the added complexity is an equilibrium response to its hazards, in particular third party opportunism, a defining characteristic of public contracting. The framework confronts two options to verify whether it is possible to limit the potential for third party opportunism: move the transaction to the public sphere completely; to drive it off the public and into the private sector. The comparison requires a case by case analysis to find out which is the most efficient governance structure for a given transaction giving due consideration to Williamson's "remediableness" criterion insofar as the alignment result must be institutionally consistent.

Spiller, like Williamson, reduces the mitigation of probity hazards to bureaucratic control-by-punishment or privatization control-by-contract and incentives, discarding the ethical dimensions of the individuals in action.

According to Furubotn and Richter (2000, p. 47), the costs incurred for supplying public goods by collective action, and they can be understood as analogous to managerial transaction costs, are, more specifically:

a) The costs of setting up, maintaining and changing a system's formal and informal political organization: include the costs associated with the establishment of the legal framework, the administrative structure, the judiciary, etc.;
b) The costs of running a polity: current expenditures for those things formerly specified as the "duties of the sovereign" such as for legislation, defense, the administration of justice which carry costs of decision making and costs of enforcing the observance of official instructions. Levi (1988, p.12) describes political transaction costs as "the costs of measuring, monitoring, creating, and enforcing compliance". To be added are the costs of running organizations that participate in the political decision-making process (Olson, 1965, p. 46).

Williamson (1999) concludes stressing that in public administration the action gravitates to the polity, resides in microanalytics where inefficiency is assessed not in absolute terms but in remediableness terms, public administration displays a comparative advantage whenever the probity attribute hazard is acute and materializes, this advantage being supported on legitimate economizing practices that have been widely condemned (low-power incentives; convoluted bureaucratic procedures; excess of employment security) and on important dimensions of management such as leadership and career staff, the latter hitherto been disregarded in the economics of organization. Williamson's (1999, p. 340) last thought about TCE application to public sector transactions shows us that we are in the infancy of its development:

> The use of extreme instances is intended to uncover important but hitherto neglected features…. The idea of "governance as integrity" (emphasis in the original) thus has broader scope than is evident from prior treatments of bilateral dependency, weak property rights, measurement, and the like. But while probity seems to resonate, it is also vague. Applications need to be delimited. Operationalization is wanting.

"Probity" attribute as added to TCE seems to have been introduced as the variable that somehow links the realm of the "social embeddedness level 1" with the "governance level 3" in Figure 2.1 above. But, as it is defined and stands by now in the model, it can be interpreted as the "prudence" Aristotelian virtue insofar as "probity concerns will be relieved by governance structures to which reliable responsiveness can be ascribed (Williamson, 1999, p. 323). As a matter of fact Aristotle (*Nicomachean Ethics*, 1144, 5-10) postulated that "Prudence as well as Moral Virtue determines the complete performance of man's proper function: Virtue ensures the rightness of the end we aim at, Prudence ensures the rightness to the means we adopt to gain that end" which suggests that all moral virtues are implied so that righteous acts and fairness in behavior as well as justice in general verify (Karayiannis and Hatzis, 2012). As mentioned above "probity" in TCE "implies high standard of integrity, to include professional excellence, … needs loyalty (to the leadership and to the mission) and process integrity" and "probity concerns will be relieved by governance structures to which reliable responsiveness can be ascribed", i.e., through

incentives and / or bureaucratic control-by-punishment. Nonetheless it is also implied that the necessary conditions for "probity" to verify are to be met within a favorable ethical context but for which TCE theory does not provide an ethical referential framework at all.

Ethics require a conscious moral agent, a virtuous person, as science requires a conscious scientist, as medicine requires a conscious doctor, etc.. Mere method or formalism does not work alone. McCloskey (2006, p. 322-329) puts it this way:

> What prevents us from being misled by other scientists [probity breach] is not the National Science Foundation or the referee system or the method of science, as splendid as these all are, but the courage, hope, faith, justice, love, temperance, and prudence of our colleagues.… It is still conventional among scientists themselves to cling to the idea that, say, the referee system mechanically assures good outcomes through Prudence Only — even while complaining under their breaths about the idiocy or the moral turpitude of their editors and referees…. The so-called scientific method … does not work. Good science like other good behavior depends on virtues, on human character. The idea is Aristotelian … we learn to be good or bad, of course, much less from philosophical precept or religious commandment than from example and story.

Deirdre McCloskey, in her book *Bourgeois Virtues*, published in 2006, advocates a balanced seven "bourgeois virtues" ethical referential framework which, as she puts it, allows humans to flourish and live as ethical beings by systematically and routinely (not only in the extreme) practicing them: hope, faith, love, justice, courage, temperance and prudence. McCloskey's seven virtues could be incorporated advantageously within Williamson's TCE model in order to substantiate the "probity" as an ethical attribute and render it universally applicable to all type (private and public) and all time transactions. This would imply for TCE to abandon the causation effect between extreme events and "probity" recognizing that ethics is a matter of constancy and is not dependent on extreme circumstances, this although ethical virtues may display subtle cultural variations according

to geography, a twist which is recognized by Williamson (1985, p. 22): "The social context in which transactions are embedded – the customs, mores, habits, moral, and so on – have a bearing, and therefore need to be taken into account, when moving from one culture to another".

McCloskey (2006) defines "ethics" as the system of the seven above mentioned virtues whereas a "virtue is a habit of the heart, a stable disposition, a settled state of character, a durable, educated characteristic of someone to exercise her will to be good" (p. 64). "Prudence and justice are calculative and intellectual…" (p. 303). "Courage and temperance are emotion-controlling and will-disciplining…. Faith, hope, and love, above all, provide ends for a *human* life" (p. 305). A full human life requires the seven virtues. Quoting Alasdair MacIntyre, McCloskey explains: "if we are to develop from our initial animal condition into that of independent rational agents [viz., prudence, temperance, and justice], and the virtues that we need, if we are to confront and respond to vulnerability and disability both in ourselves [courage, hope] and in others [love, faith], belong to one and the same set of [seven] virtues, the distinctive virtues of dependent rational animals" (p. 307).

Concluding, the attributes of transactions in the theory (Williamson, 1985, 1988b, 1991, 1999) are asset specificity, uncertainty, frequency and probity. Huet and Saussier (2003, p. 411) argue that the behavioral assumptions are at the source of transaction costs and put forward Table 2.2 shown below which I adapted by adding McCloskey's (2006) "ethics virtues" behavioral assumption as well as "probity" attribute and the "remediableness" criterion to summarize the constructs implicated by the TCE theory also relevant to the present research.

Table 2.2 Behavioral Assumptions and Transactions' Attributes

Factors Pertaining to Individuals: Behavioral Assumptions	Factors Specific to Particular Transactions	Impact on Contracting Arrangements
Bounded Rationality	Uncertainty	Incomplete Contracting
Opportunism	Asset Specificity	Hold-up / Credible Commitments /Fundamental Transformation
Farsighted Behavior (prudence)	Frequency	Economizing Behavior
Virtues Ethics	Probity	Remediableness

Source: Adapted from Huet and Saussier (2003, p. 411)

Already back in 1994 Williamson revealed his research needs and concerns regarding the progression of TCE theory as follows:

> One of the pressing needs in transaction cost economics scheme of things is to discover and explicate the underlying features that give rise to discrete structural differences between alternative forms of organization. Incentives, bureaucracy, performance differences (especially in adaptation respects), and contract law differences are among the most important. Extending the argument from the commercial to include nonprofit and public sectors is a natural and important but difficult future undertaking.… Relatedly, a combined treatment of the institutional environment, which is the aspect of the new institutional economics on which Douglas North (1991) has concentrated his attention, and institutions of governance, which is what transaction cost economics deals with, is needed (p. 45).… There is furthermore a need to develop a theory of bureaucratic failure that puts the study of internal organization more nearly on a parity with the theory of markets and market failure (p. 46).

These gaps are still unfilled warranting further research. This thesis also aims to make a contribution here.

CHAPTER III – TCE EMPIRICAL APPLICATIONS AND CRITICISM

III.1 – TCE and Empirical Applications

As far as I could go, the first empirical application of TCE to a public utility service and alternative modes of organizing natural monopoly activities is Williamson's 1976 CATV (communal antenna television) California case study. It concerns an analysis of franchise bidding for the right to install and operate a cable television using public monopolistic infrastructure in the USA as an alternative to regulation governance structure. The right was to be awarded to the bidder of the lowest monthly fee for the basic service. Refuting orthodox economics, Williamson contends that franchise bidding for natural monopoly mode suffers from much more severe contractual disabilities than have hitherto been acknowledged. Using Oakland as a case study, he demonstrated that, in a complex environment, where complete contracts are impossible, regulation as a mode of governance, while problematic, is a superior solution to rigid franchise bidding.

Thereafter several other scholars followed Williamson and attempted to apply TCE to both private and public administration settings. Below I will summarize the results of several review assessments of the empirical studies conducted since 1976 onwards, namely those of Joskow (1988), Shelanski and Klein (1995), Crocker and Masten (1996), Masten (1996), Rinfleisch and Heide (1997), Williamson (2000), Masten and Saussier (2000), Vannoni (2002), David and Han (2004), Williamson (2005), Carter and Hodgoson (2006), Klein (2008), Macher and Richman (2012), and Ménard and Shirley (2012) bearing in mind my fundamental preoccupation, i.e., to focus and to give a more detailed account of the studies conducted about transactions held within public sector organizations.

Joskow (1988), focused on the strand of the literature on issues associated with the structure of vertical relationships, and, in particular, the role of asset specificity, transaction costs, and incomplete contracts. Although finding empirical support for the importance of transaction cost applications, especially those connected with the importance of asset specificity in explaining variations in vertical relationships, advocated that more empirical work was still needed to be done.

Shelanski and Klein (1995) give a summary and assessment of empirical research in transaction cost economics organizing it by issues such as vertical integration, complex contracting and hybrid modes of governance, long-term commercial contracts, informal agreements, and franchise contracting concluding that in general the studies support TCE predictions, this tendency being overwhelmingly in the studies that examined the make-or-buy decision. Despite of these findings, they acknowledge Joskow's (1988) observation that there was still a lot to be done both further developing the approaches already undertaken and refining the methods used to test transaction cost hypotheses given the difficulties arising from the measurement of asset specificity, the relative unclear definition of key TCE constructs as well as the apparent inability to take into consideration the effect that uncertainty bears on asset specificity and its consequent impact on bilateral dependency.

Rindfleisch and Heide (1997) reviewed 45 articles (out of a selection of 150) published from 1982 to 1996 in a variety of academic journals in marketing, management, strategy, law and economics aiming at providing a review of transaction costs that addressed issues of interest to marketing scholars, but excluding case studies. They observed that the earliest applications of TCE focus on a manufacturing firm's decision to backward integrate into the supply of materials or components or forward integrate into distribution and sales. Monteverde and Teece's (1982) is the seminal study in the context of backward integration examining the make-or-buy decision for assembly components for two firms in USA automobile industry. The assessment concludes recognizing that though a workable theory of transaction costs had been formulated by the early 1970s, its transaction dimensions were not formally specified until around 1980 and the basic theory was still in need of development. The problems encountered that had not yet been fully addressed relate to: i) the relative effectiveness of different governance mechanisms in addressing governance problems; ii) a series of governance problems have been identified, but the answer to how far the available governance mechanisms align with these problems was not accomplished; iii) the effects of different governance mechanisms had not been well documented by previous research; iv) individual transactions as the unit of analysis ignores how different governance forms can be combined – the focus of the literature, hitherto had been on a single governance form. The latter problem was challenged by

Bradach and Eccles (1989) who argues that firms may purposely combine different governance forms by using a "plural form" approach to operate distinct control mechanisms for the same function and in order to understand this organizational form, the analytical focus must move from individual transactions to the broader architecture of control mechanisms.

David's and Han's (2004) review of 304 statistical tests of Williamson's TCE framework found in 63 journal articles, criticize previous reviews on the basis of lack of explicit selection and evaluation criteria, by being unsystematic, and by being exclusively narrative. Employing quantitative methods of evaluation, they select a sample of studies that test core propositions of the theory, thereby restricting themselves to published journal articles and statistical tests reaching to mixed results regarding the operationalization of some TCE's central constructs and propositions as well as low levels of empirical support in other core areas and discrepancies in the interpretation of key concepts. A 47% rate of support to the predictions of the TCE theory was obtained as a result of this quantitative assessment, which led the authors to maintain a dissonant position regarding the "unreservedly agreeing that the theory is an empirical success story" (David and Han, 2004, p. 52). David and Han support their standing on the findings of discrepant observations regarding the theory predictions' in connection with uncertainty independent variable while asset specificity as an independent variable fared best. But two other important TCE relationships, frequency and performance, have not received much empirical attention at all, consequently, as to the performance of the choice for a particular governance structure, no evidence exists as to whether the choice made is efficient. The conclusion is that empirical work on TCE as a whole has provided a rather limited picture which recommends a greater consensus on core constructs and relationships that would allow the theory to be further developed, more consistently and convincingly.

Carter and Hodgson (2006) submit a mixed picture different from the empirical irrefutable results presented by Williamson as long as they found just a few studies giving unambiguous support to Williamson's TCE, and, they argue, a significant number of the studies can be reinterpreted in terms of a competence or capabilities approach, instead of TCE. The conclusion is similar to David and Han's insofar as the empirical evidence does

not decisively support Williamson's TCE stressing the importance of an empirical program of joint testing of rival theoretical approaches.

Carter and Hodgson (2006) used two selection criteria to create a smaller sample of studies that were influential in the academic debate and were aligned with the focus of this review: citations that have had a significant impact and are deemed by others to have sufficient scientific caliber to be cited. With these criteria, 27 studies were eliminated, giving a final sample of 27 studies, 12 of which dealt with vertical integration and 15 with hybrid relationships intending to

> […] point to the studies that are most likely to have influenced the claims of TCE corroboration and show, even taking the empirical tests at face value that the results are more mixed than the more upbeat claims would suggest. Furthermore, even taking claims of significant statistical correlation as they stand, we show that sometimes these results can be interpreted in a different way, and may even support theories that are seen as rivals to Williamson's TCE (p. 464).

The results of this analysis lead to the following conclusions regarding 12 studies dedicated to the vertical integration problem: none of the studies is fully consistent with the framework, five are partly consistent with the framework and six are partly consistent and partly inconsistent, while one is inconclusive. None of these studies tests for transaction frequency and some do not test for uncertainty. As to the results of 15 studies on hybrid modes of governance give even relatively less support for TCE. Most studies test, only to a limited degree, predictions of the framework. The results of ten of the fifteen studies are inconclusive, three are partly consistent, and two are partly consistent and partly inconsistent with TCE. The most prominent problem in relation to this part of the empirical studies is that Williamson provides insufficient detail on the characteristics of hybrid modes of governance. Based upon these findings, Carter and Hodgson advocate testing rival theories in order to identify whether correlations are actually consistent with TCE or not and conclude that there is some significant empirical evidence in support of elements of TCE, but taking Williamson's framework and the evidence as a whole, the picture is rather

mixed. The analysis also reveals that there is a need to achieve greater clarity about the role and treatment of uncertainty in Williamson's TCE framework.

Klein's (2008) and Macher and Richman's (2012) are the most recent available reviews of the literature that utilize transaction cost economics and have a significant empirical component.

Macher and Richman's review (2012) covers 900 articles and book chapters published since 1976 up to 2005, starting with the above mentioned Williamson's 1976 CATV case study. This survey works with TCE described as the "governance" branch of the NIE, as opposed to measurement cost branch – Barzel, 1982, to agency-based branch – Grossman and Hart, 1986 and Hart and Moore, 1990, or to institutional environment – North, 1990. Williamson's 1976 Oakland case study was then followed by Goldberg's (1976) relational contracting and public utility regulation, Klein's et al. (1978) examination of relationship-specific investments and incomplete contracts and Williamson's (1979) development of the transactional dimensions that influence cost-minimizing governance structures which altogether provide the basis of a testable theory in which to make governance mode predictions.

Recognizing that prior such surveys have brought to light the evidence of a consistent empirical success of TCE in Industrial Organization economics, the study also acknowledges that far less is known about the influence of TCE within other business-related areas. Also, the empirical applications of TCE to other fields further removed from Industrial Organization economics, including law and political science, public policy, health economics and policy and agricultural economics and policy, have not been systematically explored. The 900 articles and book chapters collected for assessment were then two-tiered reviewed by making a separation between business-related and non-business related articles which were then placed within its most appropriate field, i.e., business, economics, marketing, finance, etc., and for non-business law, political science, etc.. Notwithstanding the fact that the separation in Marcher's and Richman's (2012) empirical literature review was not based on a distinction of private vs public TCE applications and developments thereon, it provides a good and useful overview of how the operationalization of TCE has been done by researchers, allowing anyway to pick and

choose the references of those studies that concern the public sector as well as which phenomena were analyzed therein.

Klein (2008) and Marcher and Richman (2012) surveys adopt an approach to empirical work in TCE to include qualitative case studies, quantitative single-industry studies, and cross sectional econometric and historical analyses.

According to Marcher and Richman (2012, p. 8)

> […] although case studies are often criticized because of their lack of generality and possible ex-post rationalization, they are an important and necessary complement to econometric analysis and often provide a richer description and perspective than many statistical analyses offer. These research methods also often represent the stimulus to refinements of transaction cost theory or future quantitative examinations.

Klein (2008) sustains that case studies comprise the bulk of the studies on the make-or-buy decision due to the fact that the main variables of interest – asset specificity, uncertainty, frequency – are difficult to measure consistently across firms and industries. Examples of case studies are Williamson's (1976) study of cable TV franchising in Oakland, California and Coase's (2000) reinterpretation of the G.M. – Fisher Body case. Examples of quantitative case studies focusing on a single firm or industry are Masten's (1984) investigation of contracting practices in a large aerospace corporation and Saussier's (2000) study of electricity contracts. Case studies, although circumventing the problem of inconsistent measurement across industries, however, are not without methodological problems, namely those connected with the classification of the discrete variables like "make-or-buy" and representativeness of the evidence from individual cases which may not apply to other cases. Notwithstanding these problems, Klein asserts that the cumulative evidence from different studies and industries is remarkably consistent with the basic transaction cost argument. In this regard Klein mentions Simon's (1992, p. 1504) view:

> Although case studies are only samples of one, such samples are infinitely more informative than samples of none … [v]alid hypotheses

> are much more likely to emerge from direct, intimate encounter with organizations than from speculation.

Macher and Richman (2012) sustain that the bulk of the empirical research in TCE falls into the above three categories of methods although it is noticeable that there is an increasingly interest to adopt more novel methodological approaches than discrete choice analysis to evaluate the influence of transactional properties, hold-up or small numbers bargaining on the mode of governance and over time. Although surveys have been the principal and preferred data collection technique, a number of empirical studies utilize secondary data collection techniques such as published data from diverse sources (e.g. industry trade publications, government data, newspapers, or archival data) and sources outside of published data (e.g. contracts between exchange partners). Usually employed by economists, the examination of what actual contracts represent constitutes an excellent data source for historical and empirical TCE-related research. TCE research using contract data is diverse and examines the decision to contract, the length of contract duration and contract design. In comparison to survey or questionnaire data, secondary data may offer shorter collection times and larger sample sizes (Marcher and Richman, 2012).

Klein (2008) concluded that most of the empirical work was produced on the make-or-buy decision and it follows the same basic model, i.e., organizational form is the dependent variable, often modeled as a discrete variable – "make", "buy" or "hybrid", while asset specificity, uncertainty, complexity, and frequency are independent variables. Of the later, asset specificity has received the most attention, which is due to its central role in the transaction cost approach to vertical integration. According to Macher and Richman's (2012) survey, economics represents the area best represented in the empirical TCE research. In this area vertical integration, or the make-versus-buy decision, is regarded as the canonical problem of TCE. Asset specificity is the central transactional attribute to the TCE explanation as to whether economic agents procure critical inputs and services through internal production or via market transactions.

Asset specificity, or the transferability of assets that support a given transaction to a different use or different user, is argued by Williamson (1985) to be the most important transaction attribute, consequently has been the most analyzed in the empirical literature, of

which specific investments on human capital is largely represented due to its significant weight in terms of the total cost of doing business, but also because there is a wide variety of measurement approaches (Marcher and Richman, 2012).

Klein (2008) sustains that on operationalizing the empirical work on the make-or-buy-decision, asset specificity, uncertainty and frequency are the properties or attributes that are assumed to underlie the efficient form of organization for a given economic relationship – and, therefore, the likelihood of observing a particular organizational form or governance structure – is seen as a function of these attributes. A more integrated governance structure depends positively on the amount or value of the relationship-specific assets involved, and for significant levels of asset specificity, on the degree of uncertainty about the future of the relationship, on the complexity of the transaction, on the frequency of trade, and possibly on some aspects of the institutional environment.

Uncertainty is concerned with exploring the hazards of maladaptation. The empirical findings that relate uncertainty to organizational form are mixed, partly because of the multitude of uncertainty types examined and partly because uncertainty attribute poses difficulties to analyze *per se* because complexity and uncertainty are used interchangeably, although the two are distinct analytical concepts adding to the problem. As a matter of fact complexity is a concept that, although used more recently by Williamson, has never been defined within the TCE model. The treatment of environmental uncertainty, in the sense of unanticipated changes in circumstances surrounding an exchange in reference to changes in the environment to future events, is also broad, but more uneven in comparison to asset specificity's treatment. Uncertainty as a behavioral foundation has seen far fewer studies. Measurements for environmental uncertainty constructs that have been employed in empirical analyses are broad and include demand uncertainty, technological uncertainty, and supplier uncertainty, while measurement constructs of behavioral uncertainty often attempt to measure and evaluate partner performance (Marcher and Richman, 2012).

Transaction frequency comes after asset specificity and uncertainty regarding how much attention researchers dedicated to research this construct. It has received far less treatment in the empirical literature in comparison to asset specificity and uncertainty, and

according to Marcher and Richman (2012) calling for greater theoretical and empirical treatment by researchers. So far, the hypothesis of advantageous economies of scale attached to internal organization related to transaction frequency, have not been confirmed by researchers. Williamson (1985, p. 60) posited that higher levels of transaction frequency provide an incentive for internal organization because "the costs of specialized governance structures will be easier to recover for large transactions of a recurring kind". Several empirical studies show no positive association between transaction frequency and organizational mode, while other studies dichotomize transaction frequency into one-time versus recurring exchanges and do find a significant relationship. If, however, reputation effects work well, increasing transactional frequency will support stronger reputation effects (Marcher and Richman, 2012).

Klein (2008) analyzed the empirical work produced on the make-or-buy decision organizing the analysis in the following categories: component procurement; forward integration into marketing and distribution; contracts and contractual design; informal agreements. Nearly all studies on component procurement are single-industry case studies, and, just a few, rest on cross-sectional or panel data. As to contracts and contractual design the key issues covered related to the choice between market, hierarchy and contracts (or other hybrids), being that one of the issues studied the choice of the mode of governance itself. Another one is the question of what provisions, given the choice for contracts, these contracts should contain in terms of duration, completeness, complexity and other attributes. The overall conclusion is that the empirical literature on the make-or-buy decision including the structure of long-term contracts and hybrid forms of organization is largely consistent with the transaction cost theory of the firm: vertical arrangements are usually best understood as attempts to protect trading partners from the hazards of exchange under incomplete contracting. However, challenges, puzzles and opportunities lie ahead: (i) the measurement and definition of transaction characteristics and other variables remain unclear; (ii) lack of use of rival explanations for vertical relationships in many studies, (iii) most of the studies establish correlations, not causal relations between transactional attributes and governance structures; (iv) lack of adequate consideration and analysis of the changing legal and regulatory environments. Three are the lessons learned so far. The first lesson is that asset specificity is an important determinant of vertical

contractual relations. It is not the sole determinant, however. The second lesson is that vertical relations are often subtle and complex. The third lesson is that, while we know much about the transaction cost determinants of vertical relations, we know relatively little about the relation between the costs of contracting and organization and the wider legal, political and, social environment.

Macher and Richman (2012, p. 37) concluded that the applicability of TCE to empirical problems across several business related phenomena, with the exception of accounting, such as marketing, finance and organization theory, is impressive, on the whole, remarkably consistent with TCE central hypothesis "governance choice is largely determined by the cost of transacting and that these costs are influenced by observable characteristics of the underlying transactions". Notwithstanding the acknowledgement that the majority of the empirical research in TCE surveyed is found to be a variation of the discriminating alignment hypothesis, the survey highlights the tremendous range of empirical phenomena that have been explored through the lens of TCE: going beyond its initial focus on the make-or-buy decision, TCE has provided a framework for examining organization of labour, dominant firms, contracting for natural monopoly, non-standard contracting (including franchising, exchange relations and take-or pay agreements), corporate governance, public bureaus, and reputation as well as a variety of business-related phenomena in areas such as marketing, finance, international management, organizational behavior, strategy and innovation and other social sciences disciplines, including law, political science, health economics and policy and agriculture economics policy. However there are fewer direct applications of TCE reasoning to empirical problems in accounting, which is an intriguing surprise in Macher and Richman's (2012) opinion given the relevance of accounting phenomena to questions of economic organization and performance. This dearth of empirical applications of TCE to accounting phenomena is even more acute considering Coase's (1990) hypothesis: accounting issues are important in explaining why the cost of organizing particular activities differs across firms. Coase (1990, p. 12) notes:

> In understanding how in a competitive society the choice is made between these alternatives but interrelated means of organization, we

> must take into account the role of the accounting system. The theory of the accounting system is part of the theory of the firm. It is not my belief that the secret to the determination of the institutional structure of production will alone be found in the accounting system, but it certainly contains part of the secret.

Williamson (2005b), on examining the applications of transaction cost reasoning to business administration and within social sciences in general between 1981 and 2000, based upon the number of citations in the literature to his and to Coase's work, corroborates the above observation of a dearth of applications of TCE in the accounting functional field. Strategy literature is the largest user followed by organizational behavior and while a steady growth is observed for all functional fields analyzed (strategy, organizational behavior, marketing, finance, and operations management), the accounting field is the exception in this trend.

In this regard Lee (2004, p. 64) explains the dearth of good research in the accounting and audit fields in the United States:

> In my opinion, the self-evident nature of contemporary research in the U.S. can be summarized as follows. The behaviour of capital markets and individual actors in these markets is affected by the absence or presence of relevant accounting information. A recent scandal such as Enron clearly illustrates this. It also signals the failure of researchers to advocate solutions to lapses in corporate accounting, disclosure, and audit. The question of what is relevant and reliable accounting and auditing has been ignored by American researchers for several decades, despite the presence of leading researchers in standard setting. To me it is as if medical researchers were interested only in the behaviour of doctors rather than the detection, prevention and cure of illnesses and diseases. Unsurprisingly, therefore, the quality of reported information is increasingly found to be suspect and the work of auditors of such information is declared to be unimpressive. In my opinion these conditions will persist until the American research community gets back

> to the basics of helping practitioners provide dependable services rather than conducting anthropological studies of markets and their participants.

There are a few studies focusing on the internalization versus externalization of the accounting and the internal audit function (Aman et al., 2012; Everaert et al., 2010; Carey et al., 2006; Speklé, 2001; Speklé et al., 2007; Subramaniam et al., 2004; Morrill & Morrill, 2003; Selim et al., 2000; Selim et al., 2000; Selto &Widener, 1999; Rittenberg et al., 1997, 1999, 2001; Faure-Grimaud, 1998; Spraakman, 1997) whereas those applying TCE framework use statistical methodologies and all corroborate TCE's central hypothesis. One study linking corruption and governance structure (Zhang, 2009). Subramaniam et al., (2004) applies an empirical survey to the public sector in Qeensland, Australia, but does not use the TCE framework. Rittenberg et al. (1997, 1999, 2001) studies do not apply TCE framework at all.

Grigorescu (2010) studies the increase of oversight governance structures in intergovernmental organizations applying the Principal Agent theory and econometric methodology to answer to the question "Why so many intergovernmental organizations have established recently offices and policies intended to facilitate the oversight of their bureaucracies" surveying 70 organizations. The study argues that the empowerment of democratic norms and institutional diffusion processes across the organizations have altered member states' preferences and allowed them to overcome collective action problems involved in the adoption of oversight mechanisms. The tests support the arguments of the Principal Agent framework. Mechanisms such as investigative units spread quickly to many organizations as state representatives changed their initial preferences due to diffusion processes based on both the logic of expected consequences and the one of appropriateness.

Selto and Widener (1999) empirical study surveyed 600 publicly traded firms with more than 500 employees from Compustat industry files, with a 33% response rate defining outsourced Internal Audit as dependent variable. Proxied independent variables were: asset specificity, environmental uncertainty, behavioral uncertainty, and frequency. Rational for selecting these variables is not well founded in the study. The study used mixed methods: quantitative and qualitative based on questionnaires. The study revealed difficulties on

measuring uncertainty, therefore could only conclude that asset specificity and frequency are major drivers on outsourcing of internal audit decisions.

Speklé (2007) build on Selto and Widener (1999) study and replicated it with 66 companies headquartered in the Netherlands reaching similar conclusions for asset specificity and frequency to be significantly associated with sourcing decisions.

Independence is a fundamental professional attribute of the audit profession, being it internal or external. None of the above mentioned research considered it as an independent variable. This "independence" attribute may bear an importance to audit services equal to the "probity" attribute of transactions in Williamson's (1999) TCE framework for public bureaucracies. This observation puts in evidence a gap in the TCE empirical literature.

The evolvement and positioning of the state of the art of the TCE empirical research justifies the assertion that empirical research in TCE has become increasingly interdisciplinary as well as multidisciplinary through the increased integration of TCE in alternative theories of the firm allowing the progression on the understanding of complex economic phenomena and on the building of a coherent science of organization. Williamson (2005b) gives an account of this trend: he observed both an increase of TCE citations over the interval 1981-2000 as well as the changing composition of fields in which the citations appear. At the end of the decade, business administration and economics led the citations to Williamson's work, followed by sociology, political science, other fields and law (ordered in terms of their relative importance) which allows Williamson (2005b, p. 37) to assert that "TCE is one of the "common languages" that help to unify research across the social sciences in general and the functional areas of business administration in particular".

Despite of the growing application of TCE, Macher and Richman (2012) put forward a number of theoretical and empirical gaps awaiting the furtherance of research. The first identified gap regards the use and measurement of transaction cost proxies which need to be more precisely measured and tested for the effects of key transaction cost variables such as those used as proxy for asset specificity, opportunism and uncertainty

which have been measured indirectly through secondary data (e.g. accounting data), whereas the collection of microanalytic primary data is encouraged. Opportunism concept suffers from measurement concerns insofar as the complexity of opportunism has not been fully explored or even attempted to be measured directly. The development of the analytical tools that will enable explicitly to recognize institutional differences and their effect on the prevalence of opportunism is therefore missing. In this connection it is to be highlighted that there is a critical aspect connected with the design of the econometric models that have been most widely employed as they fail to explore the interaction effects among transaction cost variables and between these variables and other potentially relevant factors. This omission is most obvious in TCE contracting studies where researchers frequently code a dummy variable according to whether contracts contain a particular provision and then analyze the effect of this variable separate from other contractual provisions. In these circumstances Masten and Saussier (2000) advocate that case studies can provide the depth necessary to allow researchers to determine what interaction effects are potentially relevant in a given instance and the importance of these effects on organizational outcomes.

The second identified gap concerns the treatment of transaction cost variables, namely asset specificity, as exogenous when assets are a result of a choice, which require treating it as an endogenous variable. The third identified gap is connected with the performance implications of organizational choice. Only a few studies pay explicit attention to the costs associated with failing to align transactions and governance structures, despite the fact that misalignment between transactions and governance does occur, and is relevant in a variety of contexts, specially identifying the organizational factors that are relevant for performance in particular contexts, articulating the factors that affect the speed with which organizations change, and empirically testing for the effects of organizational misalignment warranting greater research effort. The fourth and last identified gap is that TCE lacks a rigorous mathematical foundation that forces researchers to define with greater precision the concepts that are central to the empirical analysis.

Whinston (2003, p. 3) views the situation as follows:

> To the extent that formalization allows scholars to generate more detailed and demanding empirical tests, it may also uncover evidence that

> is inconsistent with or directly contradictory to receive TCE theory, thereby leading to further theoretical refinements.

Ménard and Shirley (2012, p. 40), on giving an account of the history of NIE, advocate the need for the development of a more unified theory of institutions, able to bridge the gap between the *Northean* general institutional framework and the *Williamsonian* specific transactions and modes of governance TCE model to contravene the existing conflicting theories and even definitions of institutions. Critically missing is a theory describing satisfactorily the interaction between the North's institutional framework (the scaffolding for human transactions) and Williamson's structure of governance –"the matrix in which the integrity of a transaction is organized" (1996a, p. 378). Central questions awaiting an answer are: "How do the Northean rules that determine the security and functioning of property rights or the laws that affect contractual credibility and enforcement shape the choice of Williamsonian modes of governance and of the ways to organize transactions? What are the comparative costs of different institutional schemes, such as different judicial systems for implementing contractual laws?". Williamson (1994) revealed these same gaps.

Another important gap in NIE adding to the above gap, seems to be the lack of full integration of the four level Williamson's (2000) "economics of institutions" framework (see Figure 2.1 above), namely how informal rules (level 1) such as ethics have a bearing on the choices of governance structures (level 3) and the alignment with transactions attributes. McCloskey's (2006) ethics framework may help fill in this gap.

Of particular interest to us is to know which was the scope, the methods, and the results of the empirical studies conducted within the public sector so far, namely those that explored the vertical integration and/or the outsourcing of services. Besides Williamson's (1976) case study of the of alternative governance mechanisms to allocating cable TV services rights in general and with reference to the experience in Oakland, California referred to above, I found a few other empirical studies conducted within the public sector in the literature connected with TCE. Oliver Williamson (1976) and Victor Goldberg (1976) set out the first detailed, comparative analyses of the roles and limitations of

markets and regulation as alternative institutions for the governance of public utility transactions.

Williamson recognized that the experience of a single city might not be representative and therefore could not resolve the debate over the efficacy of franchise bidding for cable television, much less its viability in other settings. Although the study illustrated the hazards to which franchise bidding is exposed and thereby confirmed the existence of the problems anticipated by the theory, determining the magnitude and frequency of those hazards would require more systematic study. Williamson concentrates on the limited task to show that nonstandard sales contracts need not result from monopolistic machinations. He turns his attention to the, so far by economists ignored, behavior of the parties after contract conclusion, i.e., to the process of execution, control and enforcement of contracts. The underlying problems result from contract specific investments, Knightian uncertainty, and the therefore unavoidable incompleteness of contracts. To minimize ex post opportunism of the partners to the contract, both parties are complementing or even supplementing potential legal enforcements by private orderings (Richter, 2005, p. 23). Following Williamson, most of the subsequent empirical research addressing the franchise bidding-versus-regulation debate has focused on the cable television industry (e.g. Crocker and Masten, 1996).

Masten's (1984) empirical research of input procurement practices in the USA aerospace industry, aimed at studying this important issue from an institutional choice perspective looking at how the particular details of a transaction affect the differential efficiency of alternative organizational forms. The administration of procurement in this industry is two-tiered. On the first level, the government chooses a prime contractor who is assigned overall responsibility for a particular program; and on the second, the contractor manages the production of the system itself, including what is of particular interest here - the administration of subcontracts. The study considers procurement practices at both levels. Tests were based on a probit model of the dichotomous choice between internal and external procurement of supplies to analyse the make-or-buy decisions of a prime contractor for an aerospace system involving 1,887 component specifications. The estimated coefficients provide indirect measures of the relative costs of internal and

external procurement with respect to several qualitative variables. The procurement policies of the federal government were reviewed and interpreted in light of the TCE theory, with particular emphasis on the form of the relationship between the government and the prime contractor. While components specifically designed for use in this system were significantly more likely to be produced internally, the effect was greatest for more complex components. Specifically, the lack of alternative uses for a component raised the probability of internal procurement from less than 1% to 31% for relatively simple items but from 2% to 92% for more complex components. The instances in which acquisition is likely to be beneficial are precisely those in which buying in is apt to be a problem, namely, because of "start-up costs or other nonrecurring costs, …the successful offeror is likely to become, in effect, a sole source for follow-on procurements" (Masten, 1984, p. 415). Of the fifty-four investments in special tooling or test equipment covered by the surveys, the government retained title in all but seven instances. Moreover, with one exception involving proprietary technology, each of the latter either was ranked as having a high alternative use value or had a shorter use life than the average for the forty-seven to which the government acquired title. The evidence from both stages of the defense procurement process indicates a general reluctance on the part of administrators to contract-in: government procurement policies refer explicitly to the "substantial administrative burden" incurred in acquiring and managing equipment and facilities, and estimations of actual contractor procurement practices indicate a strong "predisposition" toward external sourcing (Masten, 1984, p. 416). But the evidence also attests that the reluctance is overcome by exposure to the hazards of market exchange when components are specialized and complex. Overall, the evidence support the contention that design specificity and complexity are necessary, if not sufficient, conditions for the breakdown of cooperation in market-mediated exchanges and the subsequent integration of production within the firm. Because the limitations of contracting become particularly acute in complex and uncertain environments, greater uncertainty and complexity generally favor integration over long-term contracting.

Masten et al. (1991) study of procurement decisions in the naval construction industry shows the importance that scheduling and timing to completion and fulfilment of orders take. In contrast to manufacturing, shipbuilding requires that a large number of tasks

are performed in strict sequence on a large size, immobile object. Because interruptions at an early stage in the construction process can disrupt all subsequent operations, delay becomes a potentially effective strategy that parties to a contract can elicit for price concessions. The study found that both the costs of contractual procurement and the probability of integration rose as the importance of scheduling increased bearing an impact on the performance. Existing studies of the performance implications of organizational choices, though limited in number and scope, suggest that organizational form has a potentially significant impact on efficiency. Considerable room for additional research exists, however, on the performance implications both of regulatory policy decisions and of organizational choices more generally (Croker and Masten, 1996).

In sum, according to Crocker and Masten (1996) a considerable body of evidence supports the claim that asset specificity increases the hazards of market exchange and that the more complex or uncertain the transaction is, contracts become a less satisfactory means of protecting relationship-specific investments. In those circumstances, private parties routinely forego the benefits of market governance in favor of the "administrative" alternative.

Although the earliest empirical work centered on providing a response to natural monopoly rationales for regulation, particularly with respect to public utilities, more recent research attempted also to explore the operation of public institutions themselves. Macher and Richman (2008) give an account of the 150 articles identified as being related to law or public policy: regulation; political institutions; and development and reform. Out of these 150, a few have examined how government agencies subcontract with private firms (Ciccotello et al., 2004), whether agencies externalize certain functions (Nelson 1997; Kavanagh and Parker, 2000), and how agencies construct governance structures to monitor firms (Delmas and Marcus, 2004). Examples of applications of TCE to political institutions include examinations into the internal organization of legislatures (Weingast and Marshall, 1988) and bureaucracies (Moe, 1990), the institutional arrangements between different branches of governments (Weingast, 1995; Saalfeld 2000), the study of the impact of political institutions on public policy determination in Argentina (Spiller and Tommasi, 2003), and the political facilitation of private agreements (Richman and Boerner, 2006).

These applications into political institutions represent important recent developments in TCE research.

TCE is also used in analyzing organizational changes in the public sector. Ménard and Saussier (2002) use a database on all units supplying water for towns of more than 5000 inhabitants in France to test and understand decisions made by governments to provide a service or to outsource specifically water. This may have been the first econometric tests in TCE to explain decisions by governments to provide a service directly or to contract out either a part or all of a service to a private contractor. Two questions were posed: What determines the choice of a specific mode of governance among a set of possible modes? How do alternative modes of governance perform with regard to the same type of transactions? It led to the conclusion that the intrinsic characteristics of the transactions under scrutiny determine, at least in part, the choice of the decision makers at two levels: there is an economic rationale to contractual choices in public utilities; there is no absolute advantage for one specific mode of governance, performance depending on the fitness of the mode of governance to the attributes of the transaction.

Huet and Saussier (2003) continued the above study using the same database to highlight the links between the characteristics of the service, the organizational choice and the performance. The authors conclude that the first results confirmed that organization matters and that it has an impact on performance, and those organizational choices are certainly not made randomly. They foresaw to go a step further in their analysis to perform an econometric study linking all these elements to establish causality. This would allow firmer conclusions to be drawn as to the differentials in performance under alternative organizational choices for providing public services. Such studies relating to such links have recently emerged in the field of transaction cost economics, and no longer focus merely on the provision of public services, for example the Yvrande-Billon 2003 study.

Ter Bogt (2003) applied a case study methodology to explore the relevance of some important aspects of TCE to a better understanding and explanation of the autonomization of governance organizations in six cases in Netherlands. The main concepts of TCE were adapted to a political transaction cost "rudimentary" (p. 177) framework to explain the autonomization of government organizations. Using a five question research focusing on

political efficiency and the concepts of specificity, frequency/scale, uncertainty and bounded rationality/opportunism, and economic efficiency, came to the conclusion that various political reasons played a major part in the autonomization decision of public organizations. Factors, assumed as specific of politicians' behavior, such as opportunism, bounded rationality, political rationality and the striving for political efficiency, contributed to the understanding of the decision to autonomize an organization.

Fredland (2004) examines the current and potential roles of private military service providers of both combat and support activities to governments. The transaction cost approach suggests that inevitable contractual hazards severely limit the pure combat/combat support role of these companies, despite substantial potential cost savings, even for poor countries with weak governments. Direct combat activities, clearly involve sovereign transactions, and the probity hazard is significant. Further, sovereignty is at issue for both the importer and the exporter. While importers may continue to provide a potential market, developed countries, where these firms inevitably reside and draw their capital and labor, are likely to ban or severely curb contracts to engage in direct combat. Despite the sovereignty issue, there is a growing market, even in developed countries, for private provision of military training and support.

Levin and Tadelis (2010) studied the determinants of the choice between providing services with their own employees or contracting with private or public sector providers through a model of this "make-or-buy" choice that highlights the trade-off between productive efficiency and the costs of contract administration by using a dataset of service provision choices by USA cities and identifying a range of service and city characteristics as significant determinants of contracting decisions. The analysis suggests an important role for economic efficiency concerns, as well as politics, in contracting for government services, but, however, left many questions open. For instance, the empirical analysis conducted was purely cross-sectional; it would be interesting to study the dynamics of privatization decisions – for instance, to study whether economic shocks might drive privatization decisions or try to assess the direct outcomes of privatization decisions in terms of service quality, expenditures and transaction difficulties. This would require much

more fine-grained data outcomes, which is one reason why evidence on this front has been limited to case studies.

Posner (2010) analyses two national security organizations – the USA intelligence "community" and the Federal Bureau of Investigation (FBI) applying the principles of organization economics insofar as "organizational economics blends into 'law and Economics" (p. 31) to understand and improve the ways in which organizations overcome agency costs, information costs, and other obstacles to efficiency. He concludes that, in the examples analyzed, the organizations attempted to align the conduct of the organizations' employees with the organizations' goals to reduce agency costs. Misalignment linger whenever constraints on incentives at organizational level are present. In order to improve the economical understanding of the behavior of legal systems further studies are required.

Spithoven's (2012) case study provides a content TCE analysis of Obama Care and 25 lawsuits that challenge the 2010 reform. This article addresses the question if regulation or public/private hybrid is the most efficient governance structure to provide universal healthcare coverage in the USA. It consists of an analysis of the distinctive features of governance structures as they are incorporated in Obama Care and several documents concerning 25 Obama Care-lawsuits filed in 2010 whereas governance structures are characterized by assignment of property rights, contract law regime, risk and reputation. The study concludes that Obama Care might be ruled to be constitutional the regulation of healthcare is found to be a comparative efficient governance structure in addressing adverse selection and shows some flaws in efficiency and effectiveness due to unbalanced adaptation mechanisms, unbalanced incentives and weak enforcement devices.

Ménard and Shirley (2012) contend that, despite the poor opinion that most mainstream economists have of case studies, there has been considerable progress in NIE based upon the use of focused case studies, e.g. Williamson's Oakland's CATV, North and Weingast's study of the Glorious Revolution, Ostrom's comparative case studies of common property rights systems, Levy and Spiller on the telecommunication industry and all the studies collected in Bates' et al. (1988) *Analytical Narratives*. Case studies have proven to be a valuable tool for understanding the rich details inherent in institutional analysis, especially when they are informed by theory and conducted with rigor.

Brown & Potoski (2003), Ferris & Graddy (1998), Genugten (2005), Yvrande-Billon and Ménard (2005), and Holterman (2011) are also explicit examples of academic discussion of the application of TCE to public sector transactions. However, these authors approach the issue from a privatization of public services (such as railways or trash collection) standpoint where probity concerns were not a problem under analysis.

Concluding, while TCE is well developed and widely applied in the private sector, the applications to the public sector are much less in number and the probity attribute of transactions put forward by Williamson in 1999 has been neglected. I analyzed just a few of those taking into account their importance in terms of the aims of my research. The studies that apply TCE to the public sector in the TCE literature cover a variety of problems including regulation of public utilities and services and the governments' choices regarding the "make-or-buy" decision of services and goods. With regard to public utilities, TCE provides an explanation of the choice for regulatory policies. With regard to the provision of public services, government choices such as contracting out and privatization decisions are in line with TCE. This empirical evidence shows the applicability of TCE to the public sector. Most of the researchers applied the core of TCE model and analyze whether attributes of transactions – as defined by Williamson – determine the choices that are made by governments.

III.2 – Criticism of TCE

Oliver Williamson was awarded the Nobel Memorial Prize in Economic Science in 2009 "for his analysis of economic governance, especially the boundaries of the firm" recognized for having contributed to "Provided a theory of why some economic transactions take place within firms and other similar transactions take place between firms, that is, in the marketplace. The theory informs us about how to handle one of the most basic choices in human organization. When should decision power be controlled inside an organization, and when should decisions be left to the market" (http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2009/williamson).

Within the academic community however, there has been a large debate and a large number of criticism attached to NIE and Williamson's TCE theories. In his address speech

at the Nobel Prize awarding ceremony Williamson acknowledged (http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2009/williamson):

> I conclude that selectively combining law, economics, and organization to study the governance of contractual relations from a transaction cost economizing perspective has been instructive; and I project that research of this kind will continue to develop in conceptual, theoretical, empirical, and public policy respects. Research in transaction cost economics faces an interesting, challenging future.

Klämer and McCloskey (1989, p.141; 1992, p. 157) think of economics as a discursive practice whereas knowledge is produced by the artful use of "human argument" composed of four elements: facts, logic, metaphors, and stories, has different sources (e.g. induction, deduction and abduction) and is established through persuasion strategies of relevant audiences.

Important to understand the academic environment of either applause and/or criticism, it is the consideration of rhetoric and the role it plays as the means of communication in science. In the case of Williamson's TCE writings, Pessali (2009, 2006) offers us an analysis. As Pessali puts it, gaining recognition in economics involves taking in the professional context, relating your framework to the ones already established, negotiating your stakes as you build them, and being sensitive to what is important to your peers as the standards of rigor are established by those taking part in the relevant conversation and thus subject to the imperfections of language. The battle of the words, rhetoric, in economics is serious business. Arguing that Williamson's breach with the mainstream of economics was a delicate process requiring trade-off decisions between favoring closer identification of the theoretical pillars of TCE to existing views and creating or furthering the distance between TCE and certain established views: in the process some decisions involved to uphold a notion (e.g. opportunism) at the cost of leaving another behind (e.g. economics of atmosphere); sometimes critics saw a dilemma in TCE and demanded a less forbearing position, as with the case of maximizing versus satisficing. Regarding the latter case, Williamson, although apparently sure of his choice, favored appealing to both, this being an evidence of his unorthodox rhetorical transactions. The

construction, use, and negotiation of key notions and assumptions, as much as of the relationship established between them, have been paramount to the recognition of TCE. Notwithstanding, Williamson's rhetoric and fair play have been unable to overcome all resistance from critics and sympathizers: "Tensions within the New Institutional Economics have also conjured up difficult negotiations, as the case of bounded rationality illustrates" (Pessali, 2006, p. 62). Pessali (2009, p. 316) identifies three metaphors central to Williamson's discursive practice in building TCE: "the metaphor of transaction costs as "frictions"; "the metaphor of economic agents as "contractual man"; and "the metaphor of natural selection between mechanisms of governance on which the logic of transaction cost minimization ultimately relies".

As a matter of fact, criticism towards TCE arose in connection with several instances of the model, namely attached to the behavioral assumptions of the model and to the unclearness regarding some definitions of the transactional attributes concepts which have apparently caused operationalization difficulties. Chen et al. (2002, p. 568) sustain that not all economic actors are likely to be opportunistic, thus such a reliance on the assumption of opportunism has resulted in a large number of criticisms and that a primary reason that TCE has provoked such a large debate is because it is centered on the assumption of opportunism, a fundamental feature of human nature. Examples given in Chen et al. (2002, p. 568) of this harsh criticism are the adjectives used by some critics: "dangerous" by Perrow et al. (1986), "unhealthy" by Hirsch et al. (1990), an "ethereal hand" for organizational researchers by Donaldson (1990), and "bad for practice" by Ghoshal and Moran (1996).

Masten's et al. (1991, pp. 1-2) criticism goes to the lack of direct measurements of transaction costs insofar as the model relies on estimations of reduced form relationships between observed characteristics of transactions and modes of governance:

> Although the empirical research to date has been generally supportive of the central transaction-cost propositions, recognition that variations in internal organization costs may also play a role in the decision to integrate exposes an inherent weakness in the nature of these tests. Because of difficulties in observing and measuring transaction

> costs, analysts have had to rely on estimations of reduced-form relationships between observed characteristics and organizational forms… such indirect tests are unable to distinguish whether observed patterns of organization resulted from hypothesized changes in market transaction costs or from systematic, but as yet unexplored, variations in the costs incurred organizing production internally.

Granovetter (1985, 1992) contends that social structure and social relations are not incorporated in the theory and these could be of special importance in explaining internal organization.

Ghoshal and Moran (1996) oppose TCE's proposition that organizations exist because of their competences to mitigate opportunism through the exercise of hierarchical controls that are not accessible to markets: hierarchical controls are more likely to cause the opposite effect, i.e., aggravating the opportunistic behavior of individuals. In this line of reasoning the assumption of opportunism can become a self-fulfilling prophecy whereby opportunistic behavior will increase with sanctions and incentives imposed to curtail, thus creating the need for even stronger and more elaborate sanctions and incentives.

Masten (1996a, pp. 51-52) noted that "reduced-form estimates do not disclose the magnitude of transaction costs" and consequently that "without additional information, the magnitude of transaction cost differentials and the effects of organizational form on performance cannot be inferred from standard empirical tests of transaction cost hypotheses". In simple terms, even if empirical results are consistent with the predictions of TCE's model, this does not in itself demonstrate that transaction costs are being minimized.

Chen et al. (2002, p. 569) advance that TCE's assumption of opportunism has been opposed on two major grounds: the economic behavior in general, and opportunistic behavior in particular, have been demonstrated to be largely constrained by social relationships or institutions with shared beliefs, norms, and mores; the assumption of opportunism is found to take a narrow, "undersocialized", view of human motivation. These criticisms contend that alternative motives such as commitment, co-operation, and respect for authority are all part of human motives within an organization that serve as self-

regulating forces that prevent individuals from acting opportunistically. The question of whether and to what extent human beings are likely to be opportunistically predisposed does not have an answer yet. Noorderhaven (1995) contends that concepts such as trustworthiness are not incorporated in the model and that it does not account for the dilemma that the assumption of opportunism underlying the economizing problem in TCE also tends to undermine the proposed solution of vertical integration as far as vertical integration requires players to be partly opportunistic and partly non opportunistic.

Lipson (2004, pp. 8-9) raises the problem connected with the difficulty of measuring "transaction costs" which, in the author's opinion, is due to the absence of a standard terminology. The variations on such a central variable of TCE theory arise as researchers tailor the concept to the contexts under study. Particularly, scholars in the international relations field work on proxies and indirect measures which constitute only indirect indicators of transaction costs.

Carter and Hodgson (2006) stand that the important advance made by Williamson in operationalizing TCE was to focus on variables such as asset specificity, rather than transaction cost directly, and thus to establish the basis of a reduced form model. This reduced form approach itself brings interpretative problems, because such indirect tests are unable to distinguish whether observed patterns of organization resulted from systematic, but as yet unexplored, variations in the costs incurred organizing production internally.

While TCE has been criticized for inadequate definitions of key terms and 'catch-all' concepts, similar accusations can be made against rival theories such as Resource Based View. The Resource Based View takes the perspective that firm success is what accounts for the firm organizational structure whereas TCE theory takes the opposite perspective that market failure accounts for the firm structure of governance. Throughout the TCE literature and that of its rivals there is still lacking a consensus on basic definitions such as the firm. Without an agreement on such basic elements, any derived issues, such as the boundaries of the firm, the nature of "hybrids" and the "make-or-buy" decision become loose and prone to terminological confusion (Hodgson, 2010). As a consequence Hodgson advocates an integration of TCE and competence-based explanations that represent perhaps the most productive area for development considering the problems posed by the reduced

form of the TCE model that has being applied and the difficulties of operationalization put therein, topped by the plausibility of alternative interpretations of even the positive results in favor of TCE: "there is an obvious need for tests that can discriminate between these rival (or possibly complementary) interpretations" (Hodgson, 2010, p. 3).

Macher and Richman (2008) also point out the criticism targeted to the opportunism by sociologists (Granovetter, 1985; Shapiro, 1987) who argue that the concrete relations and social structures that exist in a given institutional setting affect the propensity for opportunistic behavior and, thus, have organizational consequences.

Meramveliotakis and Milonakis (2010) criticize TCE arguing that transaction costs are unable to provide a sufficient grounding for the explanation of institutional emergence given its static, ahistorical and universalistic nature. Given the static nature of this theoretical framework, the dynamic processes by which new social relations are created and utilized, and the question of how these social relations affect the creation of institutions and organizations, are left largely unexamined. The transaction cost reasoning is only a comparative static exercise, which is hard to reconcile with the dynamics of institutional formation and change.

McCloskey (2010, p. 303-309), on asserting that "meaning matters" because "social rules expressed in human languages have human meanings.… It signals the presence of civilization, and the legitimacy granted to the state that a civilization entails.… A good deal of life and politics and exchange takes place in the damning of incentives and the assertion of meaning", quotes Khurana (2007, pp. 323-324) to criticize opportunism in TCE – "Students were now taught that managers, as a matter of economic principle, could not be trusted: in the words of Oliver Williamson, they were "opportunistic with guile".... [Agency theory, Khurana continues] represented, within the confines of a 'professional school', a thorough repudiation of professionalism … has nothing to say about the stubborn, unavoidable fact that agents remain in touch with one another within an organization, and that this contact — like other sustained human contact — becomes layered with affect, content, and meaning". And stresses that

> Prudence is a virtue. It is a virtue characteristic of a human seeking purely monetary profit — but also of a rat seeking cheese and of a blade of grass seeking light. Consider that temperance and courage and love and justice and hope and faith are also virtues, and that they are the ones defining of humans. Unlike prudence, which characterizes every form of life and quasi-life down to bacteria and viruses, the nonprudence virtues are characteristic of humans uniquely, and of human languages and meanings (p. 303).

In sum, we can group criticism towards TCE in two main groups. On the one hand those criticisms focusing on methodological issues claiming against the weaknesses attached to the ambiguity around the central concept of opportunism as well as the unclear definitions of other concepts in the model and difficulties of operationalization of the model they cause; on the other hand, those , namely mainstream economists, that criticize the lack of mathematical models to support the reasoning and contribute to testable predictions advocating the complementary application of alternative theories such as the Resorce Based View to counter explain the same phenomena (Ménard, 2001).

CHAPTER IV - METHODOLOGY AND RESEARCH METHODS

Preceding Chapter II first described the importance of the NIE in the literature to pave the way to the review of the TCE theory, a branch of NIE, which is helpful on developing the theoretical framework for this case study with due consideration given to the overview of the empirical studies applying the TCE theory that could have some importance to this research and the criticism of TCE in Chapter III. At this point of the research, it is opportune to introduce the research design adopted and to explain how this case study was conducted as well as which evidence was gathered and how was it analyzed which starts with an explanation of the case selection and design, followed by the research questions formulated and how the operationalization of the TCE framework was constructed, the research methodology adopted, the data collection process and the methods applied to assess evidence.

IV.1. Case Selection and Design

Williamson and others explored and studied specific cases in the private sector, the public sector, and semi-public sector (hybrids) in the early stages of the development of TCE theory. So far, in economics and in other social sciences, as well as in exact sciences, specific cases have played a major role in the breakthroughs that shaped them, as long as the case is relevant and representative to the exploration of a theoretical question, notwithstanding the fact that economists do not like case studies (Ménard, 2001). Case studies in the public sector that provide the insights of public sector bureaucracies working mechanisms are scarce. The Oil-for-Food Programme was the greatest enterprise the UN undertook in terms of the size of the financial and human resources involved, number and variety of entities involved and, above all, complexity (Congressional Research Service – USA, 2005) therefore a representative case study in Ménard's terms.

Although more recently the dominant form of testing in NIE and TCE is statistical/econometrics testing, this does not preclude two major problems to unfold: one refers to the collection of microlevel data and data of the institutional environment; the second regards the necessity to refine concepts in order to make it possible to collect the

relevant data (e.g. the study of internal structures of organizations, or the costs of running different types of institutions) (Macher and Richman, 2012; Ménard, 2001). Posner (2010, p. 3) advocates that "… the study of institutions necessarily places heavy emphasis on the case study in preference to econometric studies … bucking the formalist trend of modern economics".

Relying heavily or solely on statistical econometric methodologies, have also been questioned as to the lack of economic significance and relevance of the analyses produced on their basis (McCloskey 2002; Ziliak and McCloskey, 2009; Krämer, 2011).

Ziliak and McCloskey (2009, p. 2032) explain:

> For the past eighty-five years it appears that some of the sciences have made a mistake, by basing decisions on statistical 'significance' … reducing the scientific and commercial problems of testing, estimation and interpretation to one of 'statistical significance'…. Statistical significance is, we argue, a diversion from the proper objects of scientific study. Significance, reduced to its narrow and statistical meaning only — as in 'low' observed 'standard error' or 'p < .05' — has little to do with a defensible notion of scientific inference, error analysis, or rational decision making…. Statistical significance at the 5% or other arbitrary level is neither necessary nor sufficient for proving discovery of a scientific or commercially relevant result…. Statistical significance should be a tiny part of an inquiry concerned with the size and importance of relationships. Unhappily it has become a central and standard error of many sciences.

Hence case studies can be of great help to contravene the above problems with statistical analysis and also to contribute to stabilize concepts and render them consistently applicable to "form the building blocks upon which we can erect a more solid theoretical and empirical foundation for a theory of the dynamics of institutional change" (Alston, 2008, p. 121). Case studies are seen as lacking the possibility of statistical generalization, thus unable to disprove the validity of a theory; however, as Masten (1996a) well asserts,

this weakness is far outweighed by their enabling analytical in-depth strength. Also Ryan et al. (2002, p. 149) put cases studies in the adequate perspective arguing that case studies lead to theoretical generalization when, by applying theories to new contexts, the theory is likely to be refined and/or modified.

There is a growing body of case studies in NIE as they are particularly relevant either to analyzing the trade-off among different governance structures or in examining and explaining the impact of different institutional environments on the modes chosen for organizing transactions. Examples are Levy and Spiller (1994) and Ménard and Shirley (2001) case studies (Ménard, 2001). Ménard (2001, p. 90) refers to case studies "to do with the construction of a stylized fact and is intended to provide an in depth analysis of a specific question and of related explanatory concepts". In this line of reasoning and since TCE prescribes comparison between feasible alternatives which compel to make comparisons of efficiency and effectiveness under varying alternative governance structures, the decision connected with the Oil-for-Food scandal inquiry can be analyzed in a longitudinal across context and across time case study allowing the confrontation of variations on governance structures overtime (George and Bennett, 2005; Leonard-Barton, 1990). David and Han (2004) also "note that empiricists have not taken sufficient advantage of the possibilities for longitudinal work in TCE. Not only can TCE be applied across contexts, it can also be applied across time…longitudinal work…would serve to sharpen the core theory" (p. 55). Also Gibbons (2010, p. 6), points out the strengths of the comparative institutional method quoting Simon (1978, p. 6): *"*[a]s economics expands beyond its core of price theory …, we observe in it … [a] shift from a highly quantitative analysis, in which equilibration at the margin plays a central role, to a more qualitative analysis in which discrete structural alternatives are compared".

To this end, in the present longitudinal across context and across time case study, more specifically the same type of transaction – the provision of internal oversight services at the UN is analyzed under alternative governance arrangements – produced internally and contracted out. This perspective is then enhanced by a retrospective analysis supported in an historical institutional approach (Lieberman, 2001) by historically examining and then explaining the "before" and the "after" of the case (George and Bennett, 2005). The

"before" regards the emergence of the Office of Internal Oversight Services at the UN in 1994 to which the UN General Assembly entrusted the power and responsibility to provide internally oversight services until the moment in 2004 when the UN Secretary-General decided to contract out the Independent Inquiry Committee to inquire the UN Oil-for-Food Programme scandal. The "after" regards the decisions taken by the UN General Assembly to implement changes to the internal oversight governance structures following the Independent Inquiry Committee's inquiry until the mid of 2010, coinciding with the term of office of the third head of the Office of the Internal Oversight Services. This design aims to isolate the difference in the choice of governance structures as well as the differences underlying the contracts between principals and agents as due to the influence of variance in the transactions' attributes. To achieve such a result process tracing methodology is applied in order to assess whether differences in the transactions attributes might account for differences in the effectiveness of the transactions under analysis (George and Bennett, 2005).

The advantage of this research design is justified because "Temporal analysis of the determinants and impact of institutions is necessary in order to better understand the dynamics of institutional change. Case studies are ideal for this task because they enable the analyst to construct an analytical narrative. Narratives allow the combination of a deep understanding of the historical and institutional context, with a theoretical framework" (Alston, 2008, p. 115). Also Gibbons (2010) highlights the importance of comparative institutional analysis to include not only the boundary of the firm but also of its internal organization. Williamson (1973, p. 316) argues that "the problems of efficient economic organization need to be examined in a comparative-institutional way".

In contemplating my role as researcher, Stake's (1995) conception of case researcher as interpreter is most fitting. According to Stake, the case researcher recognizes and substantiates new meanings. Whoever is a researcher has recognized a problem, puzzlement, and studies it, hoping to connect it better with known things. Finding new connections, the researcher finds ways to make them comprehensible to others. It is my purpose to have conceived some new connections between the decision of the UN

Secretary-General to contract out the Inquiry Committee, and the governance system of the UN.

I approach this study with previous experience matured for about twenty five years as professional auditor, ten of which as the Head of the Internal Audit and Investigation Services at two specialized UN agencies (1997-2007), the International Telecommunications Union (ITU) and the World Meteorological Organization (WMO). My interest in conducting this research at the UN was instigated by remembering my own struggles at the World Meteorological Organization, bearing in mind that I could build up on my insider knowledge of the functioning of the UN system acquired through my field experience, and it also serves the purpose of partly fulfilling the requirements for a doctorate in philosophy.

A significant consideration when conducting research is that of conflict of interest between the researcher and the participants. In this research there is none as I am an outsider and have never been involved in any manner with the events and phenomena object of this investigation.

The four components of this research design are: the research questions, the units of analysis, the logic linking the evidence to the questions, and the criteria for interpreting the findings (Yin, 2009). The following sub-sections detail the methods and process of the present study discussing research design, context of the study and its participants, and data collection and analysis.

IV.2. Research Questions

Given the UN Secretary-General's decision and solution to investigate the Oil-for-Food scandal, i.e., to contract out an 'Independent Inquiry Committee', finding out the rational underlying explanations and whether the inquiry into the Oil-for-Food Programme scandal worked, remain open questions to which I should attempt to find a theoretical founded answer. In the literature such a problem is assimilated, on the one hand, to a vertical integration decision problem, or 'make or buy decision', and, on the other hand, to a contractual problem. The first is the archetypal problem most studied since the 1970 Oliver Williamson's Transaction Cost Economics theory development (David and Han,

2004; Gibbons, 2010; Klein, 2008; Macher and Richman, 2012; Masten, 1996b). As I noted Williamson (1979, p. xii) puts it this way "any issue that either arises as or can be recast as a problem of contracting is usefully examined in transaction cost terms" and by the early 1980s, contracts had become at least as central to TCE as vertical integration (Gibbons, 2010, p. 13) following Buchanan (1975, p. 229) stating that "economics comes closer to being a 'science of contract' than a 'science of choice".

Thus the central question of this research is "Why was an *ad hoc* Inquiry Committee mandated in 2004 by the UN Secretary-General Kofi Annan with the United Nations Security Council's endorsement to investigate the Oil-for-Food Programme scandal instead of the UN Office of the Internal Oversight Services? Has the inquiry worked?

Or, in terms of TCE, put another way,

Does TCE's discriminating alignment hypothesis verify in the case of the Oil-for-Food Programme scandal inquiry?

In order to help addressing the above main question I need to explore the following set of sub-questions:

1. How far the UN Secretary-General's contract with the Oil-for-Food Programme scandal Inquiry Committee was crafted to economize on bounded rationality while simultaneously safeguarding the effectiveness of the inquiry against the hazards of opportunism?
2. What attribute is attached to the UN Secretary-General's contracting out transaction? Is it a "sovereign" type or a "judiciary" type transaction? Is there any specific and determinant attribute so that the decision taken maximized the efficiency and the outcome of the inquiry?
3. What hazard is implicated on UN Secretary-General's option for the Inquiry Committee instead of an internal governance structure, the Office of the Internal Oversight Services? Was it a failure of probity?
4. Was the Inquiry Committee the most efficient governance structure to provide the investigation service to the UN Secretary-General and to the UN General Assembly?

TCE's discriminating alignment hypothesis predicts that transactions, which differ in their attributes, are aligned with governance structures, which differ in their cost and competence, so as to effect a discriminating – mainly a transaction cost-economizing – result.

IV.3. Operationalization of the TCE Framework

Considering the above research questions the way to test TCE against the facts is to look for the elements of the theory, identified in sections II.2 and II.3 of Chapter II, in the historical narrative of the case in Chapter III. The degree of the explanatory power of the TCE depends then on the degree of the 'fit' between the historical facts and the elements of the TCE.

The operationalization of TCE relies on the following propositions (Williamson, 1985):

1. The transaction is the basic unit of analysis, viewed as a relationship or contract;
2. Any problem that can be posed directly or indirectly as a contracting problem is usefully investigated in transaction cost economizing terms;
3. Transaction cost economies are realized by assigning transactions (which differ in their attributes) to governance structures (which are the organizational frameworks within which integrity of a contractual relation is decided) in a discriminating way. Accordingly: i) The defining attributes of transactions need to be identified; ii) The incentive and adaptive attributes of alternative governance structures need to be described;
4. Although marginal analysis is sometimes employed, implementing transaction cost economics mainly involves a comparative institutional assessment of discrete institutional alternatives – of which privatization contracting is located at one extreme; public bureau is located at the other; and regulation is located in between (see Chapter II.2.3);

5. Any attempt to deal seriously with the study of economic organization must come to terms with the combined ramifications of bounded rationality and opportunism in conjunction with a condition of asset specificity.

Williamson (2008), adding to the above operationalization requirements, views the implementation of TCE based upon the need to address contract "on its own terms". Pertinent questions pertaining to this focus and approach are: "What are the attributes of human actors that bear on the efficacy of contract? What unit of analysis should be employed? Of the many purposes of contract, which are salient? How are alternative modes of governance described? What refutable implications accrue upon reformulating the problem of economic organization in comparative contractual terms? Are the data corroborative? What are the public policy ramifications?" (p. 46).

The UN is a public international bureaucracy, therefore the "delegation to the bureaucracy is subject to the political equivalent of the hold-up problem" in TCE (Epstein and O'Halloran, 1999, p. 43). Epstein and O'Halloran (1999, p. 44) refer to political efficiency where "power is delegated to the executive in such a way as to maximize legislator's reelection chances" rather than to market efficiency and to "Transaction Cost Politics" adapting the TCE framework to political organizations. They recognize that the major themes of TCE apply in a political context as well (p. 45) where the unit of analysis (the transaction) is a specific piece of legislation, an incomplete political contract: it details the actions that may or may not be taken by both legislators and bureaucrats, and it regulates the relations between them for the duration of the law. Third-party enforcement of these contracts is provided by the court system in case public officials fail to execute their obligations under law.

IV.3.1. Units of Analysis

Going along the lines with Williamson's (1995, p. 225) postulate as well as with Epstein and O'Halloran (1999) adaptation of TCE to "Transaction cost Politics", which suggests that any contracting problem can be usefully studied in transaction cost economizing terms, TCE underpinnings provide the theoretical foundations for the analysis of the present case insofar as the *ex post* contractual hazards implicated in the relationships

between the principals and the agents are its central problem. TCE locates the main analytical action in the *ex post* stage of contracts (where maladaptation problems appear) (Williamson, 2008).

Williamson (2008, p. 43) advocates that TCE "focuses … on uncovering and explicating the strategic hazards [emphasis in the original] that are posed by small numbers exchange in the context of incomplete contracting and the cost-effective deployment of governance to mitigate these hazards". He further acknowledges that "The natural unit of analysis for lens of contract purposes is the transaction. Naming a unit of analysis is always much easier, however, than identifying the critical dimensions for describing the unit of analysis…Awaiting dimensionalization, transaction cost economics remained a largely tautological construction" (p. 47).

Transaction is defined by Williamson (1996a, p. 379) as

> The microanalytic unit of analysis in TCE. A transaction occurs when a good or service is transferred across a technologically separable interface. Transactions are mediated by governance structures (markets, hybrids, hierarchies)', and transaction cost is defined as "The *ex-ante* costs of drafting, negotiating, and safeguarding an agreement and, more especially, the ex post costs of maladaptation and adjustment that arise when contract execution is misaligned as a result of gaps, errors, omissions, and unanticipated disturbances; the costs of running the economic system.

More specifically transaction costs include: the costs of deciding, planning, arranging, and negotiating the actions to be taken and the terms of exchange when two or more parties do business; the costs of changing plans, renegotiating terms, and resolving disputes as changing circumstances may require; and the costs of ensuring that parties perform as agreed. Transaction costs also include any losses resulting from inefficient group decisions, plans, arrangements or agreements; inefficient responses to changing circumstances; and imperfect enforcement of agreements (Williamson and Masten, 1995).

In short, transaction costs include anything that affects the relative performance of different ways of organizing resources and production activities.

In order to implement TCE theory to examine the institutional environment on which the events surrounding the Oil-for-Food inquiry developed, and how far it holds up in helping us understanding the decision of the Secretary-General and its institutional impact in the governance system of the UN, two streams of units of analysis are implicated:

i) The provision of internal oversight services: by the Office of Internal Oversight Services governance structure since its creation in 1994 upon a decision of the UN General Assembly; by the Independent Inquiry Committee governance structure, chaired by Paul A. Volcker, a former USA Federal Reserve Chairman, following the UN Secretary-General' decision taken in 2004 to contracting out the investigation into the Oil-for-Food Programme;

ii) The institutional relationships embedded in oversight contracts: the "contract" between the Secretary-General and the United Nations General Assembly established in the UN Charter; the "contract" established by the UN General Assembly between the Office of the Internal Oversight Services engaging both the UN General Assembly and the Secretary-General; and the "contract" established between the Independent Inquiry Committee and the UN Secretary-General.

IV.4. Research Methodology

In order to determine the approach for the study, understanding the categories of accounting research labeled by Hopper and Powel (1985) as mainstream accounting research, interpretive research and critical research, was important.

IV.4.1. Case Study Research Method

I adopt a qualitative research design in order to answer the aforementioned questions considering their complex and micro analytical nature but whose aim is to obtain a holistic understanding of the impact of the decision to contract out the Oil-for-Food

Programme inquiry at the UN's Secretariat governance system and, in particular, at its Office of Internal Oversight Services by seeking to intensively examine and then, explain in-depth, the observable phenomena therein. I concur with Williamson (1985, p. 105) insofar as "A breath (more observations) for depth (greater detail) tradeoff is commonly implied. I am persuaded that greater depth is needed and even essential if the study of economic organization is to progress". Qualitative research is being recommended for studying a holistic real-world particular setting to capture the contextual richness of complex specific organizational contexts and environments to find out "what actually happens" (Scapens, 1990; Miles and Huberman, 1994; Mason, 2002; Ryan et al., 2002).

Concurring with Yin (2011, p. 7), the interpretive nature of this thesis is grounded in the field of qualitative research also as defined by Denzin and Lincoln (2005): qualitative research is characterized as a situated activity that locates the observer in the world. It consists of a set of interpretive, material practices that make the world visible. They turn the world into a series of representations, including field notes, interviews, surveys, conversations, photographs, recordings, and memos to the self. At this level, qualitative research involves an interpretive, naturalistic, approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them.

Qualitative research seeks to "answer to questions that stress how social experience is created and given meaning" (Denzin and Lincoln, 2005, p. 10). Most importantly, qualitative research offers the opportunity to explore the directions that the participants and their experiences may take as well as to gain deeper understanding through natural interaction: "Being open to any possibility can lead to serendipitous discoveries" (Merriam, 1998, p. 121). Further, as Stake (1995) points out, qualitative researchers, "are trying to remain open to the nuances of increasing complexity" (p. 21) thus affording the opportunity to optimize the concept of "progressive focusing" (Huberman and Miles, 1983; Stake, 2005). As data and themes emerge throughout the course of the study, the "organizing concepts change somewhat as the study moves along" (Stake, 1995, p. 133).

There are several formally recognized methodology variations within qualitative research. Qualitative studies may use both qualitative and quantitative data (Eisenhardt,

1989; Miles and Huberman, 1994) but given the research questions posed above, an in-depth, intensive case study is to be adopted as the main research method. Yin (2011, p. 17) refers to case study qualitative research variation applied more often whenever the aim is to study a phenomenon (the "case") in its real world context.

The present case study represents a first study of the inner context of the UN oversight system aiming at contributing to open new avenues of research in International Organizations and adheres with Roger (2010, p. 13) view that case-based research is the best way to start accumulating knowledge whenever the study concerns "emerging issues that are so new and so indeterminate that data sets are not available or producible to study with methods acceptable to contemporary social science research practitioners".

According to George and Bennett (2005) a case study is a well-defined aspect of a historical episode that the investigator selects for analysis, rather than a historical event itself. They point out four advantages of case study methods that make them valuable in testing hypotheses and particularly useful for theory development: their potential for achieving high conceptual validity; their strong procedures for fostering new hypotheses; their value as a useful means to closely examine the hypothesized role or causal mechanisms in the context of individual cases; and, their capacity for addressing casual complexity. They also assert that the interest in theory oriented case studies has increased substantially in recent years, not only in political science and sociology, but even in economics and accounting: scholars are returning to "history" and developing new interest in the methods of historical research and the logic of historical explanation.

The present case concerning the impact on the governance system of the UN's Secretariat and its Office of Internal Oversight Services of the UN Secretary-General's decision to inquire the Oil-for-Food Program scandal through a stratagem of externalization of this service to an Independent Inquiry Committee, fits in this category – despite the fact that the UN governance system, and, in particular, the Office of Internal Oversight Services were affected in the aftermath of the events by the inquiry which resulted in attempts of reforming and strengthening the Office of Internal Oversight Services structures. As far as I was able to go in my literature search, there are not available founded scientific research studies to explain these phenomena.

Berry and Otley (2004), argue that qualitative case research apply to examine particular cases of public concern, where a particular event has so much richness of data and apparent significance that it becomes an exemplar of phenomena of interest: one of the examples pointed out concerns the review of the internal audit practices at Barings Bank or when financial disaster struck the Enron Corporation. Given the very public interest nature of the UN, the present case represents, undoubtedly, a significant critical case of public concern.

Following Ryan et al. (2002) classification, this research study is, on the one hand, explanatory insofar as it pursues to explain the reasons for observed practices focusing on the specific cases of the decisions concerning the provision of investigation services at the UN Secretariat making recourse to TCE theory, and on the other hand, exploratory as far as it will explore the possible reasons for the UN Secretary-General's decision to mandate an *ad hoc* inquiry committee to investigate the scandal surrounding the Oil-for-Food Programme, by embracing investigative steps that will enable to generate hypotheses that can be tested later. The ultimate aim of this research thesis is therefore to generate theory that can provide good explanations of the case also by furthering the potential need of radical consideration and change of existing theories (Merino and Mayper, 2001; Tinker, 2001; Llewellyn, 1996; Humphrey, 2001; Humphrey and Scapens, 1996).

Case-based research applied to economics and to accounting has not been considered mainstream in most Anglo-Saxon academic contexts (Ryan et al., 2002) for the very simple reason that the emergence and development of accounting and of the accounting profession are routed in the USA and the UK where deductive positivist empirical research gained an almost unique acceptable methodology status. Case studies are regarded as lacking rigor and providing little basis for generalization (Burns, 1989; Lukka and Kasanen, 1995; Baker and Bettner, 1997) although researchers such as Lukka and Kasanen (1995), Scapens (2004), Berry and Otley (2004) also recognized that there is considerable potential for generalizations from high quality case studies.

I follow Ryan et al. (2002, p.149) whereas deductive positivist empirical research allows to statistical generalization and case studies allow to theoretical generalization. Evidently the mainstream positivist empirical research does not go without criticism. Soros

(2013) is one among many other academics attempting to find explanations why economic theory has failed. He argues that the failure is more profound than it appears in the surface and it goes as deeply as the very foundations of the economic theory.

> Economics tried to model itself on Newtonian physics. It sought to establish universally and timelessly valid laws governing reality. But economics is a social science and there is a fundamental difference between the natural and social sciences. Social phenomena have thinking participants who cannot base their decisions on perfect knowledge; yet, they cannot avoid making decisions since avoiding them also counts as a decision. They introduce an element of indeterminacy into the course of human events that is absent in the behavior of inanimate objects. The resulting uncertainty hinders the social sciences in producing laws similar to Newton's physics. Yet, once we recognize this difference it frees us to develop new approaches to the study of social phenomena. While they have not yet been fully developed, they hold out great promise (p. 328).

In this regard also Klämer and McCloskey (1992, pp. 157-158) have raised their voice to wake up researchers in fields of economics, finance, and accounting as follows:

> Our claim in short is that economics, like the rest of our culture, is awakening from a modernist dream of three-and-one-half centuries' duration, turning to nightmare in its last century. The dream is that knowledge can be "objectively" founded, that one can tell whether a number is large or small without asking how it fits into a human conversation, and that conversation is best limited to the figures of speech approved by certain philosophers around 1900 as "positive", "quantitative" or, in brief, "scientific". It has been a useful dream, but it is time in economics to wake up;

and, quoting Arrington (1989, p. 3), they stress: "Arrington says that better academic accounting would "supplant an objectivist rationality with a communicative rationality". It

would recognize among other obvious arguments that modernism conceals the salience of story-telling in "giving an account".

Ryan et al. (2002) put their finger to the reductionism, fragmentation, in the way positivist methodologies seek to identify relationships between constructed abstract variables insofar as specific relationships are isolated to enable the construction of explanations by combining these relationships into general theories as if a continuum exists.

Soros (2014, p. 321) also rightly see the problem with fundamentalism surrounding deductive positivist research,

> Any valid methodology of social science must explicitly recognize both fallibility and reflexivity and the Knightian uncertainty they create. Empirical testing ought to remain a decisive criterion for judging whether a theory qualifies as scientific, but in light of the human uncertainty principle in social systems it cannot always be as rigorous as Popper's scheme requires. Nor can universally and timelessly valid theories be expected to yield determinate predictions because future events are contingent on future decisions, which are based on imperfect knowledge. Time – and context-bound generalizations may yield more specific explanations and predictions than timeless and universal generalizations.

Contrasting the critics, several academics are however using more and more case studies methods to study wholeness social systems where it is inappropriate to study their individual parts taken out of context (O'Hara, 1993; Ramstad, 1986) enhancing the comprehension of the phenomena by adopting suitable interpretative and critical theories (Bailey, 1992; Chua, 1986; March *et al.*, 1991; Flyvbjerg, 2006; Humphrey and Scapens, 1996; Llewelyn, 2003; Lukka and Kasanen, 1995; Scapens, 1990; Hopwood, 1983; Major and Hopper, 2005; Hopper and Major, 2007; Cruz et al., 2009; Cruz et al., 2011).

As Flyvbjerg (2006, p. 241) advocates:

> […] the sharp separation often seen in the literature between qualitative and quantitative methods is a spurious one. The separation is an unfortunate artifact of power relations and time constraints in graduate training; it is not a logic consequence of what graduates and scholars need to know to do their studies and do them well.… Good social science is problem driven and not methodology driven in the sense that it employs those methods that for a given problematic, best help answer the questions at hand.

McCloskey (2002, p. 44) concludes: "The progress of economic science has been seriously damaged [by the common practice of significance testing]. You can't believe anything that comes out of [it]. Not a word. It is all nonsense, which future generations of economists are going to have to do all over again. Most of what appears in the best journals of economics is unscientific rubbish. I find this unspeakably sad…. They are vigorous, difficult, demanding activities, like hard chess problems. But they are worthless as science".

IV.4.2.The Historical Case Study Research Design

I bore in mind Yin's (2009, p. 25) colloquial definition of research design "a logical plan for getting from here to there, where here may be defined as the initial set of questions to be answered, and there is some set of conclusions (answers) about these questions".

The first step taken to go from the set of questions towards reaching conclusions, regards the application of the framework of five critical questions in Mason (2002, p. 14) in order to verify the congruence and validity of the research questions presented above aimed at ensuring that the essence and the logic of the research is well determined before proceeding the development of the remaining research steps. These questions are: (1) what is the nature of the phenomena which I wish to investigate? (ontology perspective of the research) (2) what might represent knowledge or evidence of the social reality which I wish to investigate? (epistemological position); (3) what topic, or broad substantive area, is the research concerned with?; (4) what is the intellectual puzzle, what do I wish to explain and

what are the research questions?; and, (5) what is the purpose of the research and, what am I doing it for?

My central question is formulated in terms of 'Why' which is supported by sub-questions postulated in terms of 'How' and 'What'. Given the characteristics of the case at hand, my endeavor was to gain a holistic historical understanding through the lens of TCE theory of the impact of the decisions taken at critical distinguished historical moments at the UN regarding the provision of oversight services. These moments are: the period until 1993; 1994 as it represents an important shift moment with the creation of the Office of Internal Oversight Services which was entrusted with the responsibility to provide oversight services to the UN General Assembly and to the UN Secretary-General; the two year period 2004-2005, with the appointment of the Independent Inquiry Committee to investigate the Oil-for-Food Programme scandal; and, the period after 2005 up to 2010 to observe the impact of the past events and decisions regarding internal oversight at the UN.

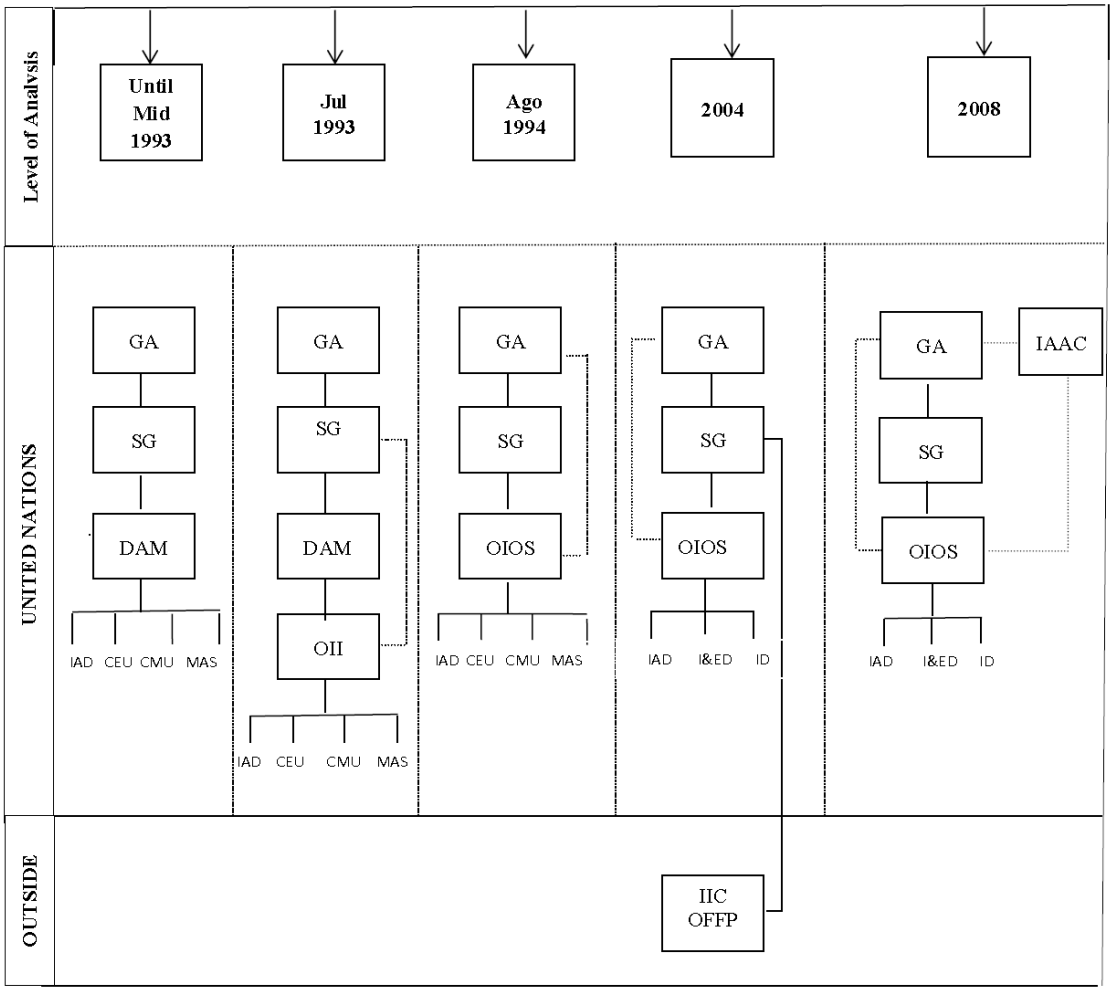
Alston (2008, pp. 103-104) advocates the use of case studies "because it allows the analyst the ability to isolate the impact of a theoretical concept in a more detailed and potentially more compelling manner … they are especially important for NIE because they enable us to analyze both the determinants and consequences of institutions and institutional change". Case studies in NIE are also known as "analytical narratives" whereas the term "analytical" conveys the use of a theoretical framework or set of theoretical concepts and the term "narrative" conveys the use of historical qualitative evidence. Narratives are ideally suited to make comparisons across time, a period long enough to isolate the determinants or impacts of institutional change. Soros (2013, p. 327) in reference to the study of financial markets asserts "They can be studied in other fields as well, but only in the form of a historical narrative, as I have done in my analysis of the euro crisis, which weaves together politics with financial economics … philosophy that deals with reality as a whole has fallen out of favor. It needs to be rehabilitated".

To fulfill this endeavor I adopted the historical institutional analysis (HI) as defined by Lieberman (2001, pp. 1012-1013) "is to estimate the impact of variations in institutional forms and configurations on a particular outcome or set of outcomes…. In other words, HI theories explain outcomes in terms of the joint effect of changing, noninstitutional variables

(which Leiberman describes as background variables) and "sticky" institutional factors that tend to change more slowly". Lieberman further explains that "The central claim of historical institutional analysis theory is that the stability of certain types of institutions effectively constrains the range of outcomes on the dependent variable, suggesting that moments of institutional origination and institutional change are critically important" (p. 1015).

The advantage to apply the historical institutional analysis to sequences of events, processes, and outcomes, is to find out the causes that forcibly precede the events. To this end, as explained by Lieberman (2001) it requires to obtain diachronic evidence about historical sequences so that it is possible to test causation directly. This approach implied the adoption of a periodization strategy to dissect the sequence of events into analytically useful periods or epochs to examine the impact of over-time change in key explanatory variables on over-time change in the dependent variable. This periodization approach was achieved by identifying which events or processes within the era under scrutiny are more important than others to use them as diving lines for a chronology. Figure 4.3 sketches the result of the identified historical moments that represented important shifts for the internal oversight structures at the UN. The first of these moments is identified 'Until 1993' which coincides with the end of the extant fragmented internal oversight governance structure. The second, 'Mid 1993' reflects the first attempt to consolidate the governance system by merging the extant units under a single governance structure. The third, 'August 1994' coincides with the moment of the creation of a new internal oversight governance structure abandoning the old system. The, '2004' represents the year of turmoil when the Oil-for-Food Programme exploded in the media and the Independent Inquiry Committee was contracted out to inquiry the scandal. The fifth and last historical moment analyzed in the case, '2008', refers to two disruptive changes in the internal oversight governance structures, the displacement of the reporting lines from the Secretary-General to the General Assembly, and the creation of a new governance structure to add to the extant Office of the Internal Oversight Services, the IAAC-Internal Advisory Audit Committee.

Figure 4.3 Milestones Evolvement Internal Oversight Structures at the UN



Legend: GA-General Assembly; SG-Secretary-General; DAM-Department Administration and Management; IAD-Internal Audit Division; CEU-Central Evaluation Unit; CMU-Central Monitoring Unit; MAS-Management Advisory Service; OII-Office Inspections and Investigations; OIOS-Office of the Internal Oversight Services; I&ED-Inspection and Evaluation Division; ID-Investigation Division; IIC OFFP-Independent Inquiry Committee into the Oil-for-Food Programme; IAAC-Independent Advisory Audit Committee.

IV.5. Data Collection

Given the nature of the research questions and the choice of the research design presented above, the steps to be adopted follow closely those suggested by Eisenhardt (1989), Scapens (2002), Ryan et al. (2002) and Yin (2009). These steps are: (1) developing

a research design; (2) preparing to collect data; (3) collecting evidence; (4) assessing evidence; (5) identifying and explaining patterns; (6) Theory development; and (7) writing a thesis.

The selection process of the case study determined the advanced collection of a substantial volume of reports issued by the Oil-for-Food Program Inquiry Committee 2005-2006, of United Nations documents, of Office of the Internal Oversight Services' background information and documents, of newspaper articles, of reports and documents of other entities such as the Government Accountability Office of the USA. This advanced collection led to the identification of the critical events and historical moments that enabled the construction of the timeline reflected in Figure 4.3 above.

In parallel, literature connected with the problematic and the phenomena under study was reviewed in order to determine, not only the research questions but, equally important, also the conceptual framework, a fundamental tool that support, guide and underlie, the analysis of the evidence produced in course of the collection data process (Mason, 2002). The results of this literature review are presented in Chapters II and III above.

Once the research questions had been formulated, it was required the search and review literature that could support the choice, the design, the development and the implementation of a case study research method.

To assist in adequately developing such an undertaking, I could make recourse to several specific training in both qualitative (including case studies) and quantitative research methods during the coursework part of my PhD program at ISCTE-IUL as well as the possibility of enhancing this background by presenting my thesis project at two different stages of its development at the European Doctoral Programmes Association in Management and Business Administration (EDAMBA) summer schools, in Sorèze, France, in 2012 and 2013. At EDAMBA my PhD project was reviewed by the faculty and also peer discussed during presentation specific sessions that allowed me to get feedback that have revealed to be fundamental on helping me focusing, directing, and progressing this thesis towards its successful completion.

Given that a descriptive analytical historical narrative of the events and facts was warrant in the present case, data collection was a key task of the research process. Besides the background documentation and information already collected to inform the design of the case study, the collection of the remaining substantial evidence was grounded on the conceptual framework, the periodization of the events presented in Figure 4.3 above, and the research questions. Data collection occurred during the period February – December 2011, May – July 2013 and February – July 2014. According to qualitative research tradition (Denzin and Lincoln, 2005; Mason, 2002; Stake, 1995; Yin, 2009), multiple data sources were explored by specifically considering the requirements of each and every of the research questions so that the quality of the study was enhanced.

Data used in this study is organized into two sets – documents and archived records collected at the UN, primary data (see Appendix H), and reports, newspapers and magazines publications collected outside the UN, secondary data (see Appendix I). This is a low intrusive method of collecting data and will provide detail and evidence of corroboration or contradiction as compared to other collected data (Merriam, 1998), but Yin (2009) cautions that while gleaning material from documents, researchers must recall that these documents were designed for purposes other than research and, therefore, they should use these sources judiciously.

The website maintained by the UN allow public access to archives of internal regulations and rules issued by the Secretary-General, internal organizational documents, organizational charts, press releases, reports, records and minutes of most of UN Organs' meetings, working documents submitted to the General Assembly for appreciation, approval or resolution, General Assembly documents and resolutions, UN Security Council resolutions as well as certain other documents. All this data is primary data. Using this tool required spend considerable in-advance time consumed learning on how to use and enhance the benefits of this remarkable website search engine. All this documentation is retrieved electronically.

Each and every document collected through the UN website is dated and constitutes public information, therefore clearly and specifically identifiable with the chronological moments and spans of time defined in Figure 4.3 above. The data was selected and

collected as the historical periodization narrative warranted. The analytical narratives are supported by this evidence, which then is interpreted and analyzed through the lens of the TCE framework of Chapter II and as operationalized in Section IV.3 above.

Collecting secondary data from outside the UN, namely articles from the general international press or specialized journals such as The Financial Times, The Wall Street Journal, The Economist, etc., required doing the search also by period and the key words 'Oil-For-Food scandal', 'UN', 'Inquiry', etc. Secondary data was searched as confirmatory data, counterfactual data, or complementary data of certain events not reported in UN official documents.

Marcher and Richman (2012, pp. 9-10) argue that although surveys have been the principal and preferred data collection technique, a number of empirical studies utilize secondary data collection techniques such as published data from diverse sources (e.g. industry trade publications, government data, newspapers, or archival data) and sources outside of published data (e.g. contracts between exchange partners). Usually employed by economists, the examination of what actual contracts represent constitutes an excellent data source for historical and empirical TCE-related research. TCE research using contract data is diverse and examines the decision to contract, to the length of contract duration and contract design. In comparison to survey or questionnaire data, secondary data may offer shorter collection times and larger sample sizes.

In the present case study interviews to collect data were not conducted since most, if not all, the actors involved in the historical events narrated in this thesis are no longer serving at the UN proper. Attempting to locate them somewhere in the world was not feasible or even worthwhile insofar as most of the data necessary to the history narrated in this case study is primary written data collected from within the UN proper or within the UN system. It is difficult to imagine how interviews about historical events covering a period of more than twenty years could add any worth value to the information contained in official written documentation.

IV.6. Assessing Evidence

Qualitative case study research amasses huge amounts of raw data; therefore, it is essential to maintain the data in an organized and timely fashion (Denzin and Lincoln, 2005; Miles and Huberman, 1994; Stake, 1994, 1995, 2005; Yin, 2009). More importantly, preliminary data analysis must be conducted immediately post-collection or better yet, "the right way to analyze data in a qualitative study is to do it simultaneously with data collection" (Merriam, 1998, p. 162). Stake (1994) emphasizes that data is continuously interpreted since qualitative research is inherently reflective, "in being ever reflective, the researcher is committed to pondering the impressions, deliberating recollections and records....data [is] sometimes pre-coded but continuously interpreted, on first sighting and again and again" (p. 242).

More specifically, Miles and Huberman (1994), outline a detailed procedure for data gathering and analysis - aiding the simultaneous nature of the work:

- coding (organizing and theming data);
- policing (detecting bias and preventing tangents);
- dictating field notes (as opposed to *verbatim* recordings);
- connoisseurship (researcher knowledge of issues and context of the site) progressive focusing and funneling (winnowing data and investigative technique as study progresses);
- *interim* site summaries (narrative reviews of research progress);
- memoing (formal noting and sharing of emerging issues); and
- outlining (standardized writing formats).

While these procedures were used in a large, multi-site study, research for this thesis utilized a similar format, making a few changes to accomplish a similar task for a single case study with a single researcher.

In particular, written field notes were replaced (either typed on a laptop computer or handwritten in a notebook) by the dictated field notes to generate a combined set of elements - summaries, memos, and outlines - into a reflective research diary kept by the researcher. The diary allowed the researcher to describe her feelings about conducting research in this area of study. The use of a reflective diary adds rigor to qualitative inquiry as the investigator is able to record his/her reactions, assumptions, expectations, and biases about the research process. The field notes will provide additional data for the analysis. These procedures served to organize the data as it was collected; such procedures marked a fine line between data collection and analysis, thus easing the task of simultaneous collection and analysis.

After reviewing all the data sources, the materials (observation notes, and documents) were manually coded and preliminary meaning generated from the documents. As delineated by Miles and Huberman (1994), the data analysis will proceed from noting patterns and themes to arriving at comparisons and contrasts to determining conceptual explanations of the case study. As I progressed, the analysis of events in ascendant sense, and within a period, it was necessary to find related information from a prior or future period, and interrelate the events. Lieberman's (2001) description of periodization strategies for historical institutional analysis acknowledges that such strategies are as a matter of fact used iteratively. While building this story by giving account of historical events the exercise was to get an integrated analytical narrative (Alston, 2008). To achieve this goal I mingled within the narrative, whenever applicable, the analysis of elements of the TCE theory, with the historical account of the relevant events. The intention was twofold: on the one hand to build a history which gives a fair account of the events and it is as comprehensive as the case warrants; and, to apply the analytical constructs of the TCE whenever they surface within the history. At the end of each period I presented a consolidated theoretical impact analysis. The advantage of this approach aims at not only avoid repetition, but above all to allow at the same time two moments of analysis: one close to the single narrated event or fact and the other aggregated which were then used to draw the final conclusions presented in Chapter VII.

After all, most of the data used in my research is primary data collected from within the UN or the UN system. Triangulation of the multiple data sources is built into data collection and analysis for the purpose of achieving trustworthiness. "Triangulation has been generally considered a process of using multiple perceptions to clarify meaning, verifying the repeatability of an observation or interpretation ... triangulation serves also to clarify meaning by identifying different ways the phenomenon is being seen" (Stake, 1994: 241). Triangulation in the present case was built using the secondary counterfactual data whenever applicable.

Finally, Yin (2009, p. 161) provides the following four tenets of high quality analysis. The analysis must:

1) attend to *all the evidence*;

2) address *all major rival interpretations*;

3) address the *most significant aspect* of the case study; and

4) utilize the researcher's *prior expert knowledge*.

These four elements have been considered and built into the research study design and were used to guide the data analysis and ensure its quality.

IV.7. Theory Development

There exist little study and evidence about the interlocking context where the internal oversight operates, much less in International Organizations. This project is an important contribution to the field helping to improve my understanding of the impact of decisions surrounding the internal oversight at the UN, and most notably the Oil-for-Food Program scandal inquiry on the UN governance system contributing to new developments by adding to the existing theory. Williamson's (2007, p. 6) views on how this is achieved and which reasoning underpins the process is applicable, quoting Solow he observes

> […] with reference to the simplicity precept that 'the very complexity of real life … [is what] makes simple models so necessary' (2001, p. 111). Keeping it simple requires the student of complexity to prioritize: 'Most

> phenomena are driven by a very few central forces. What a good theory does is to simplify, it pulls out the central forces and gets rid of the rest' (Friedman, 1997, p. 196). Central features and key regularities are uncovered by the application of a focused lens.… This last brings me to a fourth precept: derive refutable implications to which the relevant (often microanalytic) data are brought to bear. Nicholas Georgescu-Roegen had a felicitous way of putting it: 'The purpose of science in general is not prediction, but knowledge for its own sake', yet prediction is 'the touchstone of scientific knowledge' (1971, p. 37).… To be sure, new theories rarely appear full blown but evolve through a progression during which the theory and evidence are interactive (Newell, 1990, p. 14): Theories cumulate. They are refined and reformulated, corrected and expanded. Thus, we are not living in the world of Popper … [Theories are not] shot down with a falsification bullet…. Theories are more like graduate students – once admitted you try hard to avoid flunking them out…. Theories are things to be nurtured and changed and built up.

CHAPTER V – OVERSIGHT GOVERNANCE STRUCTURES AT THE UNITED NATIONS

"The essence of the independent mind lies not in what it thinks, but in how it thinks".
-Christopher Hitchens

Chapter II presents the TCE framework and the dimensions that make up the theory to explain the contracting out versus vertical integration decisions for transactions decided both within the private and the public sectors. Since the examination of the TCE theoretical framework is complete I shall now turn my attention to the historical events, decisions and developments impacting the internal oversight functions in the context of the UN Secretariat to test facts against theory to find out whether, or not, they took directions predicted by the theoretical framework.

The United Nations is an international organization created by the ratification of the United Nations Charter dated 24 October 1945 (Appendix A), hereinafter the Charter, by its Member sovereign countries. The United Nations Charter constitutes therefore a piece of international law. The United Nations, since its inception in 1945, has always fostered to being perceived as a trustworthy and of unquestionable invaluable global political public interest institution. Its predecessor, the League of Nations, had been an institutional failure in its chiefly instance, the maintenance of world peace and security hence the new institution and organization should bear with strong institutional foundations. Seemingly, in the aftermath of the World War II the UN organization was created with the main purposes of maintenance of collective security and international peace, and co-operation in economic and social matters. The League of Nations' institutional failures had an impact on the United Nations institutional design in order to contravene some of the shortcomings of the League of Nations' Covenant (Sobel, 1994).

OECD defines international organizations as entities established by formal political agreements between their members that have the status of international treaties; their existence is recognized by law in their member countries; they are not treated as resident institutional units of the countries in which they are located (OECD, 2001).

Today's professional and support staff number is approximately 55.000 in the UN proper and in programmes created by the UN General Assembly, and another 20.000 in the specialized agencies. This number neither includes temporary military and police staff in peace operations (a total of about 120.000 in 2012), nor the staff of the International Monetary Fund (IMF) and the World Bank Group (another 15.000). These figures represent substantial growth from the 500 employees in the UN´s first year and the peak total of 700 staff employed by the League of Nations (Weiss, 2012, p. 300).

The UN proper operates on the basis of a programme budget which amounts to $ 5,562.5 million for the current biennium 2014-2015 (UN document A/68/7, p. 2). The budget for peacekeeping operations is separate from the programme budget; an amount of $7.83 billion was approved for the period from 1 July 2013 to 30 June 2014 to support 17 missions with 118.111 armed troops (UN Peacekeeping Operations website- http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml). Major contributors to the UN 2013 regular budget are shown in Table 5.1.

Table 5.1 - Top 17 Contributors to the UN budget 2013

Member state	Contibution (% of UN budget)
United States	22.0%
Japan	10.8%
Germany	7.1%
France	5.6%
United Kingdom	5.2%
China	5.1%
Italy	4.4%
Canada	2.9%
Spain	2.9%
Brazil	2.9%
Russia	2.4%
Australia	2.1%
South Korea	2.0%
Mexico	1.8%
Netherlands	1.7%
Turkey	1.3%
Switzerland	1.0%
Other member states	18.4%

Source: United Nations, 2013, A/RES/67/238

An unprecedented scandal of fraud and corruption unfolded at the UN in early 2004 in connection with the management of the Oil-For-Food-Programme which governance was entrusted to the UN. The UN's Secretary-General Kofi Annan, with the endorsement of the United Nations Security Council, "appointed an independent high level inquiry to investigate the administration and management of the OFFP in Iraq" (Appendix E). The UN Office of Internal Oversight Services, the extant oversight governance structure created in 1994, was not involved in the inquiry into the alleged corruption and mismanagement of the Oil-for-Food Programme although it had the mandate to do so. Why was then the decision to contract out the inquiry into the Oil-For-Food programme scandal taken in 2004? Why was the decision to create internally the Office of Internal Oversight Services governance structure at the UN Secretariat in 1994 to provide internal oversight services including investigations taken?

These humanly designed constraint function in governing the UN economic and political life is not inconsequential. Thus, understanding why certain institutions evolve, how they operate in terms of providing incentives, how they define and shape property rights attached to decision making, how control is exercised and what factors induce institutional change is key (Hodgson, 2007). Studying these economic institutions offers a range of handful insights into how the rules of the UN are shaping the way we think about economics and management in international organizations. Actually, the UN is a set of institutions, and their subtle, but important influence and impact on global governance activity is the concern of this research.

Barnett and Finnemore (1999) concluded that most have been studied to explain International Organizations' (IOs) creation in response to problems of incomplete information, transaction costs, and other barriers to Pareto efficiency and welfare improvement for their members, but these theories paid little attention to how IOs actually behave after they are created and therefore very little is known about their internal workings or about the effects they have in the world and hence advocate "that normative evaluation of IO behavior should be an empirical and ethical matter, not an analytic assumption" (p. 727). The UN Oil-for-Food Programme scandal and the internal oversight prerogatives at the UN Secretariat are a case in point. Analyzing and explaining the events

and facts surrounding these phenomena in light of the TCE theory as well as of the "bourgeois virtues" (McCloskey, 2006), i.e., ethics, should help produce either corroborative empirical evidence of the central hypothesis of the TCE theory as well as confirming the observation of its various elements, or lead to a non-confirmatory conclusion and provide directions for exploratory explanations, and future research.

More specifically I am concerned to describe the UN 'rules of the game', the institutional design as laid down in international public law, insofar as they constitute the institutional environment underlying the evolvement of the Office of Inspections and Investigations governance structure within the UN Secretariat replaced by the Office of the Internal Oversight Services governance structure in 1994, the establishment and development of the Oil-for-Food Programme governance structure within the UN, and the decision to contract out the Independent Inquiry Committee to investigate the Oil-for-Food Programme scandal. On the other hand I am also concerned with describing the effect of the practical enacting of these institutional "rules of the game" on the UN's oversight governance structures as well as describe the "play of the game", the actual practice, of both the Office of the Internal Oversight Services and the Independent Inquiry Committee into the Oil-for-Food scandal governance structures and thereon examine any impact in the evolvement of the internal oversight governance structures at the UN.

V.1. The United Nations' Rules of the Game

Paraphrasing Williamson (2000), the UN's institutional environment "rules of the game" are formalized in the UN Charter (Appendix A). The Charter constitutes the founding United Nations' institution – according to Sobel (1994) and Conforti (2005) it is also an international constitution – that sets the "rules of the game" to promote orderly conduct among sovereign states as well as its governance structures – the "play of the game": delegates and distributes power; frames the decision making property rights; defines the governing bodies and the organizational structures; defines the incentives attached to the empowered organizational bodies; shapes the intra-organizational relationships; defines the relationships among Member countries; establishes the rules for admission to the 'club'.

The UN Charter is structured in four main pillars: the purpose and mission, the principals, the agents, and the governance modalities. More specifically the Charter is organized throughout a preamble and XIX chapters (111 articles) establishing the UN's "*raison d'être*", the conditions for membership admission/dismissal, the principal organs' composition, functions and powers, the voting system and procedure as well as a few chapters covering the ruling of issues such as amendments and ratification procedures, and miscellaneous. Figure 5.1 shows a sketch of the document.

Figure 5.1 – United Nations Charter

<table>
<tr><td colspan="2">UNITED NATIONS CHARTER</td></tr>
<tr><td colspan="2">Chapter I - Purposes and Principles</td></tr>
<tr><td>Principals

Member
States
(193)

Chapter II</td><td>Agents
Governance Structures:
General Assembly – Chap IV
Security Council – Chap V
Secretariat – Chap XV
Economic and Social Council – Chap X
International Court of Justice - Chap IV
Trusteeship Council - Chap XIII</td></tr>
<tr><td colspan="2">Chapters: III, VI, VII, VIII, IX, XI, XII, XVI, XVII, XVIII, XIX
Miscellaneous Provisions</td></tr>
</table>

Source: Author (Adapted from the UN Charter)

Relevant to this research are the governance structures and their normative governance dimensions established in the UN Charter. Appendix B shows an updated organizational chart of the UN system which reflects the provisions of the Charter as far as the organs (governance structures) as established originally in the Charter and those created subsequently by the UN General Assembly and the UN Security Council are concerned.

Relevant provisions of the Charter regarding the General Assembly include the following: it consists of all the Members of the UN each of which have one vote; a two-third majority of the Members is required for decisions on important matters; it may discuss any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter, and may make recommendations to the Members of the UN or to the Security Council or to both on any such questions or matters; it considers and approves the budget of the Organization, which expenses are borne by the

Members States as apportioned by the General Assembly; it considers and approves any financial and budgetary arrangements with specialized agencies and examines the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned; and may establish subsidiary organs as it deems necessary for the performance of its functions.

Relevant provisions of the Charter regarding the Security Council include the following: it consists of fifteen Members of the UN; the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council; the General Assembly elects for a two year term ten other Members of the UN to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the UN to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution; each member of the Security Council shall have one representative; decisions on procedural matters are made by an affirmative vote of nine members; decisions on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; it may establish such subsidiary organs as it deems necessary for the performance of its functions.

Relevant provisions of the Charter regarding the Secretariat include the following: it shall comprise a Secretary-General and such staff as the Organization may require; the Secretary-General is appointed by the General Assembly upon the recommendation of the Security Council and is the chief administrative officer of the Organization; act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and performs such other functions as are entrusted to him by these organs; makes an annual report to the General Assembly on the work of the Organization; in the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization and shall refrain from any action which might reflect on their position as international officials responsible only to the Organization; each Member of the UN undertakes to respect the exclusively international character of the

responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities. The Secretary-General has also the right to propose items for the agendas of main organs (Security Council, Provisional Rule 6; General Assembly, Rule 13; ECOSOC, Rule 10).

Relevant provisions of the Charter regarding the International Court of Justice (ICJ) include the following: shall be the principal judicial organ of the UN. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the Charter; nothing in the Charter shall prevent Members of the UN from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future; the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question; other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities. It acts as a world court and it has a dual jurisdiction: it decides, in accordance with international law, disputes of a legal nature that are submitted to it by States (jurisdiction in contentious cases); and it gives advisory opinions on legal questions at the request of the organs of the UN or specialized agencies authorized to make such a request (advisory jurisdiction).

Since its creation in 1945, the UN's membership has more than tripled (from 50 members to 193 at present), yet the Charter has gone through only three amendments affecting the Security Council's composition (from initial 11 to 15 members) and voting requirements (articles 23 and 27) and the Economic and Social Council's composition (ECOSOC - article 61, from initial 18 to 54 members), as well as the requirements for review of the Charter (article 109). As membership grew, the organization re-distributed power within two of its most powerful Councils – Security Council and the ECOSOC. This was a direct consequence of the principle of sovereign equality of article 2, number 1. Article 27 was adjusted to increase the number of affirmative votes from 7 to 9 to establish a two thirds majority. This revision was noted in Article 109 making a vote of any nine (instead of seven) members of the Security Council necessary for putative review and

amendment of the Charter. The number and powers of the five Security Council permanent members is unchanged since the original Charter: the five states (United States of America, United Kingdom, France, China and Russia) maintain veto authority over all Security Council decisions.

Developed and developing countries share seats within these two principle organs of the UN: the expansion of the Security Council allowed more voice to countries other than the five permanent members. However, the fact that the three amendments dealt exclusively with the issue of representation within the UN Councils tells us something about its members' behavior: while the absolute size of these two organs has grown, their relative representation of total membership has actually decreased. Moreover, the five permanent members' veto authority remains absolute. This shows "calculativeness" (Williamson, 1996a, p. 250-255) exerted by those countries in power at the UN and might help to explain why the UN Charter has remained so un-amended over its lifetime of almost seven decades confirming Williamson's prediction that the changes operated within the economics of institutions (see Figure 2.1 above) at the institutional environment (level 2) are very slow, on the order of centuries or millennia.

The UN is also bound by the Convention on the Privileges and Immunities of the United Nations adopted by the UN General Assembly on 13 February 1946 (Appendix C). Relevant sections of this Convention to this thesis concern the extent of the privileges and the immunities accorded to: the UN proper (Sections 2, 3 and 4 of the Convention), the member states' representatives (Section 11 of the Convention); the UN Officials (Sections 18 to 21 of the Convention); and, the Experts on Mission at the UN (Section 22 of the Convention). Extracts of these clauses of the Convention follow:

> SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity shall extend to any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

SECTION 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

SECTION 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

SECTION 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during the journey to and from the place of meeting, enjoy the following privileges and immunities:

SECTION 18. Officials of the United Nations shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(c) Be immune from national service obligations;

(d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

(f) Be given, together with their spouses and relatives dependent on them, the, same repatriation facilities in time of international crisis as diplomatic envoys;

(g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the' country in question.

SECTION 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

SECTION 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions.

The resulting “absolute” immunity from suit of the United Nations has been largely respected in most countries, though some national courts have tried to limit the Organization’s scope of immunity along the initially envisaged “functional” immunity. In practice, this has also sometimes led to the application of restrictive State immunity principles denying immunity for “commercial” activities. The *de facto* “absolute” immunity

of the United Nations is mitigated by the fact that article VIII, section 29, of the Convention requires the United Nations to "make provisions for appropriate modes of settlement of: (a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party". The General Convention's obligation to provide for alternative dispute settlement in case of the Organization's immunity from legal process can be regarded as an acknowledgment of the right of access to court as contained in all major human rights instruments. Private law contracts entered into by the UN regularly contain arbitration clauses. In the case of tort claims, such as those resulting from harm suffered as a result of peacekeeping operations or vehicular accidents, the UN usually agrees on similar forms of dispute resolution. Staff disputes within the UN are settled by an internal mechanism in the form of the United Nations Administrative Tribunal, established in 1949 (General Assembly resolution 351 A (IV) of 9 December 1949). Only the Secretary-General, Under-Secretaries-General and Assistant Secretaries-General enjoy full diplomatic privileges and immunities (Reinisch, 2009).

V.1.1. The UN and the International Organizations' Law

Law has an important bearing in international relations and therefore in International Organizations (Slaughter et al., 1998). The foundation of an international organization is based on sovereign consent expressed by the adoption of an international instrument. In this vein, and although international bureaucracies lack a general body of administrative law to guiding their workings, the legal framework is embedded in the constituting treaty, the Charter in the UN case, in the rules of procedure of individual organs and in internal rules such as financial or staff regulations reflecting particular specific practices. The UN International Court of Justice hold that the Charter should not be considered only as an agreement but as a Constitution based on the similarities between the UN organs and the administrative or legislative organs of a State resorting to the theory of implied powers clashing with the once prevalent view that international agreements should be interpreted restrictively insofar as they would involve in any case limitation of the sovereignty and freedom of the States (Conforti, 2005).

The nature of International Organizations is ambiguous and paradoxical: sovereignty of member states is assumed not infringed and having full political control of

the organizational hierarchy. The underlying assumption is that International Organizations are not entities autonomous from its creators: political organs such as the plenaries, based upon the principle of sovereign consent, decide rule making proceedings and activities' mandates, while the administration, secretariats and subordinated bodies, deal with the "technical" efficient implementation of political mandates, and the full compliance with regulations and rules (Epstein and O'Halloran, 1999, 2008). Theoretically sovereign states control politically the International Organization by taking decisions regarding mandated activities and delegating tasks in plenary (the General Assembly, the Security Council, and the Economic and Social Council in the case of the UN). International Organizations are conceived as instrumental entities only assisting member states to fulfill certain administrative functions on their behalf (Von Bernstorff, 2010).

To know how decisions taken by UN organs are deemed legal and whom bears responsibility for their impact is critical. If an international body acts outside of its grants of authority, it can be said to be acting *ultra vires* (von Bernstorff, 2010). But the paradox goes as far as to the lack of an "organ" with the power to interpret the Charter with binding effects for the other organs and for the member States at the UN. Although the UN International Court of Justice may give opinions on any "legal question", including interpretations of the Charter, these opinions do not give rise to binding decisions since neither the organs nor the States are bound to comply with it (Conforti, 2005, p.15). However, a legal opinion of the International Court of Justice gives rise to binding decisions in case of a legal dispute between member states brought to the Tribunal which entails the examination of an UN act, even of an act of the Security Council, if the question is relevant to decide the case (Conforti, 2005).

As to the binding legal power of the acts of the UN organs, it is of particular interest to the case of the Independent Inquiry Committee into the Oil-for-Food scandal the "operational resolutions" which provide for a UN action by appointing the Inquiry Committee. According to Conforti (2005, p. 296) operational resolutions entail "an action directly carried out by the Organization, for example by the Security Council or by the General Assembly, or by the Secretary-General as entrusted by these two organs under Article 98, or by a subsidiary organ created by them" whereas "the same resolution may

have at the same time an organizational nature and an operational nature when, instead of providing that certain action be carried out by an already existing organ (for example, by the same organ that issued the resolution or by the Secretary-General), it establishes an ad hoc subsidiary organ".

The discussion on whether International Organizations act independently from their creators or not is ongoing and far from being resolved: International Organizations run amok of the willing of their creators; International Organizations obey their masters too well; and, International Organizations become double agents betraying their original purposes in serving new masters (Hawkins et al., 2006). This discussion is not separable of the proper consideration of the International Organizations principals' delegation of authority to International Organizations agents. From an international legal point of view the UN has a separate standing from its member states. The International Court of Justice concluded in 1949, through an advisory opinion, "Reparations for Injuries Suffered in Service of the United Nations", the following:

> The Organization [the UN] was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of international personality and the capacity to operate upon international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality (Karns and Mingst (2004, p. 7).

I follow Bradley and Kelley (2008, p. 3) definition of international delegation as "a grant of authority by a state to an international body or another state to make decisions or take actions". The Charter contains various grants of authority to the principal UN organs, namely to the Security Council, to the General Assembly and to the Secretary-General. The decision to delegate is similar to a firm's make-or-buy decision the reason why Epstein and O'Halloran (1999, p. 7) refer to "transaction cost politics".

Articles 22 and 29 of the Charter delegate respectively to the General Assembly and to the Security Council the authority to create new governance structures - "establish such

subsidiary organs as it deems necessary for the performance of its functions". On the other hand the authority to appoint the staff of the UN is delegated to the Secretary-General Article 101, under regulations established by the General Assembly.

Employment disputes between a staff member and the UN are resolved through the internal justice system provided by the UN, including those that involve disciplinary action since the UN has immunity from local jurisdiction and cannot be sued in a national court. However, the Convention on Privileges and Immunities of the UN is a multilateral treaty established among the member states of the UN, separate from the Charter and to which the UN is not a party. In this connection Reinisch (2008, p. 289) draws the following lines:

> […] thus, there is, strictly speaking, no direct treaty obligation on the organizations to carry out the duty to provide alternative dispute settlement mechanisms. However, it is obvious that the UN and other international organizations are the beneficiaries of the privileges and immunities contained in the General and the Special Convention and should thus also bear implicit duties. In fact, the absence of a clear direct treaty obligation is rarely addressed. Instead, international courts and tribunals regularly acknowledge the connection between the immunity from national courts and the obligation of the UN to provide for alternative dispute settlement modes as expressed in the General Convention.

In case of the UN staff whenever an internal investigation concludes that there may have been a violation of criminal law, staff misconduct, the investigation results may be communicated and shared with the competent national authorities where the alleged crime took place (whereas the headquarters agreements have a bearing). This constraint on immunity obliges an international organization to waive its immunity where such immunity "would impede the course of justice" (Reinisch, 2008, p. 289). The power of authority to decide to refer the investigated case, or not, to national judicial authorities, is solely incumbent upon the UN Secretary-General (JIU, 2011, p. 11). But, while the decision to waive or not to waive immunity for legal prosecution at national courts remains that of the organization and is thus not reviewable by national courts, it is clear that this form of

implicit limitation of the immunity of an international organization also reinforces the idea that potential claimants should at least have a right of access to some type of judicial or quasi-judicial dispute settlement (Reinisch, 2008).

As a matter of fact the UN General Assembly established in 24 November 1949 (resolution 351 A (IV)) the UN Administrative Tribunal (UNAT) to hear and pass judgment upon applications alleging non-observance of contracts of employment of staff members an internal dispute resolution mechanism to settle employment disputes. The Tribunal was composed of seven members, all citizens of different member states, appointed by the General Assembly for four year term renewable once (UNAT website). This tribunal was discontinued as of 31 December 2009 upon the General Assembly decision (resolutions 61/261 of 4 April 2007, 62/228 of 22 December 2007 and 63/253 of 24 December 2008) in 2007 to introduce a new system for handling internal disputes and disciplinary matters in the UN. The General Assembly acted on a proposal made by the Secretary-General. This proposal was based on the recommendations of an external panel of experts, the "Panel on the Redesign of the UN system of administration of justice", and on consultations with staff through the Staff-Management Coordination Committee. The goal was to have a system that was independent, professionalized, expedient, transparent and decentralized, with a stronger emphasis on resolving disputes through informal means – UN Dispute System, before resorting to formal litigation – United Nations Appeals Tribunal (United Nations Internal Justice System website - http://www.un.org/en/oaj/unjs). Thus a two tier internal justice system, comprising a first instance and an appellate instance, replaced a unitary appeal instance system.

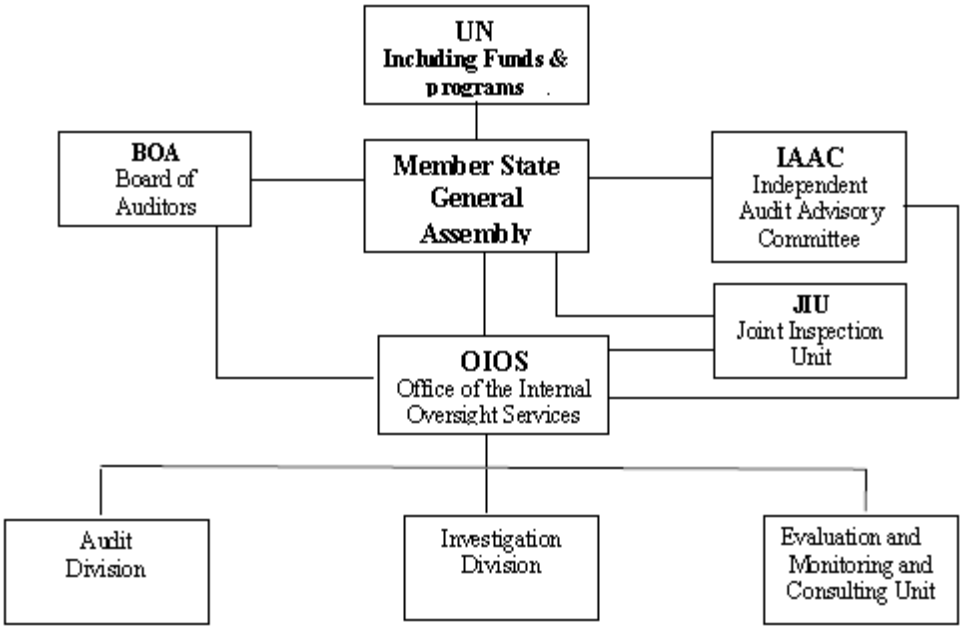
V.2. Oversight Governance Structures at the United Nations

Before going further describing the oversight governance structures coexisting at the UN, one needs to specify the normative meaning of such oversight concept used by the UN as well as its translation into the practice of the organization. This concern has been reflected in several UN General Assembly resolutions. For instance, a preamble paragraph of Resolution 48/218-B of 12 August 1994 states:

> Reaffirming its resolution 48/218 A, in which it emphasizes the need to ensure respect for the separate and distinct roles of internal and external oversight mechanisms, and to strengthen the external oversight mechanisms…. It is important to maintain the distinction between internal and external oversight mechanisms because, although they both seek to assure the effective and efficient functioning of United Nations system organizations, and use similar methods of data collection and analysis, they are different in nature and composition and fulfill different roles.

A broad range of committees or commissions are referred to as "oversight" mechanisms within the UN. Two types of oversight mechanisms are distinguished on the basis of the powers, authority, responsibilities, and functions attached to these structures: operational, and policy review mechanisms. Operational oversight mechanisms are divided into two categories: internal and external (JIU, 1995). All these structures were created and have reporting obligations to the General Assembly. Figure 5.2 below shows the UN oversight structures. The UN system organizational Chart presented in Appendix B helps visualize the entire UN system and its complexity as well as the oversight bodies and their interrelations within the UN proper and within the entire UN system.

Figure 5.2 - UNITED NATIONS OVERSIGHT STRUCTURES



The external oversight "operational" mechanisms created by the General Assembly functioning currently are: the United Nations Board of Auditors (BOA, created in 1946), The Panel of External Auditors (created in 1959), the Joint Inspection Unit (JIU, created in 1966), and the Independent Audit Advisory Committee (IAAC created in 2006 but formally at work only since 2008).

The Board of Auditors was established in 1946 by the General Assembly (UN document Resolution 74 (I), 7 December, 1946) to audit the accounts of the UN organization and its funds and programmes and to report its findings and recommendations to the General Assembly through the Advisory Committee on Administrative and Budgetary Questions (ACABQ). The Board is mandated "to express an opinion on the financial statements" and "may make observations with respect to the efficiency of the financial procedures, the accounting system, and the internal financial controls and, in general, the administration and management of the organization" (BOA website - www.unsystem.org/auditors).

The Panel of External Auditors was established by the General Assembly in 1959. The Panel comprises the members of the Board of Auditors and the appointed external

auditors of the specialized agencies and International Atomic Energy Agency (IAEA); it meets at least annually. The purpose of the Panel is to further the coordination of the audits for which its members are responsible and to exchange information on methods and findings. It also promotes best accounting and auditing practice in the UN system (Panel of External Auditors website - http://www.un.org/en/auditors/panel).

The Joint Inspection Unit (JIU) was established in 1966 by the General Assembly (Resolution 2150 (XXI) of 4 November 1966) is comprised of eleven Inspectors, from different Member States and serving in their personal capacities, chosen by the General Assembly on the basis of membership in national supervision or inspection bodies or similar competence. They investigate matters bearing on efficiency of the services and proper use of funds and seek to improve management, methods, and co-ordination through inspection and evaluation. The JIU makes reports and recommendations to the competent organs of its 13 participating organizations, of which the UN is the largest. The Unit shall perform its functions in respect of and shall be responsible to the General Assembly of the UN.

The Independent Audit Advisory Committee (IAAC) is the most recent created external oversight structure. It was established in 2006 in the aftermath of the Oil-for-Food scandal inquiry (UN document A/RES/60/248) as a subsidiary body of the General Assembly to serve in an expert advisory capacity to assist the Assembly in fulfilling its oversight responsibilities. This governance structure was positioned above the Secretary-General namely to oversee the Office of Internal Oversight Services (OIOS – the internal oversight governance structure since 1994) performance as its terms of reference show (UN document A/RES/61/275, 2007):

> […] To examine the workplan of the Office of Internal Oversight Services, taking into account the workplans of the other oversight bodies, with the Under-Secretary-General for Internal Oversight Services and to advise the Assembly thereon; to review the budget proposal of the Office of Internal Oversight Services, taking into account its workplan, and to make recommendations to the Assembly through the Advisory Committee on Administrative and Budgetary Questions; the formal report

> of the Independent Audit Advisory Committee should be made available to the Assembly and to the Advisory Committee on Administrative and Budgetary Questions prior to their consideration of the budget; to advise the Assembly on the effectiveness, efficiency and impact of the audit activities and other oversight functions of the Office of Internal Oversight Services.

The focus of this thesis is on the internal "operational" oversight governance structures, that are since 1994 consolidated in the Office of Internal Oversight Services (OIOS), in the sense that it works on primary data, and insofar as the General Assembly delegated exclusively to it the responsibility and the authority to perform audit, evaluation, inspection, monitoring, and investigation services. However, given the multiple transactions among all oversight governance structures, which have been increasing steadily over the six decades of the UN life, it is unavoidable to describe each of the oversight structures' authority, functions, responsibilities and links among them so that the role and organizational positioning of the Office of Internal Oversight Services can be better understood.

The General Assembly in its resolution 54/244 of 31 January 2000 reaffirmed that the Board of Auditors and the JIU shall be provided with copies of all reports produced by the Office of Internal Oversight Services and emphasized the need for comments on these reports by the Board of Auditors and the Joint Inspection Unit, as appropriate. The rationale behind such a resolution would be that the General Assembly, wanted to maximize the benefits to be derived from the independent expertise available to it, in order to facilitate its decision-making process and improve the effectiveness of its governance with respect to oversight (JIU, 2001). On the other hand, the General Assembly, through the same resolution also constrained the role of the Office of Internal Oversight Services:

> Emphasizes that the approval, change and discontinuation of legislative mandates are the exclusive prerogatives of intergovernmental legislative bodies; Stresses that the Office of Internal Oversight Services shall not propose to the General Assembly any change in the legislative decisions and mandates approved by intergovernmental legislative

> bodies; Recognizes that the Secretary-General can submit to the General Assembly any proposal for change in the legislative decisions and mandates through the appropriate channels (paras 8 - 10).

The Office of Internal Oversight Services' Under-Secretary-General (the head of the OIOS governance structure), who reports directly to the UN Secretary-General, prepares an annual summary activity report that the SG submits to the General Assembly, with his own separate comments. The Office of Internal Oversight Services' Under-Secretary-General may also make individual reports available to the General Assembly, again with the separate comments of the Secretary-General. The Office of Internal Oversight Services provides copies of its reports (final version) to the Board of Auditors and the Joint Inspection Unit, and each may comment, as appropriate, on them for the General Assembly (JIU, 2001).

By contrast, "policy review" oversight mechanisms use, to a large extent secondary data collected, analyzed and prepared by other organization's governance structures, and to which they add their own examination and analysis. A further important distinction between the "operational" and "review" mechanisms is their relative positioning in the final decision-making process. The "operational" oversight mechanisms are positioned at the start of the decision-making process since they provide the initial information, conclusions and recommendations on which decisions are to be made. The "policy review" mechanisms are positioned closer to the end of the political decision-making process since it is their role to assist Member States in analyzing the "operational" input in coming to a final decision (JIU, 1995).

Policy review oversight mechanisms, as they are understood within the UN system, include especially the Administrative and Budgetary Committee, designated the Fifth Committee, the Advisory Committee on Administrative and Budgetary Questions (ACABQ), the Committee for Programme and Coordination (CPC), and the International Civil Service Commission (ICSC) (JIU, 1995, 2001, 2006).

The Fifth Committee is the Committee of the General Assembly with responsibilities for administration and budgetary matters. Based on the reports of the Fifth

Committee, the General Assembly considers and approves the budget of the Organization in accordance with Chapter IV, Article 17 of the Charter. The Fifth Committee may accept, curtail or reject the recommendations of the Advisory Committee on Administrative and Budgetary Questions. The conclusions and recommendations of Advisory Committee on Administrative and Budgetary Questions often form the basis of the draft resolutions and decisions recommended by the Fifth Committee (Fifth Committee website, http://www.un.org/en/ga/fifth). The Fifth Committee is assisted by Advisory Committee on Administrative and Budgetary Questions (expert body in personal capacity) on administrative and budgetary questions, as well as by Committee for Programme and Coordination (intergovernmental expert body) on programme matters.

The Advisory Committee on Administrative and Budgetary Questions, established in 1946 by the UN General Assembly, and on the basis of Rule 157 of the Rules of procedure of the General Assembly "shall be responsible for expert examination of the programme budget of the United Nations and shall assist the Administrative and Budgetary Committee (Fifth Committee)". It consists of 16 members chosen by the General Assembly on the basis of broad geographical representation, personal qualifications and expertise: the Chairman serves full-time. It examines, advises, and reports to the General Assembly on the proposed UN programme budget, any administrative and budgetary matters referred to it, including the financing of peace-keeping operations and extra-budgetary activities, administrative budgetary coordination with the specialized agencies and International Atomic Energy Agency, and the auditors' reports on the UN and the specialized agencies. It meets extensively throughout the year, and is assisted by a small secretariat in New York (ACABQ website, http://www.un.org/ga/acabq). The Advisory Committee on Administrative and Budgetary Questions considers and reports to the General Assembly on the Board of Auditors' reports on the accounts of the UN. Furthermore, it also receives all Joint Inspection Unit reports for information and may choose to issue comments and observations, as it deems appropriate, on any of those reports which fall within its competence in accordance with article 11 (d) of the Joint Inspection Unit's Statute (JIU, 2001).

The Committee for Programme and Coordination (CPC), established in 1962, is the main subsidiary organ of the Economic and Social Council (ECOSOC, one main organ of the UN – Chapter X of the Charter) and the General Assembly for planning, programming and co-ordination. In particular, it reviews the programmes of the UN and assists the Economic and Social Council in its co-ordination functions, including considering the activities and programmes of agencies of the UN system, system-wide coherence and co-ordination, and the implementation of important legislative decisions. Its conclusions and recommendations play a key role in the adoption of the UN programme budget by the General Assembly. The Committee for Programme and Coordination has 34 elected members, is based in New York, and meets for four to six weeks per year (CPC website - http://www.un.org/en/ga/cpc).

The International Civil Service Commission (ICSC), was created in 1974, is comprised of 15 independent experts appointed in their personal capacities by the General Assembly: two of them, the Chairman and Vice-Chairman, serve full-time. The Commission makes recommendations to the General Assembly for the regulation and co-ordination of conditions of service within the UN common system, and has certain decision-making functions with respect to salaries, allowances and job classification standards within the system. It meets twice yearly for about three weeks each time, and is serviced by a secretariat in New York (ICSC website - http://icsc.un.org/rootindex.asp).

In practice the oversight concept is reflected by the difference between internal and external oversight mechanisms. The JIU reported in 1998 on this difference: "[…] internal oversight mechanisms are primarily tools to assist Executive Heads in fulfilling their management responsibilities. They are accountable to Executive Heads for providing advice on internal controls and management practices based on a systematic and independent review of an organization's entire operations. In much the same way that internal oversight mechanisms are a tool of the Executive Heads, external oversight mechanisms are a tool of Member States in the legislative organs. They are accountable to Member States for providing objective information and advice directly to them regarding the management of organizations" (p. 6).

From the above we observe that the current state of the art of the "operational" oversight mechanisms at the UN is characterized by a proliferation of oversight structures: in the course of the 69 years of UN existence the General Assembly delegated its oversight responsibilities on five differentiated and autonomous oversight governance structures. The above description helps to put the Office of Internal Oversight Services into the overall institutional context and pave the way to the exploration of the historical events of the operational internal oversight governance structures evolvement since its inception up to 2010. Recalling, the units of analysis defined in Section IV.3.1 restrict the focus of attention to the provision of internal oversight services within the UN which have been since 1994, and still are, exclusively under the remit and responsibility of the Office of Internal Oversight Services governance structure. I proceed with the historical account of the evolvement of the internal oversight governance structures at the UN.

The high number of structures entrusted with oversight functions, increase exponentially the coordination efforts and complexity of these interactions, therefore resulting in increased transaction costs, given that the various actors involved spend large quantities of funds negotiating mandates, coordinating actions and settling conflicts of interests among them. In Williamson's (1985) terms these interactions are frictions. In McCloskey's (1994) terms these interactions are "conversations".

The cause of the problem lays on the fact that the "rules of the game", the Charter, are incomplete contracts (Williamson, 1996a) insofar as they were written at a very high level without consideration for details regarding their implementation in practice. They were also written and negotiated in 1945 and since then have not been changed substantially in relevant aspects, and, or adjusted to the development and the growth of both the size and the complexity of the operations of the UN and the world order. Although more detailed "rules of the game" were then written for implementation of the Charter, provisions regarding oversight functions by the General Assembly and the Secretary-General, they also are incomplete, and, instead of having contributed to a more efficient oversight system, they added to the complexity of same and the increase of the transaction costs as we will see below.

V.3. Until Year 1993 – Internal Oversight Vertical Integration through "Heteronomization"

The UN Secretariat has, until September 1993, had four main, separate, internal oversight units, divisions of the Department Administration and Management (DAM) dependent administratively and functionally on the Under Secretary-General, the head of the Department Administration and Management: the Internal Audit Division (IAD), the Central Evaluation Unit (CEU), the Central Monitoring Unit (CMU), and the Management Advisory Service (MAS) (JIU, 1993).

Going back to 1985, the General Assembly had commended to an external consultant a study (requested by the General Assembly after a recommendation by the Board of Auditors) regarding the internal audit. The consultant's study showed that the few Internal Audit Division staff could not provide effective audit coverage of UN internal controls and performance, especially away from headquarters. The consultants recommended that staff skills be enhanced and that 18 professional posts (a 60% increase) be added to the extant 29 in Internal Audit Division. Subsequently, the Secretary-General added only two more professional posts as a "first phase" of a strengthening process (UN document A/C.5/40/61 of 26 November 1985, para. 109, as cited in JIU, 1988, para. 163).

A year later the "Group of 18" high-level outside experts highlighted a second basic issue, recommending that the Internal Audit Division should be made independent (UN document A/41/49, 1986). However, the Secretary-General refused, asserting that the auditors were independent enough within the Department Administration and Management and could carry out their work freely there (UN document A/45/226 of 17 April 1990). More specifically the Secretary-General argued that in accordance with generally accepted internal auditing standards, the independence of the audit function is achieved through its organizational status and objectivity of its audits: "It is the consistent policy of the Secretary-General to maintain the Internal Audit Division as an autonomous entity in the Department Administration and Management to examine and appraise activities for which he has administrative responsibility". The Secretary-General supported his argument on a "self-evaluation exercise by the Division in 1989 reaffirmed that the present administrative arrangement ensured its independent and effective functioning". The "independence" of the

internal audit was an issue which of course was bothering the Secretary-General and which remained lingering for many years ahead. Independence is not an attribute considered in the TCE framework, which paves the way for the discussion of its future inclusion, at least attached to transactions such as "oversight".

In 1990 a JIU report found major problems with the transparency of, and reporting on, the use of the UN's vastly increased extra budgetary resources. It stressed the need for much stronger audit coverage and the separation of the Internal Audit Division from the Department Administration and Management and making it directly responsive to the Secretary-General. The Secretary-General did not reply to this JIU recommendation.

The repercussions of the resistance of UN senior officials to accept independent oversight reached the media (The Heritage Foundation, 9 July, 1987):

> Typical … of the UN's stubborn resistance to reform was the response to the [Group of 18's report] suggestion that the Secretary-General would get more reliable data if the UN's internal audit unit were made independent, rather than being a subordinate unit of the UN's management division. To this sensible recommendation, the [head of DAM] … said that 'it is indeed theoretically possible for the Internal Audit Service to report directly to the Secretary-General'. The advisability of this move would have to be seen in relation to other factors, such as whether the already heavy schedule of the Secretary-General should be burdened by further direct supervisory responsibilities.

The first internal oversight governance structure to be created was the Internal Audit Division, in 1946. Then, in 1993, it existed for about 53 years already. This Division was organizationally located within the Department of Administration and Management and headquartered in New York. For administrative purposes it reported directly to the head of Department of Administration and Management, the Under Secretary-General for Administration and Management. Internal Audit Division itself was headed by a Director (at D-2 level, the highest director level within the UN system), and had a total of 46 professional and above posts, of which 26 were funded from the regular budget and 20

from extra-budgetary funds. Twenty-nine of the posts were located at New York headquarters, 11 in two units in Geneva, and 6 in Nairobi. The 1992-1993 programme budget was US$ 10,258,000, which included US$ 420,000 for travel (plus an extra US$ 50,000 for travel for peacekeeping audits). The stated functions and responsibilities were to conduct independent audits in conformity with generally accepted auditing standards. The Internal Audit Division work encompassed financial and administrative as well as substantive and programme aspects of the activities audited. It covered all UN activities worldwide for which the Secretary-General had administrative authority, both those funded by the regular budget and those financed from extra-budgetary funds (JIU, 1993).

The Central Evaluation Unit, created in March 1985, was located within the Department of Administration and Management, and reported administratively to the Director, Programme Planning and Budget Division, who reported to the Controller, who headed the Office of Programme Planning, Budget, and Finance (OPPB&F), and who reported in turn to the Under Secretary-General, Department Administration and Management. It had 6 professional and above staff, headed by a Director (D-1 level) all located in New York. The 1992-1993 budget was $1,505,600, which included only $22,700 for travel and external consultancy. In addition, there were some 24 professional posts related to evaluation in various units scattered throughout the Secretariat worldwide but most of them were used only partially for evaluation. The stated functions and responsibilities were to develop and implement a UN evaluation system, formulate overall evaluation policies and procedures, participate in in-depth evaluation studies, establish guidelines and support self-evaluations by programme managers (including training), and assist the Programme Planning and Budgeting Board to utilize evaluation data (JIU, 1993) .

The Central Monitoring Unit, established in 1982, was located within the Department Administration and Management in New York. Like the Central Evaluation Unit, it reported administratively to the Director, Programme Planning and Budget Division, who reported to the Director, Office of Programme Planning, Budget, and Finance, who in its turn reported to the Under-Secretary-General, Department Administration and Management. It had four professional and above staff, headed by a Director (D-1 level), and was located in New York. The budget for 1992-1993, amounted

to roughly $1 million, and did not include any travel or external consultancy funds. The stated functions and responsibilities were to monitor changes during the biennium in programmes of work in the programme budget, assist in reviewing proposed changes, and determine final output delivery versus the commitments made in the programme budget. The primary tasks were to preparing the Secretary-General's biennial report on programme performance and monitoring six-monthly progress reports by departments on implementation of their work programmes. About three-quarters of the Central Monitoring Unit's professional staff time was devoted to this function, with the remainder spent on various programme planning tasks and servicing to committees. Internal Audit Division was later also charged with determining whether activities reported as implemented by programme managers have actually been delivered (JIU, 1993).

The Management Advisory Service, like the three other oversight units, was located within the Department of Administration and Management. It resulted of a merger of various other units, but in early 1993 it was transferred out of Office of Programme Planning, Budget, and Finance to report administratively directly to the Under-Secretary-General of Department Administration and Management. It had a total professional and above staff of 6, headed by a Director (D-1 level) and was located in New York. The 1992-1993 budget was $1,505,600, of which only $37,000 was for travel and only $10,000 for external consultancy. The terms of reference were established in 1977 for its predecessor service, the Administrative Management Service (AMS), and stated that the Administrative Management Service/Management Advisory Service is the internal management consulting staff in the Secretariat. As such, it was responsible to identify, review and report on management problems or areas requiring improvement, make management surveys, assist and advice in management improvement efforts, as requested, sponsor productivity studies, monitor approved recommendations, and assist budget officials as necessary. It also was responsible for maintaining the Organization's Manual, administrative issuances, and standard managerial information forms. It reported to governing bodies on a regular basis at a certain point in the past, but such reporting was discontinued (JIU, 1993).

The external pressures for proper internal oversight increased in late 1992 to early 1994 period. A set of articles on UN corruption problems in 1992 in the Washington Post

disclosed very troubling and quite specific problems of UN managers' impunity and improprieties, and other similar critical reviews of UN operations appeared during the rest of the 1990s in the media in various countries (IO watch website, http://www.iowatch.org). The media was focused on only one, among other possible, "cure" for an organizational disease, corruption, disregarding its root causes.

Shortly after Secretary-General Boutros-Ghali took office in 1992, there were mounting concerns from the Board of Auditors, the Joint Inspection Unit, and the General Assembly regarding the state of affairs and the quality and effectiveness of the internal controls and oversight at the UN. Several adverse news in the published media at the time, added to fuel these concerns. A thorough journalistic research operated at the Washington Post is an example:

> The images are familiar…blue-bereted U.N. peacekeepers performing difficult missions…, humanitarian relief workers fighting poverty and hunger …, idealistic U.N. employees striving to make 'the new world order' a reality. But behind these images lies an enormous, largely uncontrolled bureaucracy, subject to abuses and deficiencies that impair its effectiveness, a nine-month study of the United Nations by the Washington Post has found. Interviews with current and former U.N. officials on four continents, review of thousands of pages of documents and visits to UN program sites [yield many examples]…. These examples characterize a U.N. system that has grown into what former undersecretary general Brian Urquhart calls 'an enormous ramshackle structure…a most astonishing concoction'. In ways that reform advocates find both absurd and infuriating, the U.N. system appears to have careened out of control (Branigan, 1992a and 1992b).

At the UN level, serious concerns were being raised as well. The Board of Auditors reported in its audit report for the period 1991-1992 issued in 20 August 1992:

> The internal audit in New York and at Geneva suffers from inadequate staff resources and deficiencies in planning. Audit coverage is

> insufficient, especially for Geneva-based organizations and activities. The quantity and quality of staff resources of the Internal Audit Division should be strengthened in order to ensure adequate audit coverage. Audit planning should be improved. Internal audit findings and recommendations should be given proper response (p. 6).

The Board of Auditors also focused on the same "cure" for the identified corruption disease, i.e., increasing administrative controls, increase the bureaucracy size by increasing the resources devoted to the internal oversight, as predicted by TCE (Williamson, 1999). But also the Board of Auditors failed to spell out the causes of such pervasive disease. The root cause should have to be looked for at a higher institutional level, the "embeddeness" level, insofar as ethics virtues are concerned (McCloskey, 2006).

By 1993 the USA arrears to the organization reached $1 billion. After the USA, the member state with the second largest arrears was the Russian Federation (Thornburgh, 1993b). In hopes of ending the freeze on American contributions to the UN, Boutros-Ghali appointed Richard Thornburgh, a former USA attorney-general, and Under Secretary-General, to head Department Administration and Management (where Internal Audit Division, Central Evaluation Unit, Advisory Management Service and Central Monitoring Unit were attached hierarchically). Thornburgh served a one-year appointment as Under-Secretary General at the UN (1992–1993) at the personal request of President Bush. This UN top management position put Thornburgh in charge of personnel, budget and finance matters. He was given the mandate to review all operations of the organization. The new appointee, in turn, asked the Ford Foundation to conduct an external review of the UN. It set up a commission headed by Paul Volcker, a former chairman of the USA Federal Reserve, and Shijuro Ogata, the former deputy governor of the Japan Development Bank. Within a year both Thornburgh and the Ogata-Volcker Commission issued reports highlighting many of the same weaknesses in the UN. Both called for tighter quality control of the UN staff, and budgetary reforms. The report pertained to reform, restructuring and streamlining efforts designed to make the UN peacekeeping, humanitarian and development programs more efficient and cost-effective. The Thornburgh Report also suggested the appointment of an inspector-general to root out fraud, waste, and abuse.

Seeking greater efficiency, the Ford Foundation group called for a unified peacekeeping budget (Ogata and Volcker, 1993; Boutros-Ghali, 2008).

Thornburgh's report (1993, pp 29-31) issued in 1 March, put bluntly how he regarded the state of affairs regarding internal oversight at the UN at the time. Thornburgh referred to a "chronically fragmented and inadequate structure for audit, inspection, investigation and programme evaluation*"*. One example of this fragmentation was the need to call upon to create *ad hoc* teams to carry out investigations into allegations of serious wrongdoing given the delays on the recruiting process depriving the investigation of its fundamental dimensions of professionalism and impartiality. The report also raised the problem of the lack of credibility of the audits considering the perceived lack of independence of the divisions. In sum, he envisaged the need for reform as crucial given the mounting concern of major contributing member states over the rising level of UN expenditures in nearly every area of the organization's intervention. As noted in the Volcker-Ogata report, "support for improved financing will be dependent upon a perception that funds are economically managed and effectively spent. Major donors, and indeed all Member States, deserve the reassurance that…their contributions are being wisely and prudently utilized [which they can then convey] to their taxpayers, the ultimate supporters of all United Nations activity" (IO Watch website, http://www.iowatch.org).

Investigation of waste, fraud, abuse and corruption were, as a matter of fact, showing serious shortcomings. Investigations of complaints of violations were neither centralized nor organized. In this regard the General Assembly (A/RES/47/211 of 11 May 1992, para. 13) left its concerns well expressed through specific requests to the Secretary-General to be met at the 47th General Assembly session in the sense of making proposals for: "Establishing legal and effective mechanisms to recover misappropriated funds…[and] seeking criminal prosecution of those who have committed fraud against the organization".

The Thornburgh report was then widely discussed in the media, and an article by Mr. Thornburgh himself provided a succinct summary of its major point:

> Unfortunately, the mechanisms in place to … deal with allegations of fraud, waste, and abuse within the United Nations are creaking

> leftovers from more placid times. Internal audit units are woefully understaffed [and] external audit functions are ill defined…
>
> What is needed is an Office of Inspector General, staffed to audit, investigate and lay the basis for remedial action in serious cases of conflict of interest, misappropriation of funds or other corrupt practices…
>
> Creation of this office should be coupled with adoption of a comprehensive code of conduct with strict financial disclosure requirements for key UN staff members; a moratorium on further expensive worldwide conferences; reduced travel expenditures; elimination of "featherbedding" practices, and more strenuous control over the unnecessarily wide array of UN publications…. The Inspector General's office is the centerpiece of this agenda for reform (Thornburgh, 1993b, pp. 29-31).

Whether these and other necessary reforms could be accomplished in Thornburgh's opinion would depend not only upon the exercise of the necessary political will by the Secretary-General, but also upon the member states' support for reform (Thornburgh, 1993b). Thornburgh's proposed solution followed TCE's prediction insofar as it was based on a bureaucratic control-by-punishment approach. Although he denoted having understood where the deep cause of the problem laid also proposing the "adoption of a comprehensive code of conduct", thus an ethical problem, the emphasis of his solution was on increased administrative controls.

The Central Evaluation Unit, the Central Monitoring Unit and the Advisory Management Service were centralized units in New York with very small travel budgets. The burden for on-site coverage of other headquarters and field programmes fell on Internal Audit Division, but with its severe understaffing its work plans showed that it had not been able to catch up with the tremendously rapid expansion of UN operational programmes that had occurred. Most oversight activity was still concentrated on headquarters activities and in the economic and social sectors, not on the vast resources and priorities being devoted to peacekeeping, humanitarian, and other large-scale and complex field programmes. There

were also large gaps in coverage at various UN locations. Oversight and management improvement of staff had scarcely been established at the five regional commissions, despite the urging of Joint Inspection Unit and other bodies (Thornburgh, 1993b).

Almost contemporarily the Joint Inspection Unit, following a review of the accountability and oversight at the UN, reported, in September 1993 that "[…] there has been mounting concern from the General Assembly, JIU and other external review units, and the Secretariat itself that these efforts fall far short of what is needed, provide very little independent review and impact, and have not been directed toward top priority review needs. As a result, each of the four units has recently been, or is currently, in a crisis stage which extends to a questioning of its basic functions and quality" (p. 6).

The Joint Inspection Unit's assessment of the situation regarding the *modus operandi* of the internal oversight governance mechanisms brought to light many ex post maladaptation costs (Williamson, 1985, p.21), severe shortcomings and problems corroborating the Thornburgh report: understaffing, lack of appropriate levels of professional qualifications of the staff, lack of operational independence, lack of a common body of general accepted auditing standards, and insufficient and inadequate oversight coverage of the UN operations all over the world. Level of adequate staffing and adequate level of staff qualifications were assessed by benchmarking it with both private and public sector organizations namely in the USA. Operational independence has been considered critical to oversight work. Although the Department Administration and Management argued that the four oversight units were free to carry out their work without interference, it was clear that all the staff involved in these small, lower-level units, were at a clear disadvantage when they came into conflict with senior staff in operating departments or in Department Administration and Management, and that they also depended on higher-level Department Administration and Management's officials for their future assignments, promotions, and career development (JIU, 1993).

The above assessment shows that, because of "probity" hazards (Williamson, 1999, p. 322) verified at several instances of the UN which were publicized in the media impacting negatively the organization's reputation, the internal oversight transactions and "contracts" governing their provision were considered malfunctioning, and, although

erroneously, assumed by the Secretary-General to be the root cause of the problems, therefore implying adaptation of the Barnardian type, accruing bureaucracy (Williamson, 1996, p. 26).

"Independence" of oversight attribute according to the International Organization of Supreme Audit Institutions (INTOSAI[1]) auditing standards, (revised by its Auditing Standards Committee in 1992) is the first, and a "vital", general auditing standard. INTOSAI, in its 1977 "Lima Declaration" (INTOSAI website, http://www.intosai.org) of auditing guidelines stated that audit institutions and officials can be objective and effective only if they are independent of the audited entity and are protected against outside influence. Although internal audit services are necessarily subordinate to the agency head, they nevertheless shall be as functionally and organizationally independent as is possible within the respective organizational structure. The focus is put on the audit governance structure positioning within the organization.

Instead, the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing established that the internal audit activity must be independent, and internal auditors must be objective in performing their work. Three criteria of independence have to be fulfilled: organizational independence, direct interaction with the Board and individual objectivity. Independence is defined as the freedom from conditions that threaten the ability of the internal audit activity to carry out internal audit responsibilities in an unbiased manner. Objectivity is defined as an unbiased mental attitude that allows internal auditors to perform engagements in such a manner that they believe in their work product and that no quality compromises are made. Objectivity requires that internal auditors do not subordinate their judgment on audit matters to others. Threats to objectivity must be managed at the individual auditor, engagement, functional, and

[1] INTOSAI was founded in 1953, provides worldwide leadership in the field of government auditing as consultative status with UN ECOSOC. Thirty-four audit organizations formed the group originally and the current membership includes 193 institutions (188 national institutions, the European Court of Auditors and 4 associated members). The members of INTOSAI are the primary external auditors of the United Nations. The UN General Assembly appoints the UN Board of Auditors (3 members appointed for 6 years) among the INTOSAI member representatives.

organizational levels (IIA website - http://www.theiia.org/guidance/standards-and-guidance/ippf/standards/full-standards). This "independence" requires the auditor to exercise systematically the "virtues ethics" as I mentioned in Chapter II and explained by McCloskey (2006, p. 307): "[…] the virtues that we need if we are to develop from our initial animal condition into that of independent rational agents, and the virtues that we need, if we are to confront and respond to vulnerability and disability both in ourselves and in others, belong to one and the same set of [seven] virtues, the distinctive virtues of dependent rational animals".

An oversight unit must not only be organizationally independent, but must also be perceived and seen to be independent by those targeted and concerned within the organization in order to enjoy the necessary credibility and legitimacy. However, the small, understaffed, low-level units integrated in, and hierarchically dependent on, the Department Administration and Management did not provide for the required independence and credibility. The General Assembly (A/RES/47/211), reaching this conclusion in late 1992, following a Banardian style adaptation, encouraged the Secretary-General and the executive heads of the UN organizations and programmes "to take urgent steps to strengthen the independence … of the internal audit function" (para. 14). The General Assembly further endorsed the efforts of the Board of Auditors "to ensure that common auditing standards for the UN system are consistent with those of recognized international auditing bodies" (para. 19). Here the independence attribute was seen as attached to the governance structure only disregarding the individual's behavioral objectivity dimension which lies on how an auditor carries its work, thus on the individual's character and cultural context. Adhering to the Institute of Internal Auditors' definition of "objectivity", full independence is attainable whenever both the governance structure and the individual's behavioral ethical dimensions are enacted simultaneously. Hazards of independence are not modeled within the TCE yet at all.

Given the shortness of staff and the criticality regarding the perceived lack of independence of the internal oversight governance structures, the possibility of contracting external reviews of Secretariat performance was often raised. The Committee for Programme and Coordination had recommended in 1984 that evaluations of programmes

by governments could supplement the limited Secretariat in-depth evaluations, and called again for independent external evaluation in 1992. This possibility was even provided in the 1986 Secretariat Evaluation Manual whereas intergovernmental bodies might undertake evaluation studies themselves, or commissioned outside evaluators to make them. And the 1985 Joint Inspection Unit system-wide evaluation status report found that more than one-third of the system's organizations had had some type of external evaluation study made thereabout. The Secretary-General flatly disagreed: he cited various procedural objections, but did state that he would respond to requests from the General Assembly and Economic and Social Council for specific consultants on a priority basis. The Committee for Programme and Coordination was of two minds on the question: despite its earlier call for outside expertise in evaluation, many delegations in 1985 found the Joint Inspection Unit recommendations unacceptable, arguing that independent reviews and points of view should still be sought from within the Secretariat wherever possible (JIU, 1993).

In the meantime, on 24 August, 1993, before the General Assembly took place later that same year, the Secretary-General had already announced (ST/SGB/262, 24 August 1993) the appointment of an Assistant Secretary-General, effective 1 September (within just one week time) to head an independent Office for Inspections and Investigations (OII) resulting of the merger of the extant four main oversight divisions:

> Effective 1 September 1993, there is established an Office for Inspections and Investigations, which will incorporate the Central Evaluation Unit, the Central Monitoring Unit, the Internal Audit Division and the Management Advisory Service, currently within the Department of Administration and Management. The Office will be headed by an official at the Assistant Secretary-General level, who will report directly to the Secretary-General … [and] the Assistant Secretary-General will work closely with the Under-Secretary-General for Administration and Management.

This decision was taken on the basis of the authority of the UN Secretary-General without the involvement of any other UN governance structure Organ. Although the new head of Office for Inspections and Investigation was positioned to report directly to the

Secretary-General, his rank, Assistant Secretary-General, was one level below the rank of his former boss, the Under Secretary-General, Department Administration and Management. The Secretary-General's above decision shows that he may have resisted to accord full independence to the new internal oversight structure when he determined that "The Assistant Secretary-General will work closely with the Under-Secretary-General for Administration and Management". What seems evident is that the choice for a new governance structure to administer internal oversight transactions was not a result of managerial initiative, but the result of the external pressures coming from both some member states, principals, and the adverse news in the media impacting negatively the reputation of the UN.

The question then is whether the Secretary-General's Banardian adaptation move establishing this new Office for Inspections and Investigations in September 1993, merging the four units in an autonomous, single, governance structure, reporting directly to the Secretary-General, could overcome the "maladaptation" critical shortcomings regarding the effectiveness and efficiency of the internal oversight mechanisms within the UN. The answer to this critical question is given through the evolvement of the historical events and facts which are presented in the following sections.

The strongest pressure for reform came from the USA Congress. In October, 1993, the United States Congress voted out a compromise appropriations bill which substantially underfunded contributions to UN peace keeping operations for the forthcoming year, refusing to fund a $175 million contingency fund for future unforeseen peace keeping operations; it called for a reduction in the USA share of peace keeping costs from its current 31.7% to 25%; withheld 10% of the regular budget contribution until an inspector general's office had been established; and cancelled the fourth installment of the five-year plan to pay down accumulated arrears (New York Times, 1993; Congressional Research Service - USA, 2005).

What seems evident from the events leading to this Secretary-General's decision to create the Office for Inspections and Investigations is that his decision resulted from mounting external pressures and not from his executive leadership initiative: the executive

autonomy of the Secretary-General was then low corroborating Williamson's predictions (1999, p. 321).

The International Herald Tribune in 30 September, 1993, put clearly the issue of the USA pressure: "The [U.S. House of Representatives] voted Wednesday to withhold back payments owed by the United States to the United Nations until the UN sets up an inspector-general's office to oversee management practices.…The [U.S.] Senate, in its version of an appropriations bill passed in July, approved $44 million to repay a portion of U.S. debts to the United Nations, but conditioned funding on creation of an independent UN office to root out waste".

In the midst of the harsh criticism and mounting budgetary constraints due to the USA and Russia main contributors' arrears and downsizing of contributions, the Secretary-General issued his report "Accountability and responsibility of programme managers in the United Nations" to the General Assembly (A/48/452 of October 5, 1993) pointing to multiple factors to be reflected upon but, concerning the action to be taken, it fell short:

> […] ad hoc adjustments will not address the central problem of [balancing] … the need for a greater degree of managerial discretion by senior staff … and the ultimate responsibilities to Member States. A thorough review of the [relevant] regulations, rules and procedures [for staff] will be undertaken in the coming year to … provide sufficient discretion in the conduct of their work … and make the necessary adjustments to the [existing UN] systems of accountability and responsibility (Para. 59).

During the same 48th session, held during October and November 1993, the General Assembly discussed the Joint Inspection Unit´s report issued in September 1993 (JIU, 1993) on UN accountability and oversight problems where it summarized the existing mechanisms to be "seriously deficient", and concluded that "rising criticisms and concerns" clearly indicated a "crisis of confidence*"* among Member States about the UN's deteriorating management performance, which required urgent and far-reaching corrective action.

The year 1993 came to an end, but came also with the General Assembly's resolution "Review of the efficiency of the administrative and financial functioning of the United Nations" of 23 December 1993 where "regretting" the inadequacy of the Secretary-General's dismissive report in response to its four prior resolutions calling for change, resolved, on the basis of Board of Auditors' and the Joint Inspection Unit's recommendations (as well as the pressure from the USA Congress):

> Emphasizes the need to ensure respect for the separate and distinct roles and functions of external and internal oversight mechanisms and also to strengthen the external oversight mechanisms;
>
> Stresses that oversight mechanisms should guarantee full respect for the individual rights of staff members and due process law;
>
> Requests the Panel of External Auditors and the Board of Auditors to provide their views on how oversight functions could be improved, according to current reporting procedures, and in this regard decides to consider the relevant report of the Joint Inspection Unit; Resolves that the decision to establish an additional independent entity, taking into account Article 97 of the Charter, to enhance oversight functions, in particular with regard to evaluation, audit, investigation and compliance, be taken subject to the definition of its modalities, including its relationship with existing control mechanisms;
>
> Stresses, in this regard, that **any administrative structure** should be aimed at **ensuring efficiency and cost-effectiveness**, especially with regard to programme delivery (UN document A/48/218A, Improvement of the Management of the United Nations, I, paras. 6-10) [emphasis added].

Regarding improper management of resources and funds of the UN the General Assembly "determined to address alleged cases of fraud in the United Nations in an impartial manner, in accordance with due process of law and full respect for the rights of each individual concerned, especially the rights of defense … decides to study the

possibility of the establishment of a new jurisdictional and procedural mechanisms" (UN document A/48/218A, Improvement of the Management of the United Nations, III).

V.3.1. Impact of the "heteronomization" governance structure

The impact of the choice for a certain oversight governance structure is assessed through the lens of the TCE framework expounded in the previous Chapter II searching for its observable elements in the reality and test for their adherence to the theory predictions.

"Heteronomization" is used in the present case to designate the governance structure chosen by the UN Secretariat to govern the oversight transactions in the period until August 1993. It is characterized by the vertical integration of the oversight transactions within the UN Secretariat under the remit and authority of the Department Administration and Management in four separate and unrelated divisions. Williamson's attributes of Public Agency governance structures (Williamson, 1999, p. 336 – see Section II.2.3) are used to assess "*ex post*" the features of the "heteronomization" governance structure which are relevant for the "epoch" that ended end of August 1993.

Instruments

Assignment of property rights

The delegation of internal oversight power of authority by the Secretary-General was to the Department Administration and Management.

Bureaucratization

The hierarchical lines of reporting and communication were multiple: for Central Monitoring Unit and Central Evaluation Unit, as they were located in the Programme Planning and Budget Division, this meant that the chiefs of those units reported to the Director of the Budget who, in turn, reported to the Controller who, in turn, reported to the Under-Secretary-General for Administration and Management who, in turn, reported to the Secretary-General. Under this organizational arrangement, staff in Central Monitoring Unit, Central Evaluation Unit and Management Advisory Service could not insist on seeing confidential memoranda that they considered might be pertinent to their work.

All three Central Monitoring Unit, Central Evaluation Unit and Management Advisory Service oversight governance structures were located in the Department Administration and Management. The Department Administration and Management had the mission to formulate policies and procedures and provide strategic guidance, direction and support in three broad management areas: human resources, finance and budget, and central support services. Such support covered areas as diverse as recruitment and staff development, procurement of goods and services, financial management, travel and transportation, archives and facilities management. Thus it assured the work which represented a significant portion of the budgetary expenditures of the Organization. This was an anomalous situation, which violated a standard rule for oversight functions, namely, that those charged with those functions should be independent of the activities they are reviewing and should also be seen to be independent.

More specifically, the internal audit, although was a separate division within Department Administration and Management, conducted audits of the Secretariat offices, activities and projects at the headquarters and other duty stations and the resulting findings and recommendations were communicated directly by the Director of Internal Audit Division to the heads of the audited entities, including those under the authority and remit of Department Administration and Management (UN document A/45/226, 1990). The internal oversight reports were considered strictly "internal" to the Secretariat - the General Assembly had no access to these reports.

The procedures and practices of Internal Audit Division included analyses used in the development of audit plans that took into account, *inter alia*, factors relating to the riskiness of an activity, according to the Director Internal Audit Division, the Joint Inspection Unit assessment counter observed that the few resources available were not directed toward the top priority review needs and the practice was not compliant with international internal audit standards.

All four internal oversight units were considered to be understaffed and the extant staff lacking adequate level of expertise.

Although the General Assembly, Board of Auditors and Joint Inspection Unit expressed often concerns about instances of fraud and corruption the Secretary-General did not provide for arranging for a governance structure, whichever vertically integrated or contracted out, to address the problem in stable and systematic manner, the investigations were being contracted out on an *ad hoc* basis outside any formal and widespread known due process procedures and without being endowed with the "power of the sovereign".

Performance

No wonder that the performance of the internal oversight had been for decades considered unsatisfactory in comparison with the identified needs. The credibility of the outputs of the four internal oversight divisions was questioned by the General Assembly, by the Board of Auditors, by the Joint Inspection Unit, and by Thornburgh and discredited by the media. All these entities had associated performance with resources (both skills and quantity), and with lack of "independence" of oversight transactions specific attribute, to make a causal connection between "independence" and credibility of the output.

Even confronted systematically with allegations of lack of effectiveness of the internal oversight set-up, at no point the discussion of going out in the market to outsource these services was held.

Contract law

Degree of completeness

Since the inception of the UN, the General Assembly entrusted to the Secretary-General (GA Resolution 163 (III), 1946) – Provisional Financial Regulations of the United Nations, Regulation 24 – Internal Control) the responsibility to: "f) Maintain an internal financial control which shall provide for an effective current examination or review of financial transactions in order: (i) To ensure the regularity of the receipt, disposal and custody of all funds and other financial resources of the Organization; (ii) To ensure the conformity of all expenditures with the appropriations or other financial provisions voted by the General Assembly; (iii) To obviate any uneconomic use of the resources of the

Organization". In sum, the Secretary-Generaly was delegated by the General Assembly fiduciary and custody of financial resources responsibilities.

Until 1985 the provision of internal audit services was regulated by the Secretary-General in an *ad hoc* fashion, delinked from the financial regulations. For instance, in 1981, the Secretary-General Waldheim reviewed the functions of the Internal Audit Division "Serves as the independent audit and systems appraisal staff for administrative and financial operations of the United Nations at Headquarters and overseas offices" (UN document ST/SGB/Organization, 1981).

Although the Internal Audit Division already existed since 1946 (JIU, 1995), the normative provision of internal audit services was included for the first time, as a financial rule, by the Secretary-General's bulletin only in 1985 (UN document ST/SGB/Financial Rules/l/Rev.3, 1985). Therefore, Financial Rule 110.41- Internal Audit in 1985 read as follows:

> The Internal Audit Division shall conduct independent audits in conformity with generally accepted common auditing standards. The Division shall review, evaluate and report on the soundness, adequacy and application of systems, procedures and related internal controls. The audits shall encompass the following elements: (a) Compliance – a review of financial transactions to determine whether they are in compliance with General Assembly resolutions, financial 'and staff regulations and rules, and administrative instructions; (6) Economy and efficiency – an appraisal of the operational efficiency and economy with which financial, physical and human resources are utilized; (c) Effectiveness – a review of programmes and activities financed from regular and extra-budgetary resources to compare implementation of output with the commitments set out in the programme narratives in the approved programme budget.

This rule was promulgated by the Secretary-General in accordance with the provisions of the Financial Regulations. The Secretary-General explained in the preamble that he delegated the power of authority and responsibility for the administration of the

Financial Regulations and Rules, including the Internal Audit Rule, to the Under-Secretary-General for Administration and Management (USG/DAM). The USG/DAM might have delegated authority under the financial Rules to other officials.

The staff serving at the four internal oversight divisions, as in general all staff of the UN was subject to the UN Staff Regulations and Rules established by the General Assembly as implemented and regulated by the Secretary-General through the detailed provisions communicated in its "Bulletin".

Internal justice system

The United Nations Administrative Tribunal was the last resource to resolve any labor conflicts. This was thoroughly controlled by the administration, provided few due process protections, and almost never reverses negative managerial decisions. Even for staff who "won" their appeals after literally years of trying, the system provided only modest financial recompense, if any. The Secretary-General and other senior officials who acted with delegated power on his behalf could summarily dismiss UN staff members without any explanation, and providing them only a slow and stilted procedural recourse that takes years and years to complete (IO watch website, http://www.iowatch.org).

However, in general the UN staff was covered by functional immunity, while in their official capacity as provided by the Convention on Privileges and Immunities of the United Nations (Appendix C). Such legal framework lives at the discretion of the Secretary-General to hand over any criminal act (such as defrauding the UN, committing homicide, sexual harassment, rape, etc.) committed by any staff member to national jurisdictional authorities so that it can be prosecuted.

However senior UN officials above certain echelons have enhanced functional immunity through their diplomatic status. That is, they are not bound by, or subject to, any national laws or courts. Only, when the Secretary-General makes an exception, on a case-by-case basis and at his sole (and unappealable) discretion, can their immunity be lifted and their cases turned over to national courts. There are two major negative consequences of this situation: these officials know that, whatever they do, they will almost never be sent before a national court, and if so, only because persistent outside forces (media pressure,

bad publicity, outside groups) force the issue through whistle-blowing and *exposé*, as in the UN's Iraq Oil-for-Food Programme scandal further below explored (IO watch website, http://www.iowatch.org).

Enforcement and dispute settlement procedures

The Secretary-General delegated in the Internal Audit the discharge of a substantial part of his oversight functions.

The audit findings and recommendations were addressed to the heads of the departments, projects, programmes, etc., and any disputes over the audit recommendations were either resolved informally allowing the auditee's response, or abandoned. The follow-up of the implementation of the recommendations was not properly enforced: if not implemented no consequences arose for the heads of the departments or programmes concerned.

Transactions

The transactions taking place during this period concerned the provision of oversight services by four divisions of Department Administration and Management at the UN - audit, evaluation, monitoring, and management advisory services – that were transferred to Managers and to the Secretary-General under the "contracts" established among the concerned UN governance structures. The question then is to determine what type of transactions were these oversight services in the context of the UN institutional environment at the time: sovereign, judiciary or any other type?

A sovereign transaction as defined by Williamson (1999) contains the following elements: special needs for probity; implicate the security of the "state"; and, the executive is chiefly responsible. Attributes of these transactions include efficiency, equity, accountability, and authority (Wilson, 1989).

Judiciary transactions are those that the system of law courts administers to produce or deliver justice, and constitute the judicial branch of any "sovereignty". The most important attribute of judiciary transactions is "independence" (Williamson, 1999, p. 321).

The question is then to know if any of the above definitions fit the internal oversight in the UN, namely internal audit services, delivered within the normative and legal framework extant during the period. The answer is not straight forward considering the set-up of the internal audit but one shall look at the dimensions of each of sovereign and judiciary transactions to find out which are also definitional elements of internal audit transactions.

The four attributes of sovereign transactions were present in the internal audit as defined after 1985, but the "independence" attribute was not present in the Internal Audit Division – the internal audit was operating under the authority of Department Administration and Management, nor there were any judicial type of function, for instance, the investigations were being decided case by case and investigation teams were organized in an *ad hoc* fashion. This leads to the conclusion that until September 1983 the internal oversight transactions, and namely the internal audit, could be assimilated to sovereign transactions.

Transactions' Attributes

Asset Specificity

Human assets for internal audit require high level of professional specialization as well as continuous investments in professional training. These requirements have been on the table and considered as a critical crucial factor that impaired the performance of the four internal oversight divisions during the period.

Uncertainty

The choice for the vertical integration mode of governance did not mitigate uncertainty hazards therefore transaction costs were very high, this contrary to what Williamson argues. The incompleteness of the internal oversight contracts between the Secretary-General and the heads of the four oversight structures caused constant frictions and conflicts arising from lack of independence, understaffing, blurring lines of reporting and generalized lack of accountability concerning the enforcement powers of implementation of oversight recommendations.

Frequency

Frequency was very high: the internal audit transactions were occurring systematically.

Probity

Internal oversight transactions in the UN are infused of "*probity*" in the sense that Williamson (1999, pp. 321-324) predicted: indefeasible authority, that of the executive authority of the Secretary-General received through the Charter compounded with that delegated by the General Assembly; irrevocable since there is no provision in the Charter allowing such a possibility; irreversible as the Secretary-General cannot pick and choose at wish as the authority is attached by law – the Charter, to the Secretary-General organ.

Vertical probity failed at the highest level in the interactions between the Secretary-General and the General Assembly: Secretary-General did not enact long last recommendations and requests for strengthening the internal audit and investigations services by the Board of Auditors, the Joint Inspection Unit and the General Assembly itself. Vertical probity materialized through the internal oversight reporting and the quality of information received but was evidently failing: there was no professional excellence in the internal oversight structures, namely in the Internal Audit Division; procedural safeguards were disregarded; and, the General Assembly, the Board of Auditors, and the Joint Inspection Unit considered the services unsatisfactory.

Failures of probity were acute and were pointed out at several instances, both internally and externally to the UN, leading to extreme events such as fraud and corruption, and this may have been the underlying cause that led finally to adjustments in the governance structures as predicted in TCE (Williamson, 1996, p. 26) – the consolidation of the four separate units in a single one combined with the "autonomization" of same by the creation of a separate Office for Inspections and Investigations reporting to the Secretary-General. What was not spelled out internally and externally to the UN were the underlying causes of the systemic failures of probity which are to be looked for in the individuals' / agents' (UN officials at any hierarchical level) behavior and character, i.e., ethics (McCloskey, 2006, pp. 322-329).

Alignment/Misalignment

The decision for vertical integration through "heteronomization" was in economizing TCE terms the most efficacious. The central hypothesis of TCE verified (Williamson, 1999, p. 336) for two main categories of reasons:

- Internal audit was for the UN a sovereign type of transaction organized within a public bureau;
- There was alignment between the type of transactions, the frequency, the high specificity of human resources required, and the governance structure chosen to administer them.

CHAPTER VI – INTERNAL OVERSIGHT GOVERNANCE STRUCTURES REFORM

VI.1. Year 1994 – Vertical Integration through "Autonomization"

The year of 1994 started with the new Office for Inspections and Investigations headed by the Assistant Secretary-General, the former head of the Internal Audit Division, running the internal oversight activities, reporting to the Secretary-General but "...work[ing] closely with the Under Secretary-General for Administration and Management" (UN document ST/STGB/262, 1993). The budget of the new Office for Inspections and Investigations was also maintained under the budget of the Department Administration and Management. In terms of the UN culture "working closely" meant "subordinated to" with very limited freedom of action. These two functioning organizational aspects represented, at its inception, two serious risks of failure for the Office's future continuation. The contract design was of course incomplete, and uncertainty continued to be very high (Williamson, 1985, pp. 56-60): the Director's Department Administration and Management could easily block or delay the Office for Inspections and Investigations action through maneuvering availability of funds. This arrangement, the way it was designed, was more beneficial to the Director Department Administration and Management than to the Director Office for Inspections and Investigations since the first had higher administrative incentives than the latter. This circumstance suggests that the Office for Inspections and Investigations was not set to work properly in accordance with the internal audit professional standards – its Director was in a "trap".

Childers and Urquhart in early 1994 published their analysis *Renewing the United Nations system*, to raise their concerns about oversight matters:

> […] the bulk [of financial abuses] usually occurs … in emergency operations where cash or supplies are being moved … [urgently], or where contracts must be issued under great pressure. Given the appalling under-staffing of peacekeeping operations and the disorganized state of humanitarian emergency assistance, the surprise, if any, is that there is not more fraud and waste in these operations…. A further ironic consequence of zero-growth demands has been

> the severe under-staffing of the [Internal Audit Division] … neither Secretaries-General nor member states have paid enough attention … [thus there have been] only some 30 fully qualified auditors and 6 [professional evaluation staff] to cover the entire [UN] work programme in thousands of expenditure lines, carried out at New York, Geneva, Vienna and Nairobi, five Regional Commissions, over a hundred country offices, huge world conferences and in addition over a dozen complex peacekeeping operations" (pp. 146-147).

They also emphasized that further major improvements were required: "Internal procedures to enable staff to report palpable misconduct without fear [and on the other hand without creating an atmosphere of witch-hunting] should be improved. The UN's ability to pursue miscreants through national jurisdictions needs to be strengthened. After decades of periodic suggestions for an Inspector General to be attached directly to the Office of the Secretary-General, the issue was being finally actively pressed: "To carry maximum credulity and universal confidence the appointee must be of impeccable repute and with top-caliber qualifications for such work" (p. 147). This may, on balance, be helpful but not really effective if the Internal Audit Division remains so grossly understaffed.

Despite some months had already elapsed after the decision and implementation of the "autonomization" of the oversight services through the creation of the Office for Inspections and Investigations, which included not only the four extant oversight units but also a new investigations unit in course of implementation, the external pressures continued because in the horizon there were no sufficient strong signs of improvements regarding internal oversight capacity, human assets, and independence. Asset specificity, namely human resources skills, as well as the insufficient number of staff which was impairing an acceptable coverage of the universe to be audited and controlled, was a strong concern in many instances critically connected with the lack of performance of Internal Audit Division. Another critical aspect regarded the leadership capacity and independence (autonomy) of action of the head of the Office for Inspections and Investigations: the rank in the hierarchy of the Assistant Secretary-General official was not sufficiently high, the position continued to have a certain degree of subordination to the Under Secretary-General Department Administration and Management; the power of authority to appoint and to dismiss the head of the Office for Inspections and Investigations was

on the exclusive remit of the Secretary-General; the reporting lines had not changed as the reports continued to be submitted to the auditees and not the higher instance in the hierarchy such as the Secretary-General and/or the General Assembly; the budget of the Office for Inspections and Investigations was included in Department Administration and Management and the Office for Inspections and Investigations had no decision power and control over it; and, the recruitment, promotion, dismissal of the staff of the Office for Inspections and Investigations was not delegated to the head of the Office for Inspections and Investigations. These aspects were at issue at this point in time even if in "paper" the Assistant Secretary-General was to report directly to the Secretary-General.

These aspects of the internal workings of governance structures in connection with efficiency, although critical for decision makers, are not an issue dealt with by TCE. TCE neither deals with the question of "how big governance structures should be" nor it deals with the relative effectiveness of the internal governance structures versus hierarchy in terms of instruments and incentives.

As the pressures upon Boutros-Ghali, then the UN Secretary-General, to strengthen the accountability and to promote more economic, efficient and effective use of resources continued, all together, paved the way to the establishment by the General Assembly of the Office of Internal Oversight Services in July, 1994 (UN resolution 48/218-B, July 1994 – Appendix D). This office was designed in the same lines and features of similar positions of Inspector Generals in the USA (Grigorescu, 2008), except for the reporting lines and budget appropriations: the head of the USA General Accountability Office (GAO) reports directly to the USA Congress and budget appropriations are approved by Congress, while the head of the UN Office of Internal Oversight Services at this point in time reported administratively to the UN Secretary-General (no autonomy to decide and manage important dimensions of the human resources delegated to it) and functionally, through the Secretary-General, to the General Assembly.

But it was not without controversy and unease among the decision makers that the final decision on the designation of the newly created office was chosen: it changed from the designation "Office for Inspections and Investigations" to "Office of Internal Oversight Services". The modifications that were made in the titles of the office and of its head reflected great unease among the UN "barons" (and their colleagues in many Member State delegations)

about the powerful new oversight regime that had been forced upon the UN. This unease was evident in the great interest in the choice of the first head of the Office of Internal Oversight Services (Preston, 1995).

Others, in the Washington Post, viewed the new created oversight mechanism with enthusiasm: "The United Nation's fiscal and management inadequacies are serious, and…reform is not popular in the UN Secretariat.…It is to the credit of President Clinton's policy team that it overcame [the suspicion of American motives] and forged consensus on an independent and objective inspector general.… The United Nations now will have what many in Washington have long argued for: an independent office to oversee its fiscal and management operations. As Congress does with U.S. inspector general, U. N. member states will have to keep a watchful eye on its performance, safeguard its independence and aggressively follow up on its findings. A serious, workable instrument, is in place" (Funk and Laurenti, 1994).

Before the new Under Secretary-General for Internal Oversight took office, the head of the Office Inspections and Investigations, Assistant Secretary-General, who had extensive UN audit experience, especially as head of the Internal Audit Division, in his first and last report addressed to the Secretary-General, dated 28 September 1994 (UN document A/49/449, 1994), submitted to the General Assembly (document A/49/449), covering the first and the last years of activity of the new Office for Inspections and Investigations warned that despite "high expectations", the 60 professionals and half a dozen supervisors (a total of 66 people), as detailed in table 6.1 below, he had available during the period could not properly oversee the billions of dollars of annual UN expenditures scattered worldwide. The Professional posts available to his Office actually decreased between the end of 1993 and mid-1994. The universe of the oversight office was a vast one considering the number and geographic spread throughout the world in dozens of separate locations of UN operations compounded by the amounts involved for the biennium 1994-1995, over two and a half billion dollars under the regular budget, over three billion dollars in estimated extra-budgetary funds, several billion dollars more for peace-keeping operations and billions of dollars in the UN Joint Staff Pension Fund. Owing to a lack of resources, the administrative support was provided by the Executive Office of Department Administration and Management. This was an anomalous situation, impairment to independence, since it meant that the Office for Inspections and Investigations was provided with essential

services, involving staff, travel and other administrative matters, by the largest of the departments whose work was supposed to be audited by the Office for Inspections and Investigations.

Table 6. 1. Internal Oversight Professional Staff 1994 (Regular budget and extra-budgetary)

Internal Oversight Governance Structure	Prior to OII	OII
Assistant Secretary-General and his Office	-	2
Audit	53	50
Investigation	-	5
Programme performance monitoring	4	4
Evaluation	6	5
Inspection*	-	-
Management Advisory Service	6	-
Total	69	66

Source: Report of the Office of Inspections and Investigations, 1993-1994 (A/49/449 28 September 1994)
*Inspections were *ad hoc* assignments drawing on staff in all units of the Office, and other offices as required.

During this first year, the Office for Inspections and Investigations reported that it had addressed symptoms but had not been able to address the root causes of many problems of the UN such as recruitment and promotion policies, the administration of justice, management reporting systems, staffing and financing of peace-keeping operations and contract management. Nevertheless, he concluded and stressed that

> The effectiveness of an oversight office depends to a large extent on how senior officers perceive their roles. The concept of management accountability in the United Nations has not been consistently applied…. No system of accountability will be effective without the assurance that sanctions will be promptly applied when violations occur.… There is a continuing lack of serious disciplinary measures in cases involving blatant mismanagement. The United Nations must find a proper way to deal with cases where managers or other staff members violate rules or neglect their duties….I strongly recommend that any new system of accountability and responsibility include specific penalties or sanctions for United Nations managers and other staff who disregard United Nations regulations and rules or who are negligent in the conduct of their duties and responsibilities" (pp. 5-6).

Immediately after, the General Assembly resolution A/RES/48/218 – B of 12 August 1994 (Appendix D) established

> […] an Office of Internal Oversight Services under the authority of the Secretary-General, the head of which will be at the rank of Under-Secretary-General.
>
> Decides also that the Office of Internal Oversight Services shall assume the functions prescribed for the Office for Inspections and Investigations in the note by the Secretary-General, as amended by the present resolution and subject to the modalities defined below, with a view to strengthening the executive capabilities of the Secretary-General:
>
> (a) Mode of operation:
>
> The Office of Internal Oversight Services shall exercise operational independence under the authority of the Secretary-General in the conduct of its duties and, in accordance with Article 97[2] of the Charter, have the authority to initiate, carry out and report on any action which it considers necessary to fulfil its responsibilities with regard to monitoring, internal audit, inspection and evaluation and investigations as set forth in the present resolution;
>
> b) Appointment
>
> (i) The Under-Secretary-General for Internal Oversight Services shall be an expert in the fields of accounting, auditing, financial analysis and investigations, management, law or public administration;
>
> (ii) The Under-Secretary-General for Internal Oversight Services shall be appointed by the Secretary-General, following consultations with Member States, and approved by the General Assembly. For this purpose, the Secretary-

[2] Article 97 of the Charter: "*The Secretariat shall comprise a Secretary-General and such staff as the organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the organization*".

> General shall appoint the Under Secretary-General for Internal Oversight Services with due regard for geographic rotation and in so doing shall be guided by the provisions of paragraph 3(e) of General Assembly resolution 46/232 of 2 March 1992 whereby the Assembly decided, in particular, that, as a general rule, no national of a Member State should not succeed a national of that State in a senior post and that there should be no monopoly on senior posts by nationals of any State or group of States;
>
> (iii) The Under-Secretary-General for Internal Oversight Services shall serve for one fixed term of five years without possibility of renewal;
>
> (iv) The Under-Secretary-General for Internal Oversight Services may be removed by the Secretary-General only for cause and with the approval of the General Assembly*"* [emphasis added].

The above Resolution is a "contract" in the terms of TCE (Williamson, 1999, p. 311) and it is undoubtedly an incomplete one as from the very start as therein predicted. The "operational independence" was not defined (for instance in reference to auditing professional standards) as was not specified the "cause" for "removal" of the Under Secretary-General for Internal Oversight Services allowing a high degree of discretion to the Secretary-General in the management of same. As we will see further on in this story, these "incompletenesses" would reveal to be opportunistically used by the Secretary-General.

The General Assembly's resolution required a reorganization of the extant Office for Inspections and Investigations structure. In September 1994 (UN document ST/SGB/273) the Secretary-General "established" the Office of Internal Oversight Services and set out the details of the implementation of the General Assembly resolution in the following terms:

> The purpose of this Office, … is to assist the Secretary-General in fulfilling his internal oversight responsibilities…
>
> […] shall exercise operational independence under the authority of the Secretary-General in the conduct of its duties and, in accordance with Article 97 of the Charter of the United Nations, have the authority to initiate, carry out

and report on any action which it considers necessary to fulfil its responsibilities…

The staff of the Office shall have the right to direct and prompt access to all persons engaged in activities under the authority of the Organization, and shall receive their full cooperation. Additionally, they shall have the right of access to all records, documents or other materials, assets and premises and to obtain such information and explanations as they consider necessary to fulfil their responsibilities.

[…] the Office shall coordinate its activities with the Board of Auditors of the United Nations, the Panel of External Auditors and the Joint Inspection Unit….

[…] shall submit to the Secretary-General reports that provide insight into the effective utilization and management of resources and the protection of assets. All such reports shall be made available to the General Assembly, as presented by the Office, together with such comments as the Secretary-General may deem appropriate….

[…] shall also submit to the Secretary-General for transmittal as received to the General Assembly, together with separate comments the Secretary-General deems appropriate, an annual analytical and summary report on its activities for the year.

The Board of Auditors and the Joint Inspection Unit shall be provided with copies of all final reports produced by the Office as well as the comments of the Secretary-General on these reports and shall be invited to provide the General Assembly with their comments as appropriate.

The Under-Secretary-General for Internal Oversight Services shall have delegated certifying authority for all the accounts of the Office. The Under-Secretary-General for Internal Oversight Services shall, in accordance with the Staff Regulations and Rules of the United Nations, develop an appropriate

> office organizational structure, staffing table and related job descriptions including professional qualifications of staff.
>
> With respect to the staff of the Office, the Under-Secretary-General for Internal Oversight Services shall have powers of appointment, promotion and termination similar to those delegated by the Secretary-General to the heads of programmes, funds or subsidiary organs enjoying special status in these matters. Contracts of staff appointed by the Under-Secretary-General shall be limited to service with the Office. Staff holding regular United Nations appointments who are selected to serve with the Office shall retain their current status and their acquired rights under the Staff Regulations and Rules of the United Nations.

Mr. Paschke, a career diplomat from a major contributor Member State, Germany, was appointed Under Secretary-General for Internal Oversight Services for a five-year term beginning in November 1994. But the accompanying press release, while noting that he had at least some managerial experience in his national diplomatic service, did not mention that he had any professional auditing or investigative credentials, expertise, experience, or accomplishments, nor does it appear that any evidence was ever provided to validate the legitimacy of this important UN accountability appointment (IO watch website, http://www.iowatch.org). The first appointment of the leader for the Office of Internal Oversight Services did not fulfil the skills requirements of the General Assembly's resolution, and this was a failure of "vertical probity" right from the beginning (Williamson, 1999, p. 323). At this point the Secretary-General and the UN General Assembly had increased the uncertainty of the internal oversight functioning and therefore the transaction costs as well as the risks of reputation and failure. In this case how could the probity hazard be "relieved by governance structures to which reliable responsiveness to the president can be ascribed" as predicted in TCE (Williamson, p. 323)? The Secretary-General is the chief executive officer of the UN Secretariat, a position established by the Charter which includes the provisions for appointment but does not include the provisions for removal / dismissal. Secretary-General's failures of probity are therefore not likely relieved by governance structures.

Since then this new structure is headed by an Under-Secretary-General, confirmed by the General Assembly, with a five year, non-renewable, term appointment, reporting to the UN Secretary-General directly and through her/him to the UN General Assembly. The Office of Internal Oversight Services was established "enjoying complete operational independence in the conduct of its duties" (Boutros-Ghali, 1996, p. 1) to provide full array of oversight services to the UN Secretary General. The purpose of the Office of Internal Oversight Services is to assist the Secretary-General in fulfilling her/his internal oversight responsibilities in respect of the resources and staff of the Organization through the exercise of monitoring, internal audit, inspection and evaluation, and investigation. These oversight responsibilities were defined by the General Assembly resolution A/RES/48/218 – B (Appendix D) as follows:

> (c) Functions
>
> The purpose of the Office of Internal Oversight Services is to assist the Secretary-General in fulfilling his internal oversight responsibilities in respect of the resources and staff of the Organization through the exercise of the following functions:
>
> (i) Monitoring
>
> The Office shall assist the Secretary-General in implementing the provisions of article V of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation on monitoring of programme implementation;
>
> (ii) Internal audit
>
> The Office shall, in accordance with the relevant provisions of the Financial Regulations and Rules of the United Nations examine, review and appraise the use of financial resources of the United Nations in order to guarantee the implementation of programmes and legislative mandates, ascertain compliance of programme managers with the financial and administrative regulations and rules, as well as with the approved recommendations of external oversight bodies, undertake management audits, reviews and surveys to improve the

structure of the Organization and its responsiveness to the requirements of programmes and legislative mandates, and monitor the effectiveness of the systems of internal control of the Organization;

(iii) Inspection and evaluation

The Office shall evaluate the efficiency and effectiveness of the implementation of the programmes and legislative mandates of the Organization. It shall conduct programme evaluations with the purpose of establishing analytical and critical evaluations of the implementation of programmes and legislative mandates, examining whether changes therein require review of the methods of delivery, the continued relevance of administrative procedures and whether the activities correspond to the mandates as they may be reflected in the approved budgets and the medium-term plan of the Organization;

(iv) Investigation

The Office shall investigate reports of violations of United Nations regulations, rules and pertinent administrative issuances and transmit to the Secretary-General the results of such investigations together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action to be taken;

(d) Support and advice to management

The Office of Internal Oversight Services may advise programme managers on the effective discharge of their responsibilities, provide assistance to programme managers in implementing recommendations, ascertain that programme managers are given methodological support, and encourage self-evaluation.

The reorganization of the new Office of Internal Oversight Services structure came the following year in December 1995 (UN document ST/SGB/Organization, Section OIOS) with the following components: the Under Secretary-General and its Office; the Audit and Management

Consulting Division (AMCD/OIOS), the Evaluation Unit (EU/OIOS), the Investigation Division (ID/OIOS), and the Monitoring and Inspection Unit (MIU/OIOS).

Although resolution 48/218 B (Appendix D) and the Office of Internal Oversight Services' terms of reference (UN document ST/SGB/Organization, Section OIOS) referred very briefly that Office of Internal Oversight Services "may" support and advise managers, the Office had magnified that activity by labeling its major division "Audit and Management Consulting". This behavior would not be irrelevant and inconsequential to the near future of the Office of Internal Oversight Services as will be narrated further on. This was one more risk factor (of failure and reputation hazard) added to the appointment of Mr. Paschke, but this time by the head of the Office of Internal Oversight Services himself.

The Joint Inspection Unit (JIU, 1995) pointed out the advantages of consolidating the small internal oversight units at the UN Secretariat: (a) increased independence, accruing to a larger, more competent unit hopefully reporting to top management levels; (b) greater flexibility and responsiveness, since expanded staff resources can be more easily shifted between internal oversight tasks as changing circumstances dictate, rather than being bound by narrow sub-unit boundaries; (c) greater transparency, with a combined unit much better able to report each year on its work, findings, results achieved, and views on overall management performance, progress, problems, and issues in the organization; (d) greater professionalism, through more systematic recruiting of a balanced team for various types of oversight work, improved backup capacity, and more coherent professional training and career development opportunities; (e) economies of scale, through coordinated work planning and combined assignments, field visits, administrative and support services, and reporting capacities; (f) greater visibility and stimulus to management improvement in the organization, with the larger unit becoming a much stronger focal point for interaction with programme managers, governing bodies, professional bodies, and other organizations.

VI.1.1. Impact of the "autonomization" decision

The impact of the choice for a certain oversight governance structure is assessed through the lens of the TCE expounded in Chapter II searching for its observable elements in the reality and to test for their adherence to the theory predictions.

"Autonomization" is used in the present case to designate the governance structure chosen by the UN Secretariat to govern the oversight transactions under the new Office of Internal Oversight Services oversight governance structure. It is characterized by the vertical integration within the UN Secretariat of the oversight transactions under the remit and authority of the General-Assembly and the Secretary-General. Williamson's (1999, p. 336 - see Section II.2.3) attributes of Public Agency governance structures as well as the "autonomization" concept as defined by Ter Bogt (2003, p. 151) are used to assess "*ex post*" the features of this oversight governance structure as established in 1994.

The "autonomization" adaptation process (Williamson, 1996, p. 26) occurred in two different moments in only one year span of time: August 1993 the creation of the Office for Inspections and Investigations, and August 1994 the creation of Office of Internal Oversight Services. The Office for Inspections and Investigations was an initiative and a decision of the Secretary-General and Office of Internal Oversight Services was an initiative and a decision of the General Assembly. These two UN Organs have, under the UN Charter (Appendix A), different roles and responsibilities (see section V.1). The General Assembly is a markedly political organ of the UN where the representatives of member sovereign countries have a seat (at the time 185 member countries) and each, one vote. The Secretary-General is the chief administrative officer, appointed by the General Assembly upon recommendation of the Security Council and performs any other functions as entrusted by the four political organs: General Assembly, Security Council, Economic and Social Council and Trusteeship Council. In this vein, it comes clear that the power of the two decisions is different: the decision taken by the General Assembly creating the Office of Internal Oversight Services, not only was of a political nature, but also normative as taken by the legislative UN organ, the General Assembly; the decision taken by the Secretary-General in 1993 although legitimate because taken under the remit of powers delegated to him by the Charter, the General Assembly, creating the Office for Inspections and Investigations was an administrative decision in nature, therefore less powerful.

The creation of the Office for Inspections and Investigations, as explained by the Assistant Secretary-General, the head of the Office for Inspections and Investigations, was intended to correct an anomaly that existed prior to its creation: Internal Audit Division, Central Monitoring Unit, Central Evaluation Unit and Management Advisory Services, the four internal

oversight divisions, were located in the Department Administration and Management, the work of which represented the control and review of a significant portion of the budgetary expenditures of the UN. This was an anomalous situation, which violated a standard professional practice rule for oversight functions, namely, that those charged with those functions should be independent of the activities they are reviewing and should also be seen to be independent. The consolidation of the four divisions also meant that they could operate under standard audit procedures, wherever appropriate ameliorating the quality and integrity / probity of the work performed. But, owing to a lack of resources, the administrative support to the Office for Inspections and Investigations was provided by the Executive Office of the Department Administration and Management. This continued to be an anomalous situation since it meant that the Office for Inspections and Investigations was provided with essential services, involving staff, travel and other administrative matters, archives, secretariat, by the largest of the departments whose work it was supposed to review.

The Office for Inspections and Investigations as of 1 September 1993, in comparison with the previous "heteronomization" oversight structures, which were hierarchically subordinated to the Department Administration and Management, gained some degree of autonomy, but not full autonomy because somehow it was surrogated by the Secretary-General with the sentence "the Assistant Secretary-General will work closely with the Under-Secretary-General for Administration and Management" (UN document ST/SGB/263, 1993), gained some independence at some instances of its functions, and some decision making power namely operational, some freedom to audit and investigate at its own initiative without restrictions. Under this arrangement, however, the Secretary-General would continue to control in absolute the internal oversight functions through the surveillance of the Under Secretary-General Department Administration and Management. It was essential to distinguish clearly between the mandates and functions and those of Department Administration and Management and the Office for Inspections and Investigations itself. The Department Administration and Management had the responsibility for providing management services and for establishing sound management and financial systems and controls. The Office for Inspections and Investigations should provide for independent oversight so that it could ensure compliance with General Assembly resolutions and all UN rules and regulations through audits, monitoring of performance, inspections, evaluations

and investigations, which ought necessarily to include assessments of the work of the Department Administration and Management.

One year later the Office of Internal Oversight Services was created, and, in comparison with the previous Office for Inspections and Investigations "autonomization" oversight structure, gained autonomy, gained normative independence in many instances of its functions, and gained decision making power namely operational, freedom to audit and investigate at its own initiative without restrictions as well as over some aspects of the management of its human assets. The power to decide on its own budget however, was not delegated to Office of Internal Oversight Services by the General Assembly. This aspect of the functioning of the Office of Internal Oversight impaired seriously its independence because of the dependency it had to have securing the funding for its audits, investigations and other internal oversight activities from the auditees.

The internal auditing in the UN has followed the path of the audit profession, which had evolved significantly since the World War II. It evolved from a transaction-based and compliance function, usually located within the financial controller's department, in the UN case Department Administration and Management, for checking whether accounting operations were being correctly performed to a broader internal oversight function entailing management, value for money and governance aspects of the organizations.

Transactions

The impact of the changes operated in 1994 with the creation first of the Office for Inspections and Investigations, and then of the Office of Internal Oversight, had a bearing on the oversight transactions materialized in substantial adaptation changes in the contracts between the principals and the agents concerned: the General Assembly, the Secretary-General, and the internal oversight structures' heads. The changes were operated at a pace probably never seen before up to that time in the UN bureaucracy confirming Williamson assertion that adaption is the most critical problem of economic organization (Williamson, 1996, p. 26). In only one year the UN Secretariat witnessed an unusual organizational dynamic of adaptation for such public international bureaucracies: oversight transactions and the governance structures accommodating them were revamped twice.

What substantial changes occurred then? The management of these transactions was brought up two layers in the hierarchy of the Secretariat: from a divisional level inserted under the Department Administration and Management, to the highest echelon below the Secretary-General's position. The power of authority increased as also did the span of it. The visibility and importance in the organization also increased.

For the precedent period I concluded that oversight transactions at the UN were sovereign type of transactions. Is there any new added element or dimension that requires an adjustment of my previous conclusion? Whether the changes operated and negotiated for the new "oversight contract" carry any new dimensions or elements that justify changing my mind regarding the type of transactions designed within the new set up?

A sovereign transaction as defined by Williamson (1999, p. 321) contains the following elements: special needs for probity; implicate the security of the "state"; and, the executive is chiefly responsible. Attributes of these transactions include efficiency, equity, accountability, and authority (Wilson, 1989). Considering the definitions of the General Assembly when establishing the Office of Internal Oversight (see Appendix D), the internal audit, monitoring, inspections, and evaluation transactions fit Williamson's (1989, p. 321) sovereign transactions definition.

Judiciary transactions are those that the system of law courts administers to produce or deliver justice, and constitute the judicial branch of any "sovereignty". The distinctive important attribute of judiciary transactions is "independence" (Williamson, 1999, p. 321). Taking into consideration the definitions of the General Assembly, investigation transactions could fit in many instances of the judiciary transactions definition. Notwithstanding, given the institutional design of the UN which does not provide for separation of the executive from the judiciary powers endowing both to the SG. The investigation transactions to be carried out by the Office of Internal Oversight Investigation Division (OIOS/ID) lack the full judiciary independence accorded in institutional systems with clear separation of legislative, executive and judiciary powers. On this basis, missing the full independence dimension associated with separation of powers, a likely classification for the investigation transactions as entrusted to Office of Internal Oversight Investigation Division, I put forward, is "quasi-judiciary" transactions.

Transactions' Attributes

Asset Specificity

Professional knowledge and production of internal oversight services abiding to specific professional standards, rules and procedures to safeguard the integrity / probity of the outputs and the equity and fairness, as well as continuous investments in professional training are critical components to ensure the quality and the credibility of the outputs. However, this fundamental aspect of the internal oversight services was not included in the General Assembly' resolution that established the Office of Internal Oversight (Appendix D).

Uncertainty

The decision to revamp the internal oversight governance structure was routed on a series of adverse events impacting the UN reputation and therefore pressed by external forces such as through the news in the international media and the USA government. The new arrangement, having been a General Assembly's initiative changed the nature of the internal oversight transactions which, as soon as the General Assembly took the political initiative and then the decision to establish the Office of Internal Oversight reduced the uncertainty surrounding internal oversight. But if the uncertainty was reduced in terms of the increase of the completeness of the internal oversight contract, the complexity increased as the new Office of Internal Oversight contract is a tripartite one involving the General Assembly, the Secretary-General and the Under Secretary-General Office of Internal Oversight structures. This complexity increased also the transaction costs and the potential for increased *ex post* frictions and hazards: more interactions and cooperation efforts were necessary. Another uncertainty hazard that remained unresolved and could elevate the *ex post* transaction costs concerned the sources of funding to support the internal oversight activities entrusted to the Office of Internal Oversight. The Office of Internal Oversight was not provided the correspondent autonomy and authority regarding securing the funding and the required human resources to fulfill its purposes and remained dependent in this regard to the willing of its auditees – a serious potential hindrance to the exercise of its independence and its performance efficacy.

Frequency

Frequency was very high: the internal oversight transactions were expected to occur with high frequency and had gained more visibility and importance with the General Assembly's reform.

Probity

Up to the point that the integrity of the internal oversight transactions were administered under the governance structures within the remit and responsibility of the Secretary-General only (Department Administration Management and after the Office Inspections and Investigations), the probity hazards were limited to the Secretary-General's behavior and to the behavior of the head of the internal oversight hierarchical structure in which the transactions were operationally developed and administered only. Now, with the creation of the new governance structure Office of Internal Oversight, where the General Assembly became a party to the tripartite internal oversight contract, the probity hazards, whichever they would be, would have a bearing to the General Assembly behavior as well. The organizational change had enlarged the scope of responsibility for internal oversight.

Alignment/Misalignment

Neither the General Assembly nor the Secretary-General discussed or equated the option to outsourcing the internal oversight when the decision to reform the extant oversight structures arose in both 1993 and 1994. The decision to increase the autonomy of the "heteronomization" extant structures was justified based upon the need to increase independence and also to increase capacity - universe coverage, and capabilities – professional qualifications and skills of the staff allocated to the internal oversight functions.

In confrontation with the central hypothesis of TCE the option was the most efficacious given that two conditions verified:

- The internal oversight transactions as defined in 1994 by the General-Assembly were organized internally (vertical integration) and were of two types: sovereign type as far as internal audit, monitoring and inspections and evaluation were concerned; quasi judiciary as far as the investigation transactions were concerned;

- There was alignment between the type of transactions, the frequency (high), the high specificity of human resources required, and the governance structure chosen to administer them.

VI.2. The Period 1996 – 2003: The Turmoil of the Oil-for-Food Program and the Scandal

The Oil-for-Food Programme was established in April 1995 under the remit of the United Nations Secretariat through the United Nations Security Council's Resolution 986 (following Resolution 661 which imposed embargo sanctions on Iraq in the aftermath of Iraq's invasion of Kuwait in 1990). The program was built as a mean to bridge the gap between diplomacy and force to relieve the negative impact to the Iraqi population of the UN Security Council sanctions, in the form of restraints on trade, placed on Iraq at the time of its invasion of Kuwait in 1990 and maintained after the Gulf War. Without the possibility of trading oil in the global markets and the consequent scarcity of foreign exchange for food and medical supplies, reports of increasing malnutrition, rising infant mortality, and other health problems in Iraq became a source of humanitarian concern within the UN and among its member states. The program was designed to allow that limited amounts of oil exports would be permitted under UN surveillance, with the proceeds deposited in escrow accounts (Meyer and Califano, 2006).

The program, which was initially designed to be a temporary endeavor, lasted from December 1996 to the USA-led invasion of Iraq in 2003 and developed over 13 phases of 180 days each. During this period, Iraq sold approximately 3.6 billion oil barrels to 228 companies, worthing an estimated $64.2 billion to the UN Iraq BNP Paribas escrow bank account. This income held by the UN was to be used in exchange to purchase food, medical supplies and other humanitarian materials by the Iraqi government (UN Office of the Iraq Program Oil-for-Food website, http://www.un.org/Depts/oip).

The Oil-for-Food Programme represents for the UN history the greatest enterprise it undertook in terms of the size of the financial and human resources involved, in terms of the number and the variety of entities involved and, above all, in terms of complexity of its organization and management (Congressional Research Service – USA, 2005). Some $110

billion dollars of sales of Iraqi oil and purchases of humanitarian goods were involved[3], all under the UN surveillance (Meyer and Califano, 2006).

The governance system of the program was established by the United Nations Security Council Resolution 986 (1995) which required the oil sales to be subject to the United Nations Security Council's Iraq sanctions committee, known as "the 661 Committee" and created under Resolution 661 (1990), an oversight committee that comprised representatives from each of the fifteen members of the Security Council (USA, Russia, China, UK, and France). Companies interested in purchasing Iraq oil, were required to register with the UN through a national government. The companies were then selected by and contracted directly with Iraq's State Oil Marketing Organization. Resolution 986 also required that each oil purchase reflected fair market value and be accompanied by a letter of credit payable from the oil purchaser's bank to the UN Iraq BNP Paribas escrow bank account. Each contract was subject to review by the UN oil overseers and, in some cases, by the 661 Committee. Resolution 661 also required the selection of independent experts in international oil trade to assist in review of contracts and pricing (UN Office of the Iraq Program Oil-for-Food website, http://www.un.org/Depts/oip).

It was only one year after Resolution 986, on 20 May 1996, that a Memorandum of Understanding between Iraq and the UN was set to establish the procedures for the Program's implementation. The first oil was exported under the Program in December 1996 and the first shipment of supplies arrived under the Program in March 1997. The hiring of the Program's three prime contractors followed: the bank to manage the escrow account – BNP Paribas (French); the inspection company to inspect the oil leaving Iraq – Saybolt Eastern Hemisphere BV (Dutch); an

[3] According to the United Nations Office of the Iraq Program Oil-for-Food website – (http://www.un.org/depts/oip/background - accessed on 3 July 2013) "As of 21 November 2003 when the Oil-for-Food Programme was terminated in keeping with Security Council resolution 1483 (22 May 2003), some $46 billion worth of humanitarian supplies, including about $3.8 billion worth of oil spare parts, had been approved by the 661 Sanctions Committee and the Office of the Iraq Programme. Of this amount, almost $31 billion worth of humanitarian supplies and equipment had been delivered to Iraq, including $1.6 billion worth of oil industry spare parts and equipment. An additional $8.2 billion worth of approved and funded supplies were in the production and delivery pipeline".

inspection company to inspect the goods arriving in Iraq – Lloyd's Register Inspection, Ltd (UK) (UN Office of the Iraq Program Oil-for-Food website, http://www.un.org/Depts/oip, accessed on 3 July 2013).

In the negotiations with the UN the Iraqi government managed to retain some critical operational aspects namely the choice of an escrow bank, and subject to minimal UN review as Iraq could determine the buyers of oil and sellers of goods and the prices to be paid, and most importantly, it managed to limit the observation and inspection procedures meant to assure the delivery and proper use of humanitarian aid. The idea was to channel help to the Iraqi people but avoiding Sadam regime the direct access to funds that could be misused to military purposes. The proceeds of oil sales were deposited in an escrow bank account set up by the UN Secretary-General and its use was limited whereas about 66% was earmarked to buy medicine, health supplies, foodstuffs, and essential civilian needs for the Iraqi people. Of this 53% was initially designated for the population in central and southern Iraq and 13% for the Kurds in northern Iraq. The remaining third was designed to compensating victims of the Gulf War, paying for the costs of UN weapons inspections, and covering the UN's own costs to administer the program (2.2%) (Meyer and Califano, 2006).

This 2.2% covered the governance structure of the Programme created at the UN headquarters in New York. At the UN Secretariat in New York, the Office of the Oil-for-Food Program (OIP), headed by an Executive Director (Benon Sevan from Cyprus), appointed by the Secretary-General Annan and reporting directly to him, was created and made responsible for the overall management and coordination of all UN humanitarian activities in Iraq and the procedures established by the United Nations Security Council and its Committee set up by resolution 661 (1990), as well as the 1996 Memorandum of Understanding between the United Nations and the Government of Iraq. The UN Office of the Iraq Program administered the Program as an operation separate and distinct from all other UN activities within the context of the former sanctions regime and the purview of the United Nations Monitoring, Verification and

Inspection Commission[4], the International Atomic Energy Agency (IAEA) and the United Nations Compensation Commission.

In Iraq, the United Nations Office of the Humanitarian Coordinator in Iraq was an integral part of the United Nations Office of the Iraq Program headquartered in New York: reporting directly to the Executive Director of the Oil-for-Food Program, the Humanitarian Coordinator in Iraq was responsible for the management and implementation of the Program in the field.

Internal oversight governance of the Oil-for-Food Programme at the UN level was entrusted by the UN Secretary-General to the UN Office of the Iraq Program (OIP), but still under the Secretary-General´s oversight authority, the United Nations Security Council‘s Iraq sanctions committee, a subsidiary committee established by the Security Council but under its oversight remit and responsibility, and the Office of Internal Oversight reporting to the Secretary-General and through him to the General Assembly. The Board of Auditors and the Joint Inspection Unit had also oversight responsibilities in the sphere of their respective mandates.

Nine UN specialized agencies and programs were responsible for and directly involved in implementing the Program in the three northern governorates: Food and Agriculture Organization (FAO), United Nations Educational Scientific and Culture Organization (UNESCO), World Health Organization (WHO), International Telecommunications Union (ITU), United Nations Children’s Fund (UNICEF), United Nations Development Program (UNDP), World Food Program (WFP), United Nations Office for project Services (UNOPS), and United Nations Human Settlements Programme (UN-Habitat) (UN Office of the Iraq Program Oil-for-Food website, http://www.un.org/Depts/oip).

According to the United Nations Office of the Iraq Program Oil-for-Food website (http://www.un.org/Depts/oip) “In addition nine specialized UN agencies and programs were responsible for and directly involved in implementing the Program in the field in Iraq…. The programme operated against distribution plans prepared at the beginning of each phase by the Government of Iraq and approved by the United Nations Secretary-General. Once approved, the distribution plan became the basis for Iraq’s use of revenue raised during that phase”.

[4] Replaced the United Nations Special Commission

As early as 2000, UN oil overseers alerted the United Nations Security Council (UNSC) to suspicions of illegal oil surcharges by the Iraqi government, but the UN Security Council members nevertheless unanimously approved the contracts (International Debates, 2005).

Heaton (2005) demonstrates that nations with seats on the UN Security Council received a greater number and a greater value of these contracts being the receipt of these contracts positively associated with pro-Iraqi votes; the Iraqi government was more akin to give contracts to countries seated on the UN Security Council that had exhibited prior support for the Iraqi regime.

To this respect USA Government Accountability Office (GAO, 2004, p. 4) observed that "estimates that from 1997- 2002, the former Iraqi regime attained $10.1 billion in illegal revenues from the Oil for Food program, including $5.7 billion in oil smuggled out of Iraq and $4.4 billion through surcharges on oil sales and illicit commissions from suppliers exporting goods to Iraq. This estimate includes oil revenue and contract amounts for 2002, updated letters of credit from prior years, and newer estimates of illicit commissions from commodity suppliers", and put in evidence that the sanctions committee would have taken some actions to attempt stopping the illegal surcharges on oil, but it was unclear whether any action to restrain the commissions on commodity contracts were pursued. The Government Accountability Office (GAO, 2004) also stresses that the Office of Internal Oversight's internal audit reports raised some operational concerns in procurement, coordination, monitoring, and oversight but did not report any instances of fraudulent practices.

The media started to warn about serious problems concerning the mismanagement and lack of oversight of the Oil-for-Food Programme and an emerging major scandal from late 2002 onwards (Gordon, 2002; Hosenball, 2002; Rosett, 2003a and 2003b). There was evident lack of transparency on the workings and decisions of the Security Council 661 committee's and of the public information. It was evident that Saddam Hussein had used the programme in his own benefit bypassing the sanctions imposed by the UN Security Council and Secretary-General Annan was given direct authority to sign off on all goods not itemized on a special watch list putting a veil of secrecy over billions of dollars in contracts.

The scandal in the news continued to develop. Rosett (2003a) reported the following:

> What began as a relief program for Iraqis suffering under sanctions turned into a multibillion-dollar contracting business flowing through the shrouded books of the United Nations. By the end, the Russians were selling the Baathist elite luxury cars, the French were providing broadcasting equipment for the Information Ministry, and the Germans and Chinese worked on the phone system. The United Nations refused to disclose anything beyond the generic details of the contracts.… Now, with control over the remains of the program to be shifted to the Coalition Provisional Authority, those records should be released. Not only should the Iraqi people know what their money went for, the data could provide an illuminating context for the current Russian, French, and German indignation over the American contracting list, and for the diplomatic jousting of the past year.

And Sachs, on 1 March 2004, in an article published in the International Herald Tribune openly revealed what was going on:

> In its final years in power, Saddam Hussein's government systematically extracted billions of dollars in kickbacks … funneling most of the illicit funds through a network of foreign bank accounts in violation of United Nations sanctions.… Iraq's sanctions-busting has long been an open [public] secret. Two years ago, the U.S. General Accounting Office [GAO] estimated that oil smuggling had generated nearly $900 million a year for Iraq. But the dimensions of the corruption have only lately become clear from…newly available documents and from revelations by government officials … 70 percent of … [suppliers of $8.7 billion in outstanding oil-for-food contracts] had inflated their prices and agreed to pay a 10 percent kickback…. UN overseers said they were unaware of the systematic skimming of oil-for-food revenues … [adding that] they were focused on running aid programs.… Ali Allawi, …[the] interim Iraqi trade minister [said] 'You had rings involved in supplying shoddy goods. You had a system of payoffs to … nearby countries'. 'Everybody was feeding off the carcass of what was Iraq'. As ministry officials and government documents portrayed it, the oil-for-food programme quickly evolved into an open bazaar of payoffs, favoritism and kickbacks.

The scandal exploded in early 2004, after an Iraqi newspaper published a list of about 270 people including UN officials, politicians and companies it alleged may have profited from the illicit sale of Iraqi oil during the Oil-for-Food Programme (BBC news website- http://www.bbc.co.uk/search/news/oil-for-food). The pressures in the media forced the Secretary-General Annan to react proposing an internal inquiry to be carried out by the Investigation Division of the Office of Internal Oversight. However,

> Acting in response to criticism that the in-house inquiry already in place was insufficient, Annan said a wider investigation was needed to 'prevent an erosion of trust and hope that the international community has invested in the organization'. The [Security] Council has shown no enthusiasm for a comprehensive inquiry that inevitably would look into the activities of middlemen and banks, many of whom are from some of its principal countries like France and Russia [The French president of the Security Council for this month] dismissed the possibility earlier Friday, saying the council was "not seized of the matter (Hoge, 2004).

After some debate and concern within the Security Council, and criticism of his proposed internal investigations, Mr. Annan decided for an external investigation inviting Mr. Paul Volcker, the former USA Federal Reserve Chairman (once again[5], see section V.3 above) to chair an "Independent High-Level Inquiry". The newspapers continued to reveal the dealings and discussions inside the UN:

> Russia dropped its objection on Tuesday to a proposed investigation of the United Nation's scandal-ridden oil-for-food program… Critics of the United Nations have seized on the accusations to discredit the organization … and cast doubts on Annan's willingness to permit a thorough investigation. Annan disclosed last week that he had selected [former USA Federal Reserve chairman Paul Volcker, 76, to head the panel] … the nomination had stalled on Friday

[5] Mr. Volcker was co-head of the report on *Financing an Effective United Nations: A report of the Independent Advisory Group on U.N. financing*, Ford Foundation, New York, February 1993. That report concluded *inter alia* that "The future credibility of the U.N. will depend in large measure on the effectiveness of its management, on the quality of its staff, and on improvements in its structure and administration." (p. 3)

> when Russia said it would not agree to a Security Council resolution that Volcker said he needed to [have] the necessary authority to conduct the wide-ranging inquiry that Annan was seeking. Among the people named in documents that have emerged in Iraq is Benon Sevan, a UN official who headed the oil-for-food program and allegedly accepted oil allotments himself. He has denied the charges. The documents also showed that Kojo Annan, the Secretary-General's son, was a consultant for Cotecna, a Swiss company contracted by the program. UN officials say an [internal UN] investigation in 1999 … showed that no one handling the contract was aware of the affiliation (Hoge, 2004a and 2004b).

Once again, in the history of the UN the solution adopted to resolve a crisis of critical and relevant events connected with alleged widespread mismanagement, lack of adequate internal controls, and corruption, followed the same pattern observed in the past (back in 1993): on 21 April 2004, in the wake of adverse news in the international press, alleging fraud and corruption at the management of the Oil-for-Food Programme, the Secretary-General Annan, with the endorsement of the UN Security Council, appointed "an independent high-level inquiry to investigate the administration and management of the Oil-for-Food Program in Iraq" (UN document Security Council Resolution 1538, 2004) but the Office of Internal Oversight was not involved in this inquiry into the alleged corruption and mismanagement of the Oil-for-Food Programme. While setting up the Independent Inquiry Committee, Secretary-General Annan terminated the Office of Internal Oversight's ongoing investigation into the Oil-for-Food Programme (Appendix E), notwithstanding that the Office of Internal Oversight was the extant governance structure with statutory mandate and responsibilities entrusted by the General Assembly to carry audits and investigations (Appendix D).

Several institutional issues emerge from the above. The Secretary-General had gone beyond his remit of authority trumpeting the General Assembly's authority, and, by the same token, also the Office of Internal Oversight's authority and independence when terminating the undergoing internal inquiry into the Oil-for-Food Programme to contracting out an inquiry committee. This represents a breach of vertical probity but was simultaneously an adaptive move not in the sense of the "economy of the organization" as theorized in TCE, but in a pure self and

collective opportunistic interest move "to save their personal face" to rebuild reputation and trust. In this case the "remediableness" criterion (Williamson, 1999, p. 316) that "an extant mode of organization for which no superior feasible alternative can be described and implemented with expected net gains is presumed to be efficient" did not verify. Corruption was committed at the Oil-for-Food Programme governance structures level, not at the Office of Internal Oversight.

The media continued to report the mistrust at some instances about the ability of the UN to investigate itself:

> Several [USA] congressional committees, saying they mistrust the UN's willingness to examine itself, are looking into the charges, and some critics say the scandal calls into question the organization's work in the Iraqi transition and Annan's fitness to remain in office.… Joining [Paul] Volcker on the new panel are Richard Goldstone, a prosecutor for the international criminal tribunals in Rwanda and Yugoslavia, and Mark Peith, a Swiss law professor with expertise in tracking money laundering. Volcker pledged that the inquiry would be "full", "fair", and "conclusive". He said his first task would be to see if any UN officials were involved in the corruption, and he said he hoped to have preliminary conclusions in three months (Hoge, 2004b).

Mr. Annan and others also used the media to go on the attack aggressively, starting with the Security Council, and continuing with the Coalition Provisional Authority[6].

> There is now no doubt that the [UN Oil-for-Food] program was subject to massive fraud, perhaps…more than $4 billion … Saddam [Hussein] finally signed on [to the program] … in 1996, on condition that Iraq should determine who bought the oil and which firms supplied the food and medicines. The [UN, seeking to get aid] flowing to the increasingly desperate Iraqi masses, agreed…. The question is whether the UN Secretariat was to blame…or the Security

[6] The Coalition Provisional Authority was established as a transitional government following the invasion of Iraq by the United States, United Kingdom and their allies, members of the Multi-National Force – Iraq which was formed to oust the government of Saddam Hussein in 2003. Citing United Nations Security Council Resolution 1483 (2003), and the laws of war, the CPA vested itself with executive, legislative, and judicial authority over the Iraqi government from the period of the CPA's inception on 21 April 2003, until its dissolution on 28 June 2004.

> Council….In fact, the [UN OIP]…did report problems on pricing to the Security Council … [and] also alerted [it] to pricing problems in the purchase of humanitarian goods…. Yet not one of the 36,000 … contracts … was blocked by the Council because of suspect pricing…the British and Americans…knew that there were crooked deals [but]…had other priorities…Paris and Moscow…were bitterly opposed to the sanctions and had no interest in pushing investigations…. Thus it was Security Council realpolitik that ensured that the Oil-for-Food scams were never seriously investigated, and it is here that primary responsibility for UN inaction must lie (Mack[7], 2004).

A predictable scandal exploded, this being an "extreme event" in TCE (Williamson, 1999, p. 322). The adaptation strategy adopted was the contracting out of an inquiry committee as well as disregarding the extant Office of Internal Oversight governance structure. This Secretary-General's decision is not predicted by TCE, by the contrary, it contradicts the theory, and therefore cannot be explained through its lens. TCE predicts that sovereign and judiciary transactions are best governed under a public bureau (vertical integration solution). According to TCE the underlying cause for the scandal lies on serious and extended failures of probity at all levels of the Oil-for-Food programme leadership and management, involving a great number of actors within the UN and outside contractors. These failures would be relieved by governance structures as predicted by TCE (Williamson, 1999, p. 323), which would have led in the present case the extant Office of Internal Oversight to carry out the inquiry, but, instead the ongoing inquiry was all of a sudden terminated and the Office of Internal Oversight was moved aside of the outside contracted new inquiry. The decision of the Secretary-General went precisely the opposite direction, thus, TCE cannot explain the solution adopted by the Secretary-General to inquire the scandal insofar as the deep causes of probity hazards, ethics failures, are not considered in the model. The underlying causes are to be found in the character, behavior, of the individuals occupying leading positions at the UN at several instances, belonging to the realm of ethics (McCloskey, 2006, pp. 321-329). My conclusion is that TCE has to be modified to include

[7] Mr. Mack was director of the strategic planning unit in the executive office of the UN Secretary-General from 1998 to 2001.

"ethics" as a core behavioral assumption attached to human actors to the study of economic organization along with "bounded rationality", "opportunism", and "farsighted behavior".

As the crisis was hitting strongly the UN the blame game spread almost everywhere: to the Secretariat, to the Security Council, to the Security Council permanent representative members, to other Member States, to the Office of Internal Oversight, to the General Assembly's Fifth Committee, and to contractors.

Meyer and Califano (2006, p. x) state that "almost from the start, questions arose about the design of the Program and its administration", but they do not disclose from which quarters the questioning arose. Important is recalling that this fundamental and founding aspect of the Oil-for-Food Programme has never been object of any review, audit or analysis inside, or outside the UN. If such an early official warning would have been made possible and available, if it would have been plausible or even possible to materialize it in the context of the UN "rules of the game", i.e., the Charter (Appendix A), then it could possibly have helped prevent the disaster to mount. But the disaster became bigger and bigger and at the UN there is not in place any governance mechanism enacted to prevent such type of events to emerge and grow without being stopped.

At its own peril the USA government launched a few other inquiries: several U.S. congressional committees had begun inquiries into UN management of the Oil-for-Food program and USA oversight through its role on the sanctions committee (GAO, 2004, p. 14). In July 2004 the USA Government Accountability Office released the first in-depth study on the Oil-for-Food Programme. It estimated that:

> […] the former Iraqi regime acquired $10.1 billion in illegal revenues – $5.7 billion in oil smuggled out of Iraq and $4.4 billion in surcharges on oil sales and illicit charges from suppliers exporting goods to Iraq through the Oil for Food program. The United Nations…Office of the Iraq Program (OIP) and the Security Council's Iraq sanctions committee [were] … responsible for … [program oversight]. However, the Security Council allowed the Iraqi government, as a sovereign entity, to negotiate contracts directly with purchasers of Iraqi oil and suppliers of commodities … an important factor in

> enabling Iraq to levy illegal surcharges and commissions. OIP was responsible for examining Iraqi contracts for price and value, but it is unclear how it performed this function … U.N. external audit [BOA] reports contained no findings of program fraud. …brief summaries of internal audit [OIOS] reports covering the Oil-for-Food program from July 1, 1996, through June 30, 2003…identified a variety of operational concerns involving in procurement, inflated pricing and inventory controls, coordination, monitoring and oversight. Ongoing investigations [might] examine … [how the program structure enabled Iraq to obtain illegal revenues], the role of member states in monitoring and enforcing the sanctions, actions taken to reduce oil smuggling, and responsibilities and procedures for assessing price reasonableness in commodity contracts (GAO, 2004, pp. 4-11).

None of the "operational" oversight mechanisms, i.e., the Board of Auditors, Joint Inspection Unit and the Office of Internal Oversight audit reports contained any findings of fraud and corruption during the seven years duration of the Oil-for-Food Programme. These are severe breaches of probity according to TCE definition. These oversight structures were established to be the frontline safeguards of the UN mission and purposes to minimize the risks attached to the malfunction of the bureaucratic machine, but they all failed in an astonishing manner.

VI.3. The period 1995 – 2005 of the Office of Internal Oversight Services

The Office of Internal Oversight was established "enjoying complete operational independence in the conduct of its duties" (Boutros-Ghali, 1996, p. 1) to provide full array of oversight services to the UN Secretary-General: internal audit, management consulting, program evaluation, monitoring, inspection, and investigation services in August 1994. It can also undertake proactive investigations of high-risk operations or activities, especially with respect to fraud and corruption, and provide recommendations for corrective action to minimize the risk of such violations (United Nations OIOS website http://www.un.org/Depts/oios).

The period 1995 – 2005 bore the witness of two UN Secretary-Generals, Mr. Boutrous-Ghali (from Egypt) and Mr. Kofi Annan (from Ghana), as well as two Office of Internal Oversight Under Secretary-Generals, MR. Paschke (from Germany) and Mr. Nair (from

Singapore). The evolvement of the Office of Internal Oversight therefore was inevitably determined by the action of this leadership which justifies a detailed insight into each of the terms of office of Mr. Paschke and Mr. Nair.

VI.3.1. 1994 – 1999: The first OIOS Under Secretary-General – Mr. Paschke

The year 1995 for the internal oversight started with a newly created Office of Internal Oversight in place, as well as with its recently appointed head, Under-Secretary General, Mr. Paschke. Mr. Paschke had been appointed for a five year term due to end in 1999. He started in 15 November, 1994 and some 20 days after he gave a speech at the Fifth Committee expressing his philosophy about how he viewed managing the Office. Mr. Paschke mentioned his desire to "work closely with managers and avoid confrontation" (UN Document Statement by Karl Th. Paschke to the Fifth Committee, 1994). This approach to internal oversight was in sharp contrast with the views of his predecessor's (Mr. Mohamed Aly Niazi) conclusions on the importance of sanctions considering UN's many reckless managers. As I noted the Secretary-General's appointment of Mr. Paschke had been a "vertical probity" failure and Mr. Paschke's philosophy and attitude could well undermine what appeared to have been the focus of the General Assembly's still nascent management accountability resolution of 1993, and the Thornburgh's report emphasis on the pivotal role of the new Inspector General's expected role of arms-length independence and assertive watchdog that professional audit standards impose upon professional auditors.

The starting dilemma for the Office of Internal Oversight was that it was supposed to deliver more and provide something new, better and more effective, but that it was requested to do so within existing resources. In fact, the only additional funds made available to the new office were those needed to upgrade an Assistant Secretary-General to an Under-Secretary-General post. In early December 1994, the new Under-Secretary-General went before the Fifth Committee and the Advisory Committee on Administrative and Budgetary Questions (UN Document Statement by Karl Th. Paschke to the Fifth Committee, 1994), described his philosophy, the plans and the aspirations he brought to the Office and stated that he could not measurably enhance the internal control mechanisms in the UN without more resources. In particular, he pointed to the need to intensify the audit coverage and shorten the audit cycle within the organization and to strengthen the new investigation function which, as it was its level

of staffing and professional experience, was unable to provide the investigation important additional element to oversight.

The legislative bodies (the General Assembly and its subsidiary committees) reacted favorably and Office of Internal Oversight, which had a total of 102 posts, was granted 5 additional Professional and 3 more General Service posts against the revised budget estimates for 1995, bringing the total number of posts to 110, including extra-budgetary posts. Beyond the ensuing moderate improvement in its staffing situation, this decision was understood as a significant and encouraging endorsement of its efforts to make internal oversight an effective, credible and independent component of the management structure of the UN.

Mr. Paschke informed the Fifth Committee that:

> […] permit me to tell you briefly my basic philosophy for the fulfillment of my duties…in general and for the [OIOS] in particular. First of all, I do not consider myself an antagonistic type of person.… I believe in consensus-seeking.… Results are better achieved through dialogue and quiet reasoning, in an atmosphere of mutual trust…above all, I see myself as an adviser to the Secretary-General and to senior officials, and as a counsel to line managers and to the Organization as a whole, for better management…
>
> My approach will not be primarily that of a critic. OIOS … should offer assistance to managers in implementing our recommendations … [and] to give…advice on putting into practice the measures we propose…. I understand that the primary responsibility for programme implementation rests with programme managers. The role of OIOS is to ensure that adequate systems for monitoring are in place in each department and office…I hope to encourage greater concern by managers throughout the United Nations with the results of their activities (UN Document Statement by Karl Th. Paschke to the Fifth Committee, 1994, pp. 4-5 and 7-8).

The new Investigation Unit still had to be equipped with a set of work procedures, a manual, etc., to provide a reliable frame of reference both to its employees and UN employees in general, so that due process was guaranteed, confidentiality of sources was assured and the

methodology of the investigating activity understood by all concerned. However, regarding investigation responsibilities, Mr. Paschke expressed his dislike with the new Office of Internal Oversight "hotline" mechanism, which the General Assembly had requested and insisted on to allow staff to report UN fraud and mismanagement anonymously. The General Assembly had in fact called for establishing whistleblower and hotline processes in considerable specific detail in Resolution 48/218 B (see Appendix D), and which was expanded upon in a Secretary-General's Bulletin (UN document ST/SGB/273, 1994, p. 13). Surprisingly, about this specific sensible aspect of the implementation of mechanisms to combatting fraud and corruption at the UN, Mr. Paschke told the Fifth Committee that:

> As part of the investigation function, we now have procedures for receiving confidential information … I will guarantee complete confidentiality to all those who wish to provide us with information on problems…. Having said this I must add immediately that I am not comfortable with receiving anonymous messages, and will certainly do nothing to encourage this practice. In any case, this should be seen as a system of last resort. The first, and by far the most important way, for staff to voice complaints and make suggestions must be to and through their immediate supervisors (UN Document Statement by Karl Th. Paschke to the Fifth Committee, 1994, pp. 11-12).

This Mr. Paschke's philosophy was adequate to apply to an environment and organizational culture where ethics prevail. Was the UN environment characterized by ethics? In this regard, the twenty year story telling in this thesis speaks by itself. In its first annual report of activities transmitted by the Secretary-General to the General Assembly (UN document, A/50/459, 1995, Preface), covering the period 15 November 1994 to 30 June 1995, Mr. Paschke took the stock regarding oversight at the UN pointing out some critical UN management problems: the complicated and numerous UN rules and regulations which confused rather than guided staff; the cumbersome personnel system which hindered the hiring of new talent while not terminating non-performers; a lack of good managers which necessitated urgent training programmes; poor communication and dialogue which led UN staff at all levels to "shun responsibility and accountability"; poor institutional memory and files; and far-flung UN duty stations in the field that "clearly lead a life of their own". He asserted:

> […].the bureaucracy has grown without pruning for many years; procedures and structures have become too rigid, frustrating creativity and individual initiative; overlapping and duplication of responsibilities have not been adequately addressed let alone eliminated (Preface).

Mr. Paschke did not include ethics as one acute problem among his many identified UN problems. Giving the recent events and the very reason why the Office of Internal Oversight was newly created, he was missing the point, at the least.

In 1995 the Joint Inspection Unit issued its report to the UN General Assembly on "Accountability, Management Improvement, and Oversight in the United Nations (JIU, 1995) giving its assessment of the operational situation of the new Office of Internal Oversight. It observed that the new Office was still establishing its role and it had roughly, in a one year period, issued only about a dozen of audit reports in addition to the Office of Internal Oversight annual activities report. The cause of this underperformance was found out to be caused by the lack of sufficient human resources available at the Office of Internal Oversight. Recalling, the Joint Inspection Unit had noted in 1993 that the new internal oversight governance structure should have from 200 to 800 staff instead of the 90 originally assigned, based on $4 to $5 billion of annual UN total expenditures and staffing ratios for similar public organizations. In fact, only eight posts were added in 1995, with an additional 11 net posts proposed for 1996-1997. The 1993 Joint Inspection Unit report noted that the unit would need new skills such as trained investigators and up-to-date computer systems experts, especially to fulfill its new responsibilities to deal with "waste, fraud and abuse". In recognition of this need for a mix of new specialized skills and for independent operations, the Under-Secretary-General of Office of Internal Oversight was then authorized to recruit staff directly for service with the Office rather than with the Secretariat as a whole, and to promote and to terminate them (JIU, 1995).

In 1996 the Diplomatic World Bulletin magazine (July 29-August 6) observed ironically that:

> Halfway through his term and answerable only to Member States, [Mr. Paschke] can look forward to a comfortable couple of years…. But United Nations observers are beginning to ask what has been achieved in exchange for

> … a free hand for Paschke. The answer is not encouraging … the original conception of Paschke's post was a combination of Grand Inquisitor and Super Sleuth. The final product, insiders say, falls far short of either…. 'The problem is that half the OIOS staff do not know anything about the UN' we are told, 'and the other half know everything there is to know but are part of the establishment and they are not going to make waves'. The results of OIOS's travails are paltry indeed…. There are whispers that senior staff need not fear their peccadilloes will be exposed. Paschke's Finest, it is said, will rake no muck above a certain level of political or bureaucratic influence (p. 10).

Mr. Paschke asserted early on, and often, that the UN had no more corruption problems than other organizations notwithstanding his blatant lack of expertise and experience in audit, investigations, and corruption-fighting. In a press briefing held at the UN headquarters in New York on 31 October, 1996 he responded to a correspondent who had asked the question:

> He had been asked that question before, and would repeat his answer now. He believed that the United Nations was certainly no worse than other comparable institutions…. In the first two years of his work he had come to the conclusion that fraud was not the main concern of the OIOS, but rather administrative weakness and a very limited administrative expertise, with many people handling sizeable amounts of money. It was, therefore, also a problem of enhancing management expertise and management savvy (UN document Press briefing by Under-Secretary-General for Internal Oversight Services, 1996).

During his first two years Mr. Paschke focused the Office of Internal Oversight audit priorities on peacekeeping and humanitarian field programmes, procurement, and new organization functions (like war crime tribunals). In 1998, the Office adopted a risk assessment process and a plan which seek to normally audit all parts of the UN on a rotation cycle of no more than four years (UN document A/51/432, 1996; UN document A/53/428, 1998).

In May 1997 the General Assembly (UN document A/RES/51/225, 1997) showed its concern with the internal oversight and noted its resolution "with deep concern the incidents of fraud and presumed fraud*"* (para. 11) reported not by the Office of Internal Oversight, but by the

UN external auditors. The General Assembly called on the Secretary-General to take necessary disciplinary action on cases of proven fraud and to "enhance the individual accountability of United Nations personnel, including through stronger managerial control" (para. 12). The Office of Internal Oversight investigation functions were not showing satisfactory results.

Externally, the character and the integrity of Mr. Paschke were also at issue in the media in March 1998 reporting that Mr. Paschke had accepted some DM 563,000 (about $325,000) in extra payments from the German government, a practice specifically forbidden by the UN Standards of Conduct for the International Civil Service (ICSC website, http://icsc.un.org/rootindex.asp) to which all UN system's officials are bound to comply. Mr. Paschke apparently did not promptly and publicly (or at all?) repay the money to his government (IO Watch website, http://www.iowatch.org). The reputation of OIOS leadership was therefore publicly exposed and undermined. This circumstance had its negative impact within the UN: the "tone at the top" from example (McCloskey, 2006, p. 329), crucial in any oversight body, as in any ethical community, had been relinquished. How could then the Office of Internal Oversight be perceived as respectful and professional internal oversight structure which should be binding its behavior to the ethical principles established in Standards of Conduct for International Civil Service and the Charter if its leader was "caught" overriding the "rules of the game" and no consequences arose to correct the situation? How could the Office of Internal Oversight be effective to enforce its recommendations? Performance issues are discussed in more detail further below.

However, only when the General Assembly itself identified several important areas for more focused oversight attention, in particular problems in human resources management such as personnel recruitment and selection, quality and fairness, did Office of Internal Oversight began some important, but very tardy, work on these subjects in 1998. Mr. Paschke then at least gradually joined others to urge such important actions as reform of defective UN internal control systems, completion of the modernization of UN information technology systems, and correction of grave personnel entitlements processing problems, but not the key ethical underlying issues (IO Watch website, http://www.iowatch.org).

Mr. Paschke, in his last annual activity report of July 1999, addressed to the Secretary-General and then transmitted to the General Assembly, took stock of the audit work realized

during his tenure and reported that it resulted in more than 100 audit assignments every year, yielding more than 1,000 recommendations for corrective action. In fact, there were 6,675 total recommendations made by the Office of Internal Oversight to UN management during Mr. Paschke's term, 93 percent by the auditors, with more than half of those devoted to only five programmes - the Departments of peacekeeping, management, and economic and social affairs, the UN Environmental Programme (UNEP), and the UN High Commissioner for Refugees (UNHCR) (UN document A/54/393, 1999, Preface).

These hundreds of audit reports reflected however work much more focused on compliance and process reviews than in performance audits in considerable part due to the continuing small size and limited resources of the Office (in July 1999 OIOS had available 54 audit staff and 15 investigation staff) (UN document A/54/393, 1999). While these audits had yielded some significant cost savings, apparently they were due largely to correction of bookkeeping errors and not a systematic accountability approach applied to rigorous performance reviews in need to contribute to improve the dysfunctional and weak UN's management culture prevailing at the UN.

On the quality and usefulness of the Office of Internal Oversight' reports, the General Assembly's Fifth Committee generally was not sure what it should do with the reports. Mr. Paschke observed in his last annual report (UN document A/54/393, 1999) that:

> As I write these lines, three previous annual reports, as well as several individual reports of OIOS, transmitted and introduced a long time ago, have still received no formal response from the Fifth Committee, although they have been thoroughly discussed and commented upon in that forum. I can only express my hope that this impasse will eventually be overcome and that the value added to the work of the United Nations by independent internal oversight will be recognized by all stakeholders (Preface).

The annual reports relied primarily on accounts of selected high-profile reviews. They provided quantitative statistics which focus on massive annual process reviews (hundreds of audits completed, thousands of recommendations made and many "accepted", and hundreds of staff reports about operational problems made to the Office's investigations unit). Not only are

these raw statistics not arranged, analyzed, and interpreted, they are difficult to compare and relate to other information, or to each other, in a meaningful way from year to year. They provide the General Assembly and the public with little or no transparency and sense of the all-important broader patterns of the UN organizational performance, effectiveness, management systems, and impact; a clear sense of where the major specific problems lie; or indications of new action steps needed, let alone those being taken (IO watch website, http://www.iowatch.org).

The annual activities report in 1998 asserts:

> In many [UN] departments and offices, there is still inadequate commitment to oversight, and, consequently no coordination or managerial mechanism that collects and analyses on a routine basis information on the progress made and results achieved under the various activities and programmes. Many departments still do not have either a senior planning and coordination function…or a unit to provide coordinated feedback.… Progress requires that [programme managers recognize] … such systems as basic management tools for improving efficiency and effectiveness of implementation.

Although resolution 48/218 B (Appendix D) and the OIOS terms of reference (UN document ST/SGB/273, 1994) referred briefly that OIOS "may" render management advisory services, Mr. Paschke had magnified that activity by labeling its major division "Audit and Management Consulting", and was keen to be perceived and viewed working partnering closely with managers and their programmes throughout the UN. Despite its above assertions in his previous report in 1998, in his last annual report (UN document A/54/393, 1999) Mr. Paschke reaffirmed what had been his positioning and philosophy while leading OIOS during its first five years of functioning:

> The independence of this Office is its most important and indispensable asset…. I had to wage a confidence-building campaign early on to convey to our various constituents, stakeholders and clients that this Office intended to be a partner rather than an adversary of management, proactive rather than detective, promoting effectiveness and efficiency rather than seeking

> retribution.… More and more, OIOS consultancy is actively sought…particularly in the areas of strengthened internal controls and improved management performance (Preface).

VI.3.2. 2000 – 2005: The second OIOS Under Secretary-General – Mr. Nair

The five-year term of Mr. Paschke ended in November 1999, but his successor, a banker and civil servant Mr. Dileep Nair of Singapore, was chosen by the Secretary-General only in February 2000 and took office only in April 2000. The Under Secretary-General's Office of Internal Oversight leadership was vacant for five months with no overlap or orderly transition. Once again, the selection and recruitment process that led to the appointment of Mr. Nair had many gross flaws which were also noticed by the media (Pisik, 2000): "[…] there was little transparency. Only the single nominee chosen by Secretary-General Annan – who is inter alia the chief UN administrative officer whose programmes are subject to OIOS review – was identified to the General Assembly for its rubber-stamp approval".

Although Secretary-General Annan had publicly stated that choosing the highest-caliber people was his goal, senior-level appointments such as that of Mr. Nair at the Office of Internal Oversight were made under his discretionary power, with no vacancy announcement, no publicized job description, and no standard recruitment or promotion procedures. Like the appointment of Mr. Paschke, the second selection to head Office of Internal Oversight position was not a publicly-scrutinized selection process. This also clearly undermined, once again, from the very beginning, the leadership of the internal oversight at the UN. This meant a repeated pattern failure of "vertical probity" signaling to the UN organization, to the UN system as a whole, and to the world community in general, serious disdain for proper, transparent, and professional selection of an oversight expert. This lack of integrity of the recruitment process conducted by the Secretary-General, endorsed by the General Assembly, was above all an ethical infringement, or the total absence of ethics, from the very top of the organization. The decision was taken and implemented in violation of the principles and the "rules of the game" of the UN. A virtuous person wants to be good "not just from his own point of view but from that of the community" (McCloskey, 2006, p. 322). Yet, and once again, no UN organ or official raised internally any serious objections, nor even the Board of Auditors or the Joint Inspection Unit. The term of office of Mr. Nair was then due to end in April 2005.

During the period from November 1999 until April 2000, Mr. Hans Corell, of Sweden, was chosen to assure *ad interim* the leadership of the Office of Internal Oversight, including the Investigation Section and its confidential records. Mr. Hans Corell was the head of the United Nations Legal Office (the office giving legal support to the UN Secretary-General which namely supports and conducts all legal procedures in labor disputes at the United Nations Administrative Tribunal defending the organization). This raised serious conflict-of-interest issues that might have compromised the independent and arms-length Office of Internal Oversight status and its responsibilities to protect staff confidentiality: then, during this six month period the investigation and the accusation powers were vested in the same official.

In February 2000, given the Oil-for-Food Programme's increase in size and complexity, the Office of Internal Oversight established the Iraq Programme Audit Section (IPAS), within the Internal Audit Division to provide audit coverage specifically for the Programme and relate programs (IIC 1st Interim Report, 2005, p. 171).

Some five months after Mr. Nair had taken office, an Investigations Section official gave an interview to The Observer International (Burke and Vulliamy, 2000, 3 September) which reported:

> The United Nations has been hit by an unprecedented wave of fraud, waste and corruption. Officials at its antifraud investigation unit say they are expecting to have to run more than 350 inquiries by the end of the year – nearly twice the total for 1998, and a 50 per cent increase on last year. Thousands of staff, contractors, and consultants have been interviewed in scores of countries…. The revelations will embarrass Kofi Annan, the UN Secretary-General, who is to welcome national leaders … to the "Millenium Summit" in New York next week…. One senior investigator said last week that the UN investigations unit's workload was greater than ever. We are seeing more and more frauds and abuses of authority….The OIOS's annual report, due out next month, will reveal cases of sloppy management, law enforcement, harassment and outright criminality…OIOS is working with dozens of international police forces – including Scotland Yard – on inquiries into the activities of UN personnel.

A month later, the Office of Internal Oversight annual report for 2000, Mr. Nair's first report, revealed that "The Investigations Section investigated 38 cases which were presented for administrative or disciplinary action: 22 of those cases were recommended for criminal prosecution by national law enforcement authorities" (UN document A/55/436, 2000, para. 156). This 2000 annual activities report disclosed the increasing steady workload, continuous understaffing, and oversight work that was overly-concentrated in the headquarters in New York and little overseas in the field missions and programmes (UN document A/55/436, 2000).

The 2001 Office of Internal Oversight annual activities report was more optimistic than the preceding one. It reported the launch of a new strategic planning approach intended to improve the coordination and implementation of its programme activities as mandated in the medium-term plan aiming at "leverage available resources optimally to accomplish results that add value to the service that OIOS provides to the Organization and the Member States" (p. 8). The Office of Internal Oversight considered that the strategic planning exercise had resulted in: a consolidated annual work programme; a schedule of joint assignments with the Board of Auditors and the Joint Inspection Unit; client profiles with assessments of individual client departments and their implementation of oversight recommendations; revamped semi-annual report to the Secretary-General and annual report to the General Assembly; establishment of key indicators of achievement for oversight; and the creation of an International Trust Fund to revamp and support the enhancement of the professional capacities in internal oversight. In addition the Office had restructured and merged monitoring, inspection, evaluation and consulting units into a new single division to increase the efficiency to the limited available resources in a more integrated approach (UN document A/56/381, 2001). This 2001 report left an important mark: it was the first time that the Oil-for-Food Programme was explicitly mentioned in an Office of Internal Oversight annual activities report. However it was only an announcement type of statement: "the Office has recently established a dedicated section within the Internal Audit Division for the Office of the Iraq Programme to ensure close coordination and, in some cases, jointly perform audit coverage of activities undertaken by nine United Nations agencies in Iraq" (UN document A/56/381, 2001, p. 8).

During this annual period ending 30 June 2001, Office of Internal Oversight's funding totaled USD 28.6 million, of which USD 10 million were from extra-budgetary sources. The

staffing level of the Office consisted of a total of 165 posts; 125 were Professionals and 40 were General Service. Seventy-four of the total posts were funded from extra-budgetary sources, including 33 resident auditor and investigator posts from individual peacekeeping missions (UN document A/56/381, 2001).

Regarding personnel management it was reminded that the Office of Internal Oversight Under-Secretary-General had been separately delegated the authority from the Secretary-General in 1995 (UN document ST/AI/401, 1995) to exercise a certain degree of latitude and control over the personnel and resources to meet the need for the Office's operational independence, but consistent with the UN regulations and rules. A separate Appointment and Promotion Panel, independent of the Secretariat appointment and promotion bodies, had also been established to advise the Office of Internal Oversight Under-Secretary-General on personnel matters. The Panel had considered 17 appointment, promotion and placement cases during this period (UN document A/56/381, 2001, p. 10; UN document, ORG/1139, 2001).

The 2002 Office of Internal Oversight annual activities report informed on a continued strategy supported on three main pillars: qualified staff, a culture of continuous improvement, and improvement of client relations. It introduced new initiatives of risk assessment; prioritizing investigative assignments to handle the increasing caseload; applying its internal management consultants to meet demands for services; supporting self-evaluation by program managers; and upgrading its performance management information systems. On undertaking these new initiatives it "responded with determination to calls by Member States for better use of [UN resources] by focusing its services to instill a greater sense of accountability throughout the Organization" (UN document A/57/451, 2002, Preface, pp. 7-9). Since the new tasks represented an effort which was not commensurate with the available resources accommodated in the Office of Internal Oversight biannual budget (regular and extra-budgetary funds), in order to achieve the proposed objectives, the Office called upon Member States for surplus extra-budgetary resources to be entrusted to "Trust Fund for Enhancing Professional Capacities for Internal Oversight" eventually established during 2001 (UN document A/57/451, 2002, p. 9).

For the period ending 30 June 2002 the Office of Internal Oversight's funding totaled USD 17.8 million, of which USD 7.8 million were from extra-budgetary sources and had a total of 179 posts: 131 in the Professional category and 48 in the General Service category. Eighty-

eight of those posts were funded from extra-budgetary resources, including 30 resident auditor and investigator posts for individual peacekeeping missions. The separate Appointment and Promotion Panel, which would be renamed the Office of Internal Oversight Review Body, considered 20 appointment, promotion and placement cases (UN document A/57/451, 2002, p. 10).

The 2003 Office of Internal Oversight annual activities report highlighted the implementation of a new approach to build its annual work plan driven to the prioritization of key risk areas for oversight: the highest risk areas identified then were safety and security, procurement, and peacekeeping. This practice was built up to better accommodate the increasing specific requests of the General Assembly "for new reviews and studies as well as updates of earlier oversight reports" (p. 4). It also emphasized the wish to get managers involved in identifying the most serious risks in their operations with the support of the expertise available at the Office, as well as to work in close collaboration with Member States and other oversight bodies "to optimize the use of resources and to avoid duplication among the oversight bodies" (UN document A/58/364, p. 4).

During the annual period ending 30 June 2003 the Office had total funds of USD 18.2 million, of which UDS 7.8 million was funded from extra-budgetary and a total of 185 staff (this in comparison with a total of 165 in 2001, one year after Mr. Nair had taken office) being 130 at the Professional level and 55 in the General Service category. Of those 94 were funded from extra-budgetary resources, including 27 resident auditor posts in the peacekeeping missions as well as 8 regional investigator posts for peacekeeping cases. During the period the Appointment and Promotion Panel considered 25 appointment, promotion and placement cases. At the end of its fourth term Mr. Nair had managed to increase steadily the human and financial resources entrusted to OIOS (UN document A/58/364).

The beginning of the year 2004 brought to light some adverse news in the media regarding allegations of widespread corruption and fraud: early in March at the Oil-for-Food Programme and, later in May a high profile case of sexual harassment committed against a woman staff member by the High Commissioner Ruud Lubbers (former Dutch prime minister) at the United Nations High Commissioner for Refugees (UNHCR in Geneva) requiring investigation by the Office of Internal Oversight.

The Lubbers case, as it was then most known, was paradigmatic as far as Office of Internal Oversight's exercise of its independence prerogative versus the Secretary-General's ultimate authority to overrule any findings is concerned. The following quotation from Fleck at the International Herald Tribune of 19 May, 2004, illustrated the public alarm with the case at international instances:

> Ruud Lubbers, the high commissioner for refugees [UNHCR] … confirmed … a sexual harassment complaint filed against him by a staff member. Lubbers, 65, a former Dutch prime minister, denied the allegations…. The woman … said the incident occurred at the end of a meeting as she, Lubbers and five male staff members were leaving the room. The woman told other staff members that she was "shocked and horrified", associates said. Lubbers said Dileep Nair, chief of the [OIOS] had told him of the complaint … filed … four months after the alleged harassment took place. Two UN investigators were sent…to Geneva by OIOS.

In June 2004 the Office of Internal Oversight contracted Deloitte & Touche LLP to conduct an Organizational Integrity Survey, as part of a process to develop an Organizational Integrity Initiative which had been launched in 1 May 2003 (UN document ORG/1381, 2003). The purpose was to measure both attitudes and perceptions about integrity among UN staff. Respondents to the survey were 6,075 covering the entire organization. The picture was quite negative showing that staff perceptions and concerns with unaddressed integrity and accountability problems. According to the survey overall conclusions, the staff perspective was summarized as follows (p. 9):

> Most of the infrastructure to support ethics and integrity is in place; accountability is not. There are perceived weaknesses, (e.g., protection from reprisal for identifying those who violate the guidelines on professional conduct) but such weaknesses may be…perceptions only. More importantly, staff seems to wonder: Who can (or should) be held accountable if leaders and supervisors are not? Who can care much about ethics and organizational integrity if leaders, supervisors and staff appear to not care and not caring has little impact on career success?

Hoge published in the International Herald Tribune, June 16, 2004 some of the comments made by staff members in this survey:

> The UN has a 'phone book' of rules and regulations which are totally useless as they are never practiced", a staff member is quoted as having said … [another said] 'Senior leaders caught in serious breaches of ethics should be punished, not promoted as usual', …[others still added] 'Get rid of the old boy network', 'That network is wide, tenacious and powerful…. So long as you can wind your way into that network, you are OK…. Opposing the network is certainly the end of a UN career'…. [The study] is being made public at a time when Secretary-General Kofi Annan has been forced by the widespread publicity [about corruption in the Iraq oil-for-food program] to appoint a high-level panel to look into them…. The new study records relatively high levels of worker satisfaction…but its most negative findings have to do with ingrown leadership and the lack of response to reports of corruption.

These survey findings led Secretary-General Annan to make the integrity survey results public but with a cover letter, which stated *inter alia* that:

> According to the survey, staff generally perceive that breaches of integrity and ethical conduct are insufficiently and inequitably addressed by the disciplinary system. At the same time, they voice concern about the consequences of 'whistle-blowing' or reporting on misconduct, and certainly about the mechanisms for such reporting…. Clearly … these need to be better known and made more accessible to staff at large. We will inform all staff about the means available to them for reporting on suspected misconduct. We will also develop measures to reinforce formal protection for whistle-blowers, while ensuring that they are not used to cloak false accusations … it is interesting to note that, while the great majority of staff believe that their own immediate supervisors demonstrate integrity and uphold the United Nations' values, the general view of senior leaders is less positive. The survey rightly emphasizes the need for senior leaders to lead by example, living up to the commitments they make in their annual compact with me… I will therefore be

> directing my senior colleagues to make much greater efforts in this area (UN document Secretary-General's letter of 4 June 2004, p. 3).

Remarkable is that it required the "integrity survey" for the Secretary-General to spell out for the first time the word "ethics".

Rosett, who has closely followed the evolution of the oil-for-food scandal for several years, gave her views of the factors underlying the situation in an article published on 16 June, 2004 in the Wall Street Journal:

> Does anyone see a problem here? The basic flaws are simple: Anytime you create a large institution, accord it great privileges of secrecy, give it a big budget and have it run immune from any sane standard of accountability, you are likely to get a corrupt organization…. The problem with the Secretariat isn't "tone" at the top. It's accountability at the top and secrecy throughout … [A real solution] … would probably require setting up a competing international institution, based on openness and accountability.

However, new adverse events were to come. While the Office of Internal Oversight's staff investigated the serious allegations at the UN High Commissioner for Refugees, and Mr. Nair up stand to maintain the inclusion of the investigation of Lubbers case in his annual activities report despite the pressure to the contrary on the part of the Secretary-General Annan, Mr. Nair himself was entrapped in a scandal of mismanagement allegations within the Office of Internal Oversight, as shown by the following quotes:

> The United Nation's anti-corruption department has been rocked by accusations that the office itself is corrupt. The head of the [OIOS] …, Dileep Nair, has been accused of promoting and recruiting people in ways that are not consistent with U. N. rules and regulations. Also, a senior investigator has been suspended and there have been accusations of financial and sexual misconduct. The scrutiny of Nair and his division comes at a delicate time, as the United Nations is under intense scrutiny for alleged abuse of the Iraqi oil-for-food program. Nair has been accused of covering up abuses [in that] … program…. Other allegations of impropriety include charges that some inside the OIOS

> received financial kickbacks in return for promoting people and that some people were promoted in exchange for sexual favors (Hunt, Fox News, June 16, 2004).

The allegations against Mr. Nair came at the time the Secretary-General had manifestly dissented and disagreed with him regarding the corroborating conclusions of the Office of Internal Oversight's investigators in the Lubber's sexual harassment case at UN High Commissioner for Refugees. BBC News reported on this dissent on July 15, 2004:

> One of the UN's most senior figures has been cleared of sexual harassment by Secretary-General…. Mr. Annan found that the complaint against [High Commissioner for Refugees Ruud Lubbers] 'could not be sustained by the evidence' [a UN spokesman] said. However, Mr. Annan said in a letter to staff of the [UNHCR] that he had written to Mr. Lubbers 'conveying in the strongest terms my concerns about the incident which gave rise to the complaint'. Mr. Annan's spokesman said the matter was now 'considered closed', and that efforts were being made to 'rebuild trust and confidence' among UNHCR staff**.**

The above shows one more "attack" to the Office of Internal Oversight's independence by the Secretary-General. One more time the Secretary-General hindered "probity" as defined in TCE insofar as, guided by self-interest to protect his personal position, he violated the "rules of the game" set by the General Assembly for the Office of Internal Oversight in many instances. As I noted, the General Assembly had left the Office of Internal Oversight "contract" (Appendix D) highly incomplete regarding the total absence of definition of "operational independence" leaving the door opened to the discretionary action of the Secretary-General. This circumstance would not in itself constitute a risk for infringements of the Office of Internal Oversight's independence prerogative if in the Secretary-General's position is an ethical individual who would guide his decisions recurring to the seven virtues, not only "prudence" (McCloskey, 2006, pp. 322-323).

While the turmoil caused by the investigations were going on contemporarily, i.e., the Oil-for-Food Programme scandal, the Lubbers harassment case, the Integrity Survey results, and, lately, the allegations of mismanagement and favoritism against Mr. Nair, the UN Board of

Auditors finally, and for the first time, reported in July that the UN lacked a comprehensive anti-fraud plan, and many UN offices have little or no policy and mandates in this respect. The Board of Auditors then recommended that the UN adopt a comprehensive corruption and fraud prevention plan with a coordination committee, appropriate training, follow-up processes, and a review of investigation processes away from headquarters (UN document A/59/5, 2004). The Secretary-General however attempted to soften this warning by stating that: "…some of the Board's comments may give the mistaken impression to the uninitiated reader that the potential for large-scale fraudulent and corrupted activities is widespread. The Administration assigns high priority to the issues of fraud and corruption" (UN document A/59/318, 2004, paras. 124-126).

The Office of Internal Oversight's annual activities report for the period ending 30 June 2004 was the fifth and the last report transmitted to the General Assembly by Mr. Nair, and marked a full decade of the Office of Internal Oversight existence. It included: rendering account of a self-evaluation exercise, the citation of its operational independence and the need to ensure its independence was a cornerstone of good governance; and, the need for a proper delegation of authority to the Office of Internal Oversight in this connection (UN document A/59/359, 2004).

In 2001 Mr. Nair had made, in its annual report, for the first time, a short reference to the Oil-for-Food programme. In his last 2004 report he came back to the issue of the Oil-for-Food Programme to inform that the Office of Internal Oversight had provided preliminary information as well as logistical and administrative support to the independent inquiry headed by Paul Volcker, which was set up by the Secretary-General (earlier in late March 2004) to look into allegations concerning the oil-for food programme. He added, the Office of Internal Oversight had made available all its audit reports into the Oil-for-Food Programme to facilitate the inquiry and had provided information on the status of the internal audit recommendations concerning the programme prescribed so far. Surprisingly, Mr. Nair did not report any reason for such a debacle in the Oil-for-Food Programme, nor he made any reference or explanation to the scandals going on in the media or to the fact that the Office of Internal Oversight's investigation division was not involved by the Secretary-General in this new investigation into the Oil-for-Food Programme and an "independent inquiry" had been organized chaired by the former USA Federal Reserve Chairman (for developments of these events see Section VI.4.1). Nor even a single word on this issue. Also the UN Board of Auditors omitted any reference to the Oil-for-Food Programme

scandal. However, he reported that the Office of Internal Oversight Investigation Division had initiated, developed and presented the first Uniform Guidelines for Investigations, which were subsequently endorsed by the International Investigators Conference, held in Brussels in April 2003 (UN document A/59/359, 2004).

The information provided by the Office of Internal Oversight to the General Assembly was, therefore, deficient, and consequently the Office of Internal Oversight and the Board of Auditors had also hindered "probity" in terms defined in TCE. The UN is an organization which is highly bureaucratized, highly regulated, however, as the reality well shows, rephrasing McCloskey (2006, p. 322) I say "What prevents the world community from being misled by the UN Secretary-General, by the UN General Assembly, by the UN Security Council, by the UN Board of Auditors, by the UN Office of Internal Oversight, by the UN Joint Inspection Unit is not the numerous wonderful UN Charter and other "rules of the game", but the courage, hope, faith, justice, love, temperance, and prudence of those individuals in power at the UN".

For 2004 the Office of Internal Oversight's funding totaled USD 23.5 million, of which USD 11.8 million were funded from extra-budgetary sources. As at the end of June 2004, the Office had a total of 180 posts: 124 at the Professional and 56 at the General Service level. Of these posts, 89 were funded from extra-budgetary sources, including 27 resident auditor posts in the peacekeeping missions and 8 regional investigator posts for peacekeeping cases. The Review Body, formerly the Appointment and Promotion Panel, considered 20 appointment, promotion and placement cases (UN document A/59/359, 2004).

The Secretary-General Annan included his specific comments to the 2004 Office of Internal Oversight's annual activities report for transmission to the General Assembly with a proposal for the General Assembly to commend a comprehensive review of the office's operations. This proposal denotes that the Secretary-General did make a sharp difference in the tone and the substance between Mr. Paschke's and Mr. Nair's last annual activities reports: in the case of Mr. Pasckhe the Secretary-General commented warmly that the independence of the Office had never been compromised during his tenure, and that he had enjoyed Mr. Annan's complete support, but in case of Mr. Nair he passed on a clear message of last recourse admonition:

> This year marks the tenth anniversary of the [OIOS]… Given the critical nature of the responsibilities entrusted to the Office, and that since its inception no independent evaluation has been carried out…it may be timely for the General Assembly to consider initiating a comprehensive review of its operations…. Such a review should be aimed at determining how to strengthen the capacity to deliver the mandates given by the General Assembly. The review will also provide me, as chief administrative officer of the Organization, an assessment of how well OIOS can assist me in the efficient and effective management of the United Nations. Should this proposal be endorsed by the General Assembly, I would be ready to establish a multidisciplinary panel of outside experts to conduct the review (UN document A/59/359, 2004, p. 1).

This proposal by Mr. Annan was not inconsequential. Given that the Office of Internal Oversight just had completed its own self-evaluation, the same exercise that Mr. Pashcke had carried out before the end of its five year term. The General Assembly itself was due to make another five-year assessment of the Office's work in 2004 as established by the General Assembly in 1999 (UN document 48/218 B and 54/244), Mr. Annan's proposed review would jeopardize or actually derail the General Assembly's review. This proposal occurred just after Mr. Annan engaged in a dissent with the Mr. Nair concerning the sexual harassment allegations against Mr. Lubbers toppled by accusations of many other scandals as well.

This proposal of an independent review was the second of its type in a row up to this point in time during 2004: first the Oil-for-Food Programme inquiry, second the independent review of the Office of Internal Oversight's operations. This recurrent practice denotes a Secretary-General's behavior pattern: whenever an adverse event appears to threat the extant political equilibriums, or his own personal interests, he made recourse to external entities to carry out "independent" investigations. These Secretary-General's "independent reviews" are characterized by: the Secretary-General sets the terms of the review, the Secretary-General selects the people who will lead it, the Secretary-General is the recipient (and the customer) of the final report, and the Secretary-General decides what to do with the conclusions and recommendations made by the "independent" investigators. As it is clear this "independence" has nothing to do with the Institute of Internal Auditors and INTOSAI definitions of "independence".

Any such investigations on the Oil-for-Food Programme, and on the Office of Internal Oversight operations, if they were intended to be truly independent, would have to be fully implemented and monitored under the remit of authority and responsibility of the General Assembly which established back in 1994 the Office of Internal Oversight to which it entrusted the investigation functions at the UN aligned with the TCE central hypothesis. This critical issue will be further discussed below.

The turmoil continued and adverse events were unfolding like a cascade. During the 59th General Assembly session a strong admonishment to the Secretary-General Annan came from the staff representatives before the Fifth Committee of the General Assembly in October 2004:

> Rosemarie Waters, President of the United Nations Staff Union, said that the measures introduced in the past six years had had a profound and sometimes deleterious effect on the staff of the Organization. […] management had been reforming itself and increasing management authority, while reducing accountability. The Staff Union had the greatest respect for the Secretary-General's vision for the Organization and had supported the goals of his reform programme. It could not, however, support the erosion of staff rights and dissolution of oversight mechanisms as a means of implementation, and it could not continue legitimizing actions in which staff, through their elected representatives, had no meaningful role to play…
>
> The organization had yet to establish concrete measures for individual accountability, she continued. It was essential that areas with expanded delegation of authority for personnel decisions … should be carefully examined, and, if abuses were found, such delegation should be revoked. The … [OHRM] had informed staff representatives of its inability to enforce accountability because they lacked central authority. The Fifth Committee may wish to recommend that concrete individual accountability be developed, in consultation with staff representatives, on a priority basis (UN document GA/AB/3641, 2004).

But the Lubbers's sexual harassment case was looming as BBC News, October 28, 2004 reported:

> A senior UN official [Ruud Lubbers] was cleared of sexual harassment earlier this year because the secretary general rejected the verdict of an internal watchdog…. But a revised report issued by UN watchdogs on Thursday revealed that investigators supported the allegation … [and recommended appropriate action]. Mr. Annan refused to take action, saying the allegations were 'not sustainable'…. Despite the recommendation, Mr. Annan dismissed the complaint, but instead wrote to Mr. Lubbers stressing his concerns in the strongest terms. UN spokesman Fred Eckhard attempted to explain the secretary-general's verdict on Thursday, asserting that Mr. Annan decided the allegations were unsustainable after seeking legal advice on the matter. 'He did not say there was no evidence. He said he found the evidence unsustainable on a legal basis', Mr. Eckhard said.

Not only Secretary-General Annan had overruled the findings and recommendations of the Office of Internal Oversight's investigators, but also he then had withheld the release of the Office of Internal Oversight annual activities report to the General Assembly to attempt to cover up for his own actions – a failure of probity. In mid-November, after the blocked OIOS report on the Lubbers case had finally been issued, the UN announced the results of its "investigation" of the allegations concerning Mr. Nair. The reaction was quick and fierce.

> An exhaustive probe has cleared the head of [the UN's OIOS] of alleged staff rules violations and has found no credible information to back corruption and other charges against him, a UN spokesman said today. The investigation was ordered after the UN Staff Council … [reported allegations against Mr. Nair]…of violations of appointments and promotion in OIOS, as well as allegations of corrupt practices in the Office and 'other misconduct' by Mr. Nair. Spokesman Fred Eckhard said … 'a thorough review conducted by [UN Under Secretary-General for Management] Catherine Bertini found that "no staff regulations or rules were violated …, and that the relevant personnel procedures were followed'. With regard to the other allegations, the

> investigation did not receive 'credible information on which to follow-up and, therefore, recommended that no further action was necessary in the matter', the spokesman said. He added that Mr. Annan had accepted the investigation's findings and recommendations … [and that he told] Mr. Nair that he had every confidence that the good work of the [OIOS] under his leadership would continue (UN News Service, 16 November 2004).

But the UN Staff Council, that had lodged the complaint against Mr. Nair, was discontent about the investigation arrangements and the process the Secretary-General had set up for the investigation. CBSNEWS.com, reported on November 19, 2004 the discontent of the Staff Council as follows:

> Angered at Secretary-General Kofi Annan's dismissal of allegations against the UN's top investigator, union leaders met for a second day on Friday to decide what action to take…. Nonetheless, the union was clearly upset at Annan's exoneration of UN watchdog Dileep Nair earlier this week…In a letter to [the Staff Union] … Annan's chief of staff, Iqbal Riza … wrote that the allegations 'required careful review and, inevitably, took some time to complete'. But the Staff Union stressed…that during the six-month UN investigation, despite being the complainant, 'the Staff Committee was neither informed that an investigation was taking place, nor asked to clarify its concerns or provide testimony'. [Spokesman] Eckhard said, 'If they say they were not consulted, I think that's definitely something we'd like to discuss with them next week. That doesn't seem right'.

And the adverse news were spread everywhere. Another revealing insert was published by Carnegie in iafrica.com/news on 19 November, 2004:

> UN employees were readying on Friday to make a historic vote of no confidence in scandal-plagued Secretary-General Kofi Annan, sources told AFP … Annan has been in the line of fire over a high-profile series of scandals…. But staffers said the trigger for the no-confidence measure was the announcement…that Annan had pardoned the UN's top oversight official, who

> was facing allegations of favoritism and sexual harassment [after a 'thorough review' by UN Under Secretary-General for Management Catherine Bertini]…. 'This was a whitewash, pure and simple', said a [staff representative]…In a letter sent to the union, … Annan's chief of staff, Iqbal Riza said Nair had been 'advised that he should exercise caution' in future to 'minimize the risk of negative perception'…. In a [draft] resolution…, the union said Riza's statement "substantiates the contention of the staff that there was impropriety" and that there exists 'a lack of integrity, particularly at the higher levels of the organization'…. Staffers who asked not to be named, afraid that speaking out could damage their future prospects in the United Nations, said the Nair decision was emblematic of widespread corruption by Annan and his senior staff"

In order to calm the troubled waters the Secretary-General informed through the UN News Service the staff on the same date of the adverse news in the press, 19 November, 2004, on his intentions to resolve the conflict: "The idea is to keep dialogue going…so that it isn't necessary to adopt resolutions saying they have no-confidence in senior management', he said. "We'd certainly like them to have more confidence in us and we hope we can achieve that through dialogue".

The year 2005 also started with bad news: The Independent Inquiry Committee into the Oil-for-Food Programme released its first "Briefing paper" (dated 9 January, 2005) to provide perspective on the 58 audit reports which were made public for the first time that same day after the Secretary-General had waived the immunity of such documents. The picture the Inquiry Committee painted on the Office of Internal Oversight action in relation to the Oil-for-Food Programme was not positive, by the contrary, it was critical, exposing the weaknesses of the Office of Internal Oversight in risk assessment, corruption-fighting, adequacy and deployment of investigative and audit resources, and the grave lack of actions taken on the Office of Internal Oversight's findings by UN senior officials (UN Document, IIC Briefing Paper, 2005). The UN News Service reported the event on 10 January 2005:

> United Nations officials today welcomed initial findings by [the Volcker inquiry] into the UN Oil-for-Food programme in Iraq, acknowledging

> deficiencies … and pledging to revamp the world body's current overall management structure. [UN spokesman Stephane Dujarric told a press briefing that the preliminary analysis] … 'is just one step in the … inquiry which the Secretary-General initiated, and which continues to enjoy his full support and cooperation…. What this initial briefing from the Committee does show is that there was a dynamic auditing process generated by the UN itself, as well as the audits of external auditors…'. He noted that all audits…were conducted in accordance with internationally recognized standards … [and that] 'We ourselves are already focused on issues of management and accountability … in a critical review … which will lead to a broad overhaul of the UN's management structure and systems…'. Mr. Dujarric pointed out that the Oil-for-Food programme 'did fulfil its main objective by providing humanitarian relief to 27 million Iraqis…'. [He] stressed that 'the audits that were released today are just one snapshot of the programme … they are part of a whole process'.

The interpretation of this Inquiry Committee's Briefing Paper by Miller published in the International Herald Tribune on January 11, 2005 is the following:

> [The Volcker commission's 36-page "provisional" assessment of UN auditors' performance says they]…did not adequately monitor its giant oil-for-food program in Iraq and that in some cases UN officials ignored recommendations deemed crucial by the auditors…. The audits make clear that many of the deficiencies were known in the late 1990s, at a time when indications of corruption of the program by Saddam Hussein and others were reaching the UN…. The briefing paper chronicles numerous shortcomings in the Iraq auditors' activities. [It cites] … the auditors' failure to monitor in depth the New York headquarters of the office that administered the program, where nearly 40 percent of the $1 billion of the program's administration costs were spent. In addition, the commission noted, the auditors failed to monitor contracts for the oil sales … or those for the purchase of goods … to ease the debilitating effect of sanctions on Iraqis. Nor did the auditors examine the

> letters of credit issued by the program's major banker…. The program, the commission said, suffered from a 'chronic shortage' of auditors assigned to monitor the UN's largest aid program, financed through 2.2 percent of Iraq's oil revenue.

In sum, Mr. Nair's last year of his five year tenure was tumultuous in many senses. In June 2004 the first news articles appeared revealing that Mr. Nair had violated UN rules and regulations in promoting and recruiting staff, and there were accusations of financial and sexual misconduct (all of which he denied). As a consequence the UN Staff Council requested the Secretary-General an investigation of the situation. The Secretary-General entrusted the investigation to the head of the Management Department, Under Secretary-General Catherine Bertini. Mr. Nair held a position of Under Secretary-General himself and had the power of authority delegated by the General Assembly to audit and investigate the Management Department led by Mrs Bertini. In November the Secretary-General announced that an "exhaustive probe" by the UN's Under Secretary-General for the Management Department, had cleared Mr. Nair of the charges, and Mr. Annan announced his continued confidence in Mr. Nair. The Staff Council, however, discontent with the outcome of the investigation which it considered to have been superficial and incomplete, perceived it as one more cover up maneuver of the Secretary-General, which compounded with the integrity survey results, the Lubbers case, and Mr. Annan and the Iraq Oil-for-Food improprieties under investigation by the Volcker's inquiry – led the Staff Council to draft an overall vote of no confidence in Mr. Annan's leadership. The Secretary-General failed to establish a proper and independent investigation of the allegations raised against Mr. Nair for two combined main reasons: Mr. Nair's "contract" established with the General Assembly (see Appendix D) required the General Assembly consent for his appointment as well as removal and put him in the position of reporting functionally to the General Assembly, not to the Secretary-General; Mr. Nair had the same rank of Mrs. Bertini but Mrs Bertini reported exclusively to the Secretary-General. Mrs. Bertini's investigation could not be independent at any instance. To safeguard the integrity of this investigation process the Secretary-General should have conveyed the issue to the General Assembly which should have cared to guarantee the integrity of the process. Once again the Secretary-General breached his duty of probity to the organization. In so doing the Secretary-General was not able to exercise justice and temperance.

Notwithstanding, Mr. Nair remained in office but only until March 2005, when Mr. Annan's support vanished. The Secretary-General's spokesman announced the filing of a "charge letter" against Mr. Nair, because the Volcker inquiry accused him of misusing UN funds and violating UN staff regulations. Mr. Nair then left the UN, disgraced, on April 23, a month before his five-year term ended. But Mr. Annan's spokesman also announced that an independent, thorough investigation would be made of allegations against Mr. Nair, to determine whether a full external investigation was warranted (UN press release SG/SM/9793, 2005; Peschmann, 2005). The Secretary-General was jeopardizing his and the UN' integrity and reputation while changing the course of his actions only when pressed by outsiders or "externalities" showing in the open his lack of ethics and incompetence to care about the UN mission and purpose.

In June 2006 (more than one year after Mr. Nair had been dismissed) the two independent lawyers appointed by Mr. Annan to investigate Mr. Nair's case again, announced that they had completed their investigation, and found that Mr. Nair had violated UN promotion rules confirming previous charges. Yet Mr. Annan ordered the case closed because the case found no evidence of these findings, and he apologized to Nair for any "personal dismay" for suffering "unmerited public innuendo". The lawyers expressed great surprise at all this, on two counts. First, although Annan had ordered all UN personnel to cooperate with their investigation, the Office of Internal Oversight itself had delayed their requests for documents and interviews with knowledgeable officials. Second, the entire experience raised basic questions about the UN's ability to investigate wrongdoing and Secretary-General Annan's willingness to do so (Fox News.com, June 2, 2006).

Mr. Nair's tumultuous leadership of the Office of Internal Oversight thus came to a discredited end. To this had greatly contributed Mr. Kofi Annan's leadership and extensive probity failures to establish and instill proper accountability and oversight as well as having curtailed the Office of Internal Oversight independent action.

VI.3.3. The OIOS' performance during the period 1995-2005

The term of Office of Mr. Paschke

In 1994, when the General Assembly established the Office of Internal Oversight it also decided "to evaluate and review the functions and reporting procedures of the Office of Internal

Oversight Services at its fifty-third session [year 1998] and to that end to include in the provisional agenda of that session an item entitled 'Review of the implementation of General Assembly resolution 48/218 B". As decided, in 1998, the General Assembly launched a 5-year evaluation of the Office of Internal Oversight performance. However, after discussing various guidance and improvement issues for over a year, particularly concerning investigation work, the informal consultations slowed down. The General Assembly finally passed a resolution in January 2000 (United Nations General Assembly, A/RES/54/244, 2000) namely reaffirming and confirming the content of its Office of Internal Oversight founding resolution 48/218 B (Appendix D) with a single new request to "the Secretary-General to submit to the General Assembly for its consideration and action, in conformity with the relevant provisions of the Charter and the rules of procedure of the General Assembly, rules and procedures to be applied for the investigation functions performed by the Office of Internal Oversight Services, in order to ensure fairness and avoid possible abuse in the investigation process". It also decided that it would "evaluate and review at its fifty-ninth session [year 2004] the functions and reporting procedures of the Office of Internal Oversight Services". None of the General Assembly resolutions concerning the Office of Internal Oversight define in which basis or criterion the evaluation was and would be carried out. Failing to transparently establishing the assessment process and criterion is a failure of probity in TCE terms.

The General Assembly, while calling on the Secretary-General to protect staff and whistleblower rights, and requiring a report to it explaining the Office of Internal Oversight procedures to ensure fairness and avoid possible abuse in the investigation process, put in evidence the diversified and idiosyncratic nature of the transactions governed by the Office of Internal Oversight: on the one hand investigation transactions, which are quasi judiciary transactions (Section VI.1.1); and, on the other hand, internal audit, monitoring and evaluation transactions, which can be typified as sovereign transactions (Section VI.1.1). Tensions and frictions verified in many instances during Mr. Paschke tenure originated by having both quasi judiciary transactions and sovereign transactions governed under the same governance hierarchical structure aggravated by the fact that Mr. Paschke was not akin to investigation activities given his diplomatic profile placated and his own initial stated philosophy and wish to "working closely with management".

The Office of Internal Oversight annual activities reporting, which result from a decision of the General Assembly (Appendix D), would be an instrument to assess performance, but the reports issued during Mr. Paschke's term of office, while giving an account of what had been done during the one year period of activity, did not however presented any benchmark or even any relation between resources employed and outputs produced mediated by the prioritization of activities based on risk assessment or even the criterion on which he had based Office of Internal Oversight's self-assessment exercise. What results as a conclusion then, is that there were no evident efficiency and effectiveness concerns underlying his management philosophy. An economizing concern would have required the Office of Internal Oversight to have planned ahead its activities on the basis of an operational plan which would be confronted to the realizations at the end of the reporting period and would lead to give account to the General Assembly. The initial budget entrusted to the Office of Internal Oversight was established in absolute terms taking the previous budget of Office for Inspections and Investigations internal oversight structure without linking them to oversight objectives and outputs on the basis of a rationale. Efficiency could not be measured or assed at all.

As a matter of fact Office of Internal Oversight annual activities reports denote lack of objectivity in disclosing overall work and results, but this weakness is particularly evident in the new investigations activities. Mr. Paschke's voluminous annual reports display many elaborate statistical appendices on audit assignments and recommendations made, but nothing regarding an overall appreciation of the UN risk areas, types of risk, relative materiality, link with UN mission and goals, and, on this basis, showing the UN critical management problem areas, and an almost total veil of secrecy concerning investigations work. Instead of giving an overall picture of the investigation results, trends, and patterns observed, the Office of Internal Oversight provided only an account of a few illustrations of minor and small individual corruption and misconduct cases.

Furthermore, the Office of Internal Oversight performance reports did not show data regarding the level of professionalism of the office, the depth of coverage of organizational programs, the cost savings achieved and the results achieved, including cases sent to (in this case national) courts and convictions achieved, all to give an account of the progress made, successes, and problems and developments emerging, as well as the impact on waste, fraud, and abuse. Mr.

Paschke's overall reports did not inform the General Assembly or the general public on the overall UN performance and the anti-corruption results and progress that the Office of Internal Oversight had achieved in line with the General Assembly resolution which preceded and justified the creation of the Office (UN document A/RES/48/218 A, 1993) whereas it identified "the need for an enhanced oversight function to ensure the effective implementation of these activities in the most cost-effective manner possible...the need for the establishment of a system of responsibility and accountability for United Nations officials".

During the entire term of office of Mr. Paschke the Oil-for-Food Programme was running uninterruptedly. During his five years Mr. Paschke never reported any risk or problem in connection with the management of the Oil-for-Food Programme, although the internal oversight responsibility of the Programme was entrusted to the Office. None of the Office of Internal Oversight annual activities reports transmitted to the General Assembly contained any specific reference or alert raised during the audits to this Programme. The existence of the Oil-for-Food Programme was not even disclosed: astonishing, considering its materiality for any professional auditor. But the Office of Internal Oversight was not alone failing to fulfill its responsibilities of "probity" reporting. The General Assembly and the Secretary-General also displayed lack of "probity" insofar as the internal oversight contract (Appendix D) is tripartite engaging these three parties as institutional safeguards for the rest of the organization regarding internal control through audits and investigations. On the top of this serious omission and probity failures, was also the astonishing omission of the Board of Auditors.

But if the operational oversight structures did not report anything about the Oil-for-Food Programme, the policy review oversight structures did not claim for the reporting of the Oil-for-Food Programme audits as they were supposed to. We may come to the conclusion that the UN was formally equipped with three operational oversight governance structures (Office of Internal Oversight, Board of Auditors, and Joint Inspection Unit) and more policy review oversight governance structures (Secretary-General, General Assembly, Fifth Committee, Committee for Programme and Coordination, Security Council), but none of these governance structures effectively played the expected and pre-established institutional role, i.e., to consider the Oil-for-Food Programme to be disclosed or even mentioned in their oversight reports and inform the public about the evolvement of the situation before the scandal have exploded. These governance

structures are delegated through the UN Charter the authority and responsibility to oversee and safeguard the organization, therefore the assets that are entrusted by the world tax payers to the UN management and custody. The behavior displayed by the UN policy review and operational oversight governance structures might have derived from positions of conflict of interests and opportunism, surrounding the Programme. Undoubtedly they all fail their probity responsibilities and duties and displayed lack of ethics.

Mr. Paschke's leadership went awry on account of his diplomat professional background unfit to oversight work. The failure of probity had been of those that appointed him, namely the Secretary-General and the General Assembly. He did provide the illusion and appearance of oversight and investigation as an unprofessional glance at Office of Internal Oversight annual activities reports may suggest, but failed to systematically and seriously establish it. On his turn, the Secretary-General Annan never provided serious top leadership support for professional oversight or for management accountability or any sanctions for poor management performance, and, above all, did not led by ethical example. The General Assembly did not find a proper way to "oversee the overseer" or make effective use of his work and did not provide sufficient resources for its responsibilities to oversee, and combat corruption especially in investigations. In sum, the Office of Internal Oversight's performance under Mr. Paschke can be summarized as an expensive failure and maneuver on account of the very high transaction costs (also operational) bearing consequence of the Secretary-General's and the General Assembly's failed appointment decision of Mr. Paschke, an outrage failure of probity (Williamson, 1999) and ethics (McCloskey, 2006).

The term of Office of Mr. Nair

In 2004 another five-year review was due in accordance with General Assembly resolution in 1999 (UN Document A/RES/54/244, 1999), but this time the Assembly dispatched the issue with a very brief resolution. It recognized succinctly the failure of management accountability and oversight efforts of the last ten years stating (UN document A/59/649, 2004; UN document A/59/272, 2004):

> 1. Decides …(c) Original versions of the reports of the Office of Internal Oversight Services not submitted to the General Assembly are, upon request, made available to any Member State;
>
> 3. **Further decides that reports of the Office of Internal Oversight Services shall be submitted directly to the General Assembly as submitted by the Office and that the comments of the Secretary-General may be submitted in a separate report** [emphasis added];…
>
> 5. Notes that no mechanism has been established for the follow-up of [OIOS] recommendations, including those considered by the General Assembly;
>
> 6. Emphasizes the importance of establishing real, effective and efficient mechanisms for responsibility and accountability;
>
> 7. Regrets that despite previous information provided by the Secretary-General on the establishment of accountability mechanisms, including the accountability panel, such mechanisms are not in place, thereby affecting the efficient and effective functioning of the Organization.

However, notably, an important consequence of the General Assembly's negative assessment of the Office of Internal Oversight performance was reflected in its decision regarding the change of the reporting lines of the Office of Internal Oversight when removed the direct reporting of Office of Internal Oversight to the Secretary-General and entrusted it to the General Assembly. The resolution establishing Office of Internal Oversight in 1994 (Appendix D) had determined "(ii) The Office shall also submit to the Secretary-General for transmittal as received to the General Assembly, together with separate comments the Secretary-General deems appropriate, an annual analytical and summary report on its activities for the year".

From 2004 onwards OIOS' reports are submitted directly to the General Assembly as follows: "3. **Further decides that reports of the Office of Internal Oversight Services shall be submitted directly to the General Assembly as submitted by the Office and that the comments of the Secretary-General may be submitted in a separate report**".

This decision, taken in the midst of many scandals including those involving both Mr. Nair and Mr. Annan personally in connection with the Oil-for-Food Programme, while giving more visibility and importance to the Office of Internal Oversight in the organization, also increased the uncertainty and open the door to opportunistic behavior on the part of the Secretary-General. Uncertainty increased as far as the potential frictions and power struggles between the Secretary-General and the Office of Internal Oversight are concerned. The potential for opportunistic behavior on the part of the Secretary-General was opened because the General Assembly had not decided to safeguard the Office of Internal Oversight's operational independence fully: the Office continued to depend a great deal on the auditees funding to its oversight activities as well as on lack of full autonomy to recruit and manage its staff, the most important asset for the internal oversight success.

Another substantial reporting aspect that was changed this time regards the access of the General Assembly to the original Office of Internal Oversight's reports which onwards should be available to the General Assembly members upon request, and summaries of same would no longer be the way to convey information to the General Assembly regarding individual audit, investigation, and monitoring and evaluation reports. These decisions were taken as counter measures and attempts to correct serious failures of probity of all oversight governance structures concerned with the ongoing scandals. In terms of TCE (Williamson, 1999, p. 336; see also Table 2.1) this move by the General Assembly reflects a reduction of the autonomy (incentives) of the Secretary-General and an increase of the autonomy and independence (incentives) of the Office of Internal Oversight.

By the same token the General Assembly also reaffirmed, as it had before, the roles of the various external oversight structures, and called on Mr. Annan and the Board of Auditors to report on how to guarantee the Office of Internal Oversight full operational independence. It also agreed with the Office of Internal Oversight that the Secretary-General should report on measures implemented to strengthen accountability and the results achieved, and establish a mechanism of Secretariat officials to feed oversight findings into UN operations to improve them (UN document A/RES/59/272, 2004). Finally the General Assembly "Decides to evaluate and review at its sixty-fourth session [that would occur in 2009] the functions and reporting procedures of the [OIOS] and any other matter which it deems appropriate …" (UN document A/RES/59/272,

2004, para. 16). The proposal of the Secretary-General regarding an "independent review" of the Office of Internal Oversight operations had not been accepted at this point though.

The above lack of accountability mechanism noted by the General Assembly was confirmed by the USA Government Accountability Office in 2004, when it reported that: "In 2002, the … [OIOS] found that program managers and department and office heads were not complying with U.N. regulations…nearly half of program managers were not regularly monitoring and evaluating program performance. In addition, program managers were not held accountable for meeting program objectives because U.N. regulations prevent linking program effectiveness and impact with program managers' performance. U.N. officials told us that a more mature program monitoring and evaluation system is needed before program managers can be held responsible for program performance. We found that there were a variety of problems….Most programs do not have comprehensive monitoring and evaluation plans…overall, evaluation findings were not used…. The Secretary-General tasked the…OIOS to develop a strategy to systematically evaluate and monitor programme results and to introduce information systems needed … and expects to have a complete system by 2006" (GAO 04-339, 2004 pp. 19-23).

The General Assembly's conclusions point to a lack of effectiveness of Office of Internal Oversight work insofar as it observed that the UN still continued not to be equipped with a follow-up and monitoring system regarding the implementation of the Office of Internal Oversight's recommendations. Notwithstanding, once and over again, its own oversight of the overseer's responsibilities remained short in terms of its future action and responsibility to improve the situation: the General Assembly while deciding once more to carry out the next evaluation and review of the Office operations in 2009, did not specify in what such evaluation and review would consist, which criteria it would use to such an evaluation, and, most important, which objectives it aimed from the Office future activity. The solution for the time being, as explained above, was to surrogate some internal oversight power to the Secretary-General but leaving behind unresolved instances of increased uncertainty.

Looking back to the disturbing "extreme" events in terms of their impact on the reputation and image of the UN that unfolded in the media in the preceding months ahead of the General Assembly gathering at the end of 2004, events that had a bearing on the UN Secretary-General as

well as on the Office of Internal Oversight functioning and thus on its leadership, one would expect to see the concern of the General Assembly's Fifth Committee in some form reflected in the public documents. But, on the contrary, the Fifth Committee did not acknowledge the scandals going on, and did not make any statement, any comment, any regrets, any emphasis, any recalling, nor even a written word on the adverse events reported about Mr. Nair's case, about Mr. Lubbers' case, or about the ongoing inquiry into the Oil-for-Food scandal and the questions about Mr. Annan's probity (UN document A/RES/59/270, 2004; UN document A/RES/59/271, 2004). By contrast, reading the documents after ten years have elapsed, one concludes that the General Assembly documents, the Office of Internal Oversight's reports, the Joint Inspection Unit's reports, and Board of Auditors' reports, covering this period of time, all omit the facts and the risks. If a distracted and uninformed reader does not explore the newspapers at the time and does not establish the link of the General Assembly's documents issued at the time with the results of the inquiry into the Oil-for-Food Programme, the fraud and corruption critical events would go unnoticed. They all blatantly lacked probity and behaved unethically. Why this critical and public interest information was surrogated from the UN official documents, i.e., which comes to the same as having been surrogated from the peoples of the world? Was it possible because the UN is not subject to any type of democratic scrutiny? This critical aspect of the functioning of the UN is not the subject of this thesis, but may well be of interest to further future academic investigation.

Exploring the Office of Internal Oversight reports issued under Mr. Nair term of office lead to the conclusion that past problems and shortcomings continued, *inter alia*, the above mentioned General Assembly's regret that the UN continued lacking an effective accountability system in place and that no mechanism had been established for the follow-up of Office of Internal Oversight's recommendations. But the General Assembly remained also short in fulfilling its oversight responsibilities as its rather unresponsive and inconsistent handling and acting on substantive Office of Internal Oversight's reports hampered the Office of Internal Oversight action and positive impact in the organization as a whole. The General Assembly was targeting the Office of Internal Oversight instead of focusing on the cause of the problem, a management culture not infused with probity (Williamson, 1999) and with ethical behavior (McCloskey, 2006).

But despite the internal and external constraints, the Office of Internal Oversight became regularly involved in (instead of avoiding) broad management audits of key areas such as peacekeeping, human resources management, and management systems. An important element of the Office operations is certainly the philosophy and approach to the counterparties: Mr. Nair opted to continue to adopt a behavior which aimed to make the Office to be perceived as partner of management and work closely to help and support managers. If this philosophy and behavior might have been useful as far as consulting services were concerned, it also jeopardized the effectiveness of both the investigations and internal audit functions. This was a leadership option that puts in evidence a fundamental critical aspect of the design of the Office of Internal Oversight governance structure as it existed.

However the picture painted by Mr. Nair in his reports regarding investigations is much rather mixed and ambiguous. The 2001 annual report, suddenly and conspicuously, had very little to say about investigative actions and results. It showed a big increase in cases received and backlog, but made little mention of major fraud cases found or prosecuted, funds saved, whistleblower activity and actions taken thereon, the number of cases sent to national courts in the 2001 reporting year, or the results obtained in those courts (UN document A/56/381, 2001). In 2002 the annual report did not include a separate commentary on the Investigations Section. Indeed, although some references to investigation results were featured prominently in the preface, the word "investigations" was nowhere to be seen in the report's table of contents (UN document A/57/451, 2002). The 2003 annual report provided more stories of cases, but only one item on investigation work – "Rationalizing the services of investigations and prioritization of cases". Overall it was not very reassuring since it stated that the Investigations Division had received some 630 "new matters" to be investigated, but a standing backlog of some 200 items remained. It stated not very convincingly that every one of them was "carefully assessed" with a "thorough review" (UN document A/58/364, 2003).

The 2004 annual report showed little change. It again provided no separate section focusing on overall Investigations Division work. The self-evaluation exercise gave investigations work three paragraphs, calling the Division "a highly professional entity" which had matured to investigate allegations of all types of fraud, waste and mismanagement, with a rising caseload every year, as more staff and managers "feel encouraged to make reports. The

Division was also working "proactively" with other enforcement agencies and authorities, but UN offices away from New York noted the "many demands on a small staff" and the need for investigators at duty stations on a permanent basis, to provide a deterrent effect. Overall, "feedback indicated that OIOS should provide more information about investigations and OIOS in general" (UN document A/59/359, 2004, paras. 117-119).

The Secretary-General, as in other areas, has sought to minimize and downplay the Iraq Oil-for-Food Programme scandals and indicate that things are "under control". The Secretary-General's 2004 annual report section on "Accountability and oversight" (UN document A/59/1, 2004, paras. 253-254), under the Investigations section of the report, did highlight decisive Office of Internal Oversight-led actions to clean up a fraudulent USD 4.3 million fund diversion in Kosovo. But, when it came to the multi-billion dollar Iraq Oil-for-Food scandal (roughly 2,500 times as big) Mr. Annan referred only to "allegations of impropriety" to inform the General Assembly of his appointment of the Inquiry Committee:

> On 21 April 2004, I appointed a high-level Independent Inquiry Committee to investigate allegations of impropriety in the administration and management of the oil-for-food programme in Iraq. To ensure a thorough and meticulous inquiry, the members of the Committee have access to all relevant United Nations records and information and the authority to interview all relevant officials and personnel (Para. 254).

The relevance and the impact of this Secretary-General's decision to contract out a specific governance structure to inquiry the Oil-for-Food Programme scandal is my next concern.

VI.4. The period 2004 – 2005: The Independent Inquiry into the OFFP Scandal through "Externalization"

VI.4.1. The inquiry's governance structure

In section VI.2 above I explored the governance structures set up at the UN to administer the Oil-for-Food Programme as well as the evolvement of the Programme over seven years ending in 2003 but followed by the burst of the public scandal – the UN humanitarian relief programme was eventually profitable to those in power at the UN, to some in Iraqi regime, to

many diplomats and politicians in many countries in the world and also to too many private companies operating under several sovereign jurisdictions, and finally remained short in reaching its initially announced humanitarian purposes. The governance structure of the UN had blatantly failed to safeguard the integrity of UN mission in connection with the Iraqi people, which in TCE is a failure of probity, i.e., a full extent absence of virtues ethics.

The Iraq USA-led invasion, the defeat of Sadam Hussein's regime combined with the settlement of the Coalition Provisional Authority to govern the aftermath transitional period towards the restatement of a democratic regime in Iraq, opened the access to documents and information that allowed to bring to light the irrefutable proofs of the outrage against the Iraqi people but also against all world citizens that perceive the UN as a trustful and humanitarian oriented organization.

On 21 April the Secretary-General Annan, with the endorsement of the United Nations Security Council, appointed "an independent inquiry to investigate the administration and management of the Oil-for-Food Program in Iraq" (UN document Security Council Resolution 1538, 2004). The Office of Internal Oversight was not involved in the investigation into the alleged corruption and mismanagement of the Oil-for-Food Programme. In so deciding the Secretary-General set a three person external Inquiry Committee to which invited: the Chair, Mr. Volcker, former USA Federal Reserve; Mr. Goldstone, a retired justice of the highest court of South Africa; and, Mr. Pieth a university Professor at Basel university leading expert on money laundering and corporate corruption. Mr. Volcker, while accepting the task, requested specifically the Secretary-General (Meyer and Califano, 2006) that the Security Council passed Resolution 1538 endorsing the creation of the Inquiry Committee to provide "authority" for the "Inquiry". Resolution 1538 (United Nations Security Council, 2004) expressed the Security Council endorsement:

> Affirming the letter of its President of 31 March 2004 welcoming the Secretary-General's decision to create an independent high-level inquiry to investigate the administration and management of the Programme and taking note of the details relating to its organization and terms of reference; Welcomes the appointment of the independent high-level inquiry…

To launch the inquiry, the Secretary-General established the Independent Inquiry Committee's (IIC) terms of reference (Appendix E) which set the boundaries of the inquiry as follows:

> The IIC shall collect and examine information relating to the administration and management of the Oil-for-Food Programme, including allegations of fraud and corruption on the part of United Nations officials, personnel and agents, as well as contractors, including entities that have entered into contracts with the United Nations or with Iraq under the Programme:
>
> (a) to determine whether the procedures established by the Organization, including the Security Council and the Security Council Committee established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait (hereinafter referred to as the "661 Committee") for the processing and approval of contracts under the Programme, and the monitoring of the sale and delivery of petroleum and petroleum products and the purchase and delivery of humanitarian goods, were violated, bearing in mind the respective roles of United Nations officials, personnel and agents, as well as entities that have entered into contracts with the United Nations or with Iraq under the Programme;
>
> (b) to determine whether any United Nations officials, personnel, agents or contractors engaged in any illicit or corrupt activities in the carrying out of their respective roles in relation to the Programme, including, for example, bribery in relation to oil sales, abuses in regard to surcharges on oil sales and illicit payments in regard to purchases of humanitarian goods;
>
> (c) to determine whether the accounts of the Programme were in order and were maintained in accordance with the relevant Financial Regulations and Rules of the United Nations.

Although the Committee members were appointed by UN Secretary-General Annan, the Independent Inquiry Committee was constituted as an external autonomous governance structure. The Committee's employees were not UN staff. The recruitment of investigators and other staff

had been undertaken outside the UN personnel structure. No UN personnel worked at the Independent Inquiry Committee with the exception of 3 support administrative staff on loan from the UN, who dealt exclusively with administrative issues (IIC website - http://www.iic-offp.org).

The Independent Inquiry Committee, headquartered in New York, with small offices in Baghdad and Paris, counted with more than seventy-five persons fully dedicated to the investigation with a wide variety of professional backgrounds, including accountants, attorneys, and former law enforcement personnel. In New York, the Executive Director was responsible for the overall direction and coordination of the Inquiry staff, including primary responsibility for liaison with governments. The Chief Legal Counsel and the Chief Investigative Counsel led the Inquiry's investigation. The Chief of Forensic Services had the principal responsibility for developing and analyzing the large number of records both within and outside of the UN, relating to the Oil-for-Food Programme. The Counsel to the Committee was responsible, among other duties related to the investigation, for setting and enforcing guidelines for the investigation, including appropriate interviewing procedures and relations with national investigative bodies. The Communications Director advised on how to inform the public about the work of the Committee, and handle contacts with the media. In Paris, a Chief Investigation Officer concentrated particularly on those aspects of the investigation conducted in Europe and other areas outside North America. The Head of the Baghdad Office led the investigation in Iraq. The Committee staff was organized into teams of international investigators, drawn from different fields of expertise (IIC website - http://www.iic-offp.org).

The Independent Inquiry Committee initially received USD 4 million to begin putting its office and staff in place. The total final cost of the core investigation, developed from April 2004 through to the end of 2005, was USD 36 million (Meyer and Califano, 2006).

In order to ensure the cooperation of UN personnel with the Inquiry Committee, the Secretary-General instructed all UN officials and personnel to cooperate with the inquiry in a 1 June 2004 Secretariat Bulletin (UN document, ST/SGB/2004/9, 2004). In the Bulletin, the Secretary-General specifies that "any violation of the foregoing instructions could result in disciplinary action under the Staff regulations and Rules". Through this provision the Inquiry Committee was given access to all relevant UN records and information and the Secretary-General made it clear that all UN officials and personnel were expected to cooperate and make

themselves available for interviews. The Committee also obtained records and conducted interviews of individuals and entities not affiliated with the UN who had knowledge relevant to the inquiry, including allegations of impropriety. Additionally, the Committee was mandated by Resolution 1538 (United Nations Security Council, 2004) to seek cooperation from UN Member States.

The Inquiry Committee could not be delegated judicial power, as this was delegated through the Charter to the Secretary-General only. The Charter has no provision allowing any such sub-delegation of powers. Hence, this investigation constituted an administrative inquiry without any subpoena powers. The Office of Internal Oversight investigations also, for the same reason, do not carry any subpoena powers. As a practical matter, the power to subpoena individuals and documents typically does not extend beyond the jurisdiction of the issuing authority (IIC website – http://www.iic-offp.org). According to the TCE assumptions the inquiry to work required the "authority and the security" of the "state"— the UN Charter, which was not the case, therefore it could not have worked. On the other hand, the option to contract out the inquiry contradicts the prediction of TCE that "public bureaucracy is the most efficient mode for organizing sovereign transactions".

There were several investigative bodies with the mandate and the authority to investigate parts of the Programme. In Iraq, there was the Iraqi Interim Government's inquiry conducted by Ernst & Young. In the USA, several Congressional Committees as well as judicial bodies were investigating the Programme, with a focus on the involvement of American companies. In the UK, the Office of Customs and Excise focused on the role of British companies in the Programme. To facilitate the necessary sharing of information the Committee entered into a Memorandum of Understanding with the Supreme Board of Audit of Iraq and the Coalition Provisional Authority reaffirmed later with the Iraqi Interim Government.

VI.4.2. The IIC's Inquiry Results

The Inquiry Committee communicated publicly the results of its workings through a series of documents, briefing papers, and reports posted in a specifically created website (http://www.iic-offp.org): Investigations Guidelines, 2004; Status Report (9 August 2004); Briefing Paper-Tables of Companies (21 October 2004); Briefing Paper Internal Audit Reports

on the United Nations Oil-for-Food Programme (9 January 2005); Interim Report (3 February 2005); Comparison of Estimates of Illicit Iraqi Income During UN Sanctions (3 February 2005); Second Interim Report (29 March 2005); Third Interim Report (8 August 2005); Report on the Management of the Oil-for-Food Programme (7 September 2005); Impact of the OFFP on the Iraqi People (7 September 2005); Report on the Manipulation of the Oil-for-Food Programme (27 October 2005); Procedures for Law Enforcement Requests for Access to IIC Documents and Information (November 2005).

Although the focus of this thesis concerns the internal oversight structures, understanding the dimension of the gigantic scandal and outrage of the UN Oil-for-Food Programme endeavor is crucial. The latest Inquiry Committee (IIC Final Report, 2005) report "illustrates the manner in which Iraq manipulated the Programme to dispense contracts on the basis of political preference and to derive illicit payments from companies that obtained oil and humanitarian goods" (p. 1). Some of the main findings thereon give us an idea:

> Oil surcharges were paid in connection with the contracts of 139 companies and humanitarian kickbacks were paid in connection with the contracts of 2,253 companies" (p. 1). Companies accused of paying kickbacks to the Iraqi regime include major global corporations such as Daimler-Chrysler AG, Siemens AG, and Volvo.
>
> The Saddam Hussein regime received illicit income of $1.8 billion under the Oil-for-Food Program. $228.8 million was derived from the payment of surcharges in connection with oil contracts. $1.55 billion came through kickbacks on humanitarian goods (p.1).
>
> In allocating its crude oil, "Iraq instituted a preference policy in favor of companies and individuals from countries that, as Tariq Aziz described, were perceived as friendly to Iraq, particularly those that were members of the Security Council" (p. 9).
>
> Russian companies purchased 30 percent of oil sold under the Oil-for-Food Program, worth approximately $19.3 billion (p. 22). French companies were the second largest purchasers of Iraqi crude oil under the Program overall,

contracting for approximately $4.4 billion of oil from Iraq. "Total International Limited and SOCAP International Limited contracts accounted for approximately 74 percent of the oil purchased by French companies under the Programme" (p. 47).

Iraq awarded special allocations not only to companies, but also to individuals and their representatives. These individuals were influential in their respective countries, espoused pro-Iraq views, or organized anti-sanctions activities. They included present and former government officials, politicians and persons closely associated with these figures, businessmen and activists involved in anti-sanctions activities (p. 11).

A "Command Council" was established by the Iraqi regime "to determine the distribution of oil contracts to companies and individuals of interest". It was headed by Vice President Taha Yassin Ramadan, and included Deputy Prime Minister Tariq Aziz and Minister of Finance Hikmat Al-Azzawi (p. 16).

Several Russian political parties and politicians received allocations of Iraqi oil, including (pp. 27-42): The Communist Party of the Russian Federation (125.1 million barrels); Vladimir Zhirinovsky and the Liberal Democratic Party of Russia (73 million barrels); Party of Peace and Unity (55.5 million barrels); Alexander Voloshin, Chief of Staff to Russian President Vladimir Putin (4.3 million barrels).

The Iraqi government, in addition to giving preference to French-based companies, "granted oil allocations to individuals based in France who espoused pro-Iraq views". These included (pp. 47-61): Jean-Bernard Merimee, Special Adviser to the United Nations, with the rank of Under-Secretary General (6 million barrels); Charles Pasqua, former Minister of the Interior, France (11 million barrels); Claude Kaspereit, businessman and son of French MP Gabriel Kaspereit (over 9.5 million barrels); Serge Boidevaix, former Director of the Department for North Africa and the Middle East, French Ministry of Foreign Affairs (over 32 million barrels); Gilles Munier, Secretary-

> General of the French-Iraqi Friendship Association (11.8 million barrels); British Member of Parliament George Galloway was allocated a total of over 18 million barrels of oil either directly or in the name of one of his associates, Fawaz Abdullah Zureikat. Nearly two-thirds of the oil was lifted, or loaded by tanker at a port (pp. 79-88); Mr. Zureikat received commissions for handling the sale of approximately 11 million barrels that were allocated in Mr. Galloway's name; According to Iraqi officials, oil allocations were granted to fund Mr. Galloway's anti-sanctions activities. Iraqi officials identified Mr. Zureikat as acting on Mr. Galloway's behalf to conduct the oil transactions in Baghdad; Roberto Formigioni, the President of the Lombardy Region of Italy was "granted a total of over 27 million barrels of oil" by the Government of Iraq. Over 24.1 million barrels of this oil were lifted (pp. 89-98).

Meyer and Califano (2006, back cover page) highlight the threatening power of the insidious corruption at several instances of the governance of the Oil-for-Food Program to the UN itself:

> More than 2,200 companies paid $1.8 billion in illegal surcharges and kickbacks to the Iraqi regime; The UN Security Council stood by as Iraqi regime outright smuggled about $8.4 billion of oil during the Program years in violation of UN sanctions; The Iraqi regime steered oil contracts for political advantages by giving rights to buy oil to dozens of global political figures sympathetic to Iraq´s goal to loosen or overturn the UN sanctions; The Iraqi regime provided Benon Sevan, the UN´s chief administrator of the Program, with rights to buy more than 7 million barrels oil; UN-related humanitarian agencies collected tens of millions of dollars for costs they never incurred, and some built factories in Iraq that weren’t needed or that never worked at all; Even Secretary-General Kofi Annan was tainted by it; But the whole story has never been told in one place.

Besides these findings connected with outside private contractors, intermediaries, private companies and politicians, the Inquiry Committee also reached serious findings of a few UN

senior officials' corruption and misconduct. The most critical examples illustrate the situation as follows:

Mr. Benon Sevan, Under Secretary-General and Executive Director of the United Nations Office of the Iraq Programme from 1997-2004, was alleged having "corruptly and in concert…derived personal pecuniary benefit from the Oil-for-Food Programme through the receipt of cash proceeds from sales" (IIC, Third Interim Report, 2005, p. 52).

Mr. Alexander Yakovlev, held various positions at the UN Procurement Division from 1985 to 2005, including Case Officer in charge of contractual arrangements for the Oil-for-Food Programme's independent oil and humanitarian goods inspectors, was alleged to have "…purposefully participated in a corrupt scheme to solicit a bribe…, provide confidential bid information, internal assessments, and selection considerations …violated the Charter of the UN as well as provisions of the UN procurement Manual and the UN Staff Regulations and Rules" (IIC, Third Interim Report, 2005, p. 72).

Mr. Iqbal Riza, Chef de Cabinet of the Secretary-General Annan from 1997 to 2004, was alleged to have "acted imprudently and in contravention of his own April 12, 2004 directives regarding the preservation of all documents relating to the Programme when, on April 22, 2004,…shred three years of his chronological files from 1997 to 1999. The shredding of documents continued until December 2004, well after the Secretary-General's preservation instruction on June 2014" (IIC, Second Interim Report, 2005, p. 84).

Mr. Dileep Nair, Under Secretary-General of the UN Office of Internal Oversight Services from 2000 to April 2005, was alleged to have "obtaining funding for a Special Assistant position in OIOS by representing that the Special Assistant would be performing functions for the Programme. The Special Assistant, whom Mr. Nair directly supervised, performed virtually no Programme-related work during the two years that he was funded by the Programme. This misuse of Programme funds violated United Nations Staff Regulation 1.2(b). However, in this case, the Special Assistant performed only minimal Programme-related functions. **Given Mr. Nair's oversight responsibilities within the Organization, he must be held to the highest standards of conduct**" [emphasis added] (IIC, Second Interim Report, 2005, p. 90). Notably, Mr. Jean Pierre Halbwachs, who was the Financial Controller of the United Nations and

responsible for the management of the BNP Paribas Escrow bank account of the Oil-for-Food Programme, was the official that approved and authorized the funds to be allocated to the Assistant position in the office of Mr. Nair. Apparently Mr. Halbwachs while approving the funds did not request to Mr. Nair for the necessary support evidence that the Assistant would be working also for the Programme, documents that the financial regulations and rules of the UN establish as mandatory before financial approval is granted (see Section VI.5.2 below for Mr. Halbwachs).

This section could not be closed without reporting what happened to the people that were object of allegations by the Inquiry Committee. Did any of them was prosecuted and jailed? Was any UN official punished? The answer to these two simple questions is a blatant no. Nobody in the UN was jailed or even ever punished. The exception, there is always one, was Mr. Nair, the head of the Office of Internal Oversight who was forced out and dismissed before his contract reached the end. Apparently the explanation for Mr. Nair being the "example" exception was given by the Inquiry Committee – "Given Mr. Nair's oversight responsibilities within the Organization, he must be held to the highest standards of conduct". This assumption implies that "Auditors" are not like the other human beings with their virtues and vices. Auditors in the Inquiry Committee's view should be above suspicion and only virtues, while all others, including the Secretary-General, Mr. Iqbal Riza, members of the Security Council, etc., were apparently accepted with all their vices and lack of ethics. What moral philosophy was the Inquiry Committee's that discriminated the "Auditor" from who it claimed higher moral principles than from any other UN official?

In 2008 the magazine *The Economist* blatantly questioned the results of the Inquiry Committee inquiry as follows:

> The oddity in hindsight is that most of the malefactors seem to have been businessmen, not members of the UN bureaucracy, which many American congressmen denounced as a nest of corruption. So far only two UN officials have been charged with oil-for-food offences – Mr. Yakovlev, and Benon Sevan, who ran the programme. Charged with taking nearly $160,000 in bribes, he has fled to his native Cyprus. Arguably, the real culprits at the UN were not its officials but the Security Council, whose five permanent members invented

> a scheme that was wide open to abuse but who failed to impose the necessary safeguards (The Economist, March 13th 2008).

What becomes apparent from the above is that the Inquiry Committee's inquiry was a lost opportunity to contribute to the reversal of the deeply engrained UN staff perception that "no one" was caring much about ethics and organizational integrity and not caring had little impact on career success as the Deloitte & Touch Organizational Integrity Survey had brought to light. In this very sense of ethics, the Inquiry Committee's inquiry did not also work. McCloskey's (2006, pp. 270-273) statements "The stories of our culture give us models for acting courageously or lovingly or justly…. Guides to ethical life, to repeat, are achieved mainly through story and example…. We build our characters story by story" helps sustain my conclusion.

VI.4.3. The IIC's findings in connection with the Office of Internal Oversight

The first important fact to bear in mind in order to interpret the Inquiry Committee' findings regarding the functioning of the Office of Internal Oversight is that the terms of reference that the Secretary-General had established and negotiated with the Inquiry Committee did not include any reference or request for an assessment of the Office of Internal Oversight functioning and performance. Why then the Office of Internal Oversight was one of the first targets of the Inquiry Committee? Could the Secretary-General Annan, as well as the Security Council (which endorsed the Inquiry Committee appointment), have had any specific personal, or collective, interests to publicly expose and weaken the image and reputation of the Office of Internal Oversight? The answers to these questions will be given in Section VI.4.6 below.

The first Inquiry Committee interim report released on 3 February, 2005 (IIC 1st Interim Report, 2005) dealt specifically, among other issues, with the review of how the Office of Internal Oversight Internal Audit Division "executed its duties and responded to challenges that it encountered regarding the Programme" (p. 29).

The overall assessment was quite critical. The Inquiry Committee concluded that the Office of Internal Oversight Internal Audit Division did not fulfill its mandate by failing to audit and report on critical aspects of the Programme although many valuable recommendations had been made in the audits performed. The assessment was based on a benchmarking of the Office

of Internal Oversight practices with the Professional Practices Framework promulgated by the Institute of Internal Auditors (IIA website - http://www.theiia.org) for three dimensions of the internal audit services: operational independence; audit planning and risk assessment; and, scope and funding of internal audit (IIC 1st Interim Report, 2005).

As to operational independence, the Inquiry Committee found it somehow lacking since the Head of the Internal Audit Division was reporting to the Under Secretary-General of the Office of Internal Oversight, who in turn reported to the UN Secretary-General, a status that contrasted with the International Audit Standards that required the head of the internal audit to report functionally to an audit committee, to a board of directors, or to any appropriate governing authority (IIC 1st Interim Report, 2005, p. 30).

Risk assessment and planning prepared on that basis had started in 2001, but still the Office of Internal Oversight was not setting priorities, allocating its resources, and identifying gaps in coverage and resources by using this instrument at its full potential. Another constraint was the funding system. Approximately 40% of the Internal Audit Division funding originated from contributions negotiated with the funds and programs that it targeted to be audited (IIC 1st Interim Report, 2005). This was a serious constraint impairing both the Office of Internal Oversight operational independence and the scope of the audits.

The Inquiry Committee identified the causes underlying the overall assessment. The first regards the long last problem of understaffing which combined with the limited funding hampered its audit coverage of the Oil-for- Food Programme. The second concerns the audit coverage failure: many functions of the Office of the Iraq Programme in New York headquarters as well as key elements of the oil and humanitarian contracts, including price and quality of goods, were left without oversight. The third failure concerns communication: the deficiencies detected through the audits along the way, had not been reported in the Office of Internal Oversight annual activities reports to the General Assembly. The fourth cause identified was the Office of Internal Oversight's lack of a mechanism to resolve disputes with the auditees, such as disagreements of scope of audits. The fifth and last set of causes underlying the overall failure were those derived from the Office of Internal Oversight deviations of the International Internal audit Standards, namely a) the inability to report directly to an audit committee or other independent board; b) failure to complete wide risk assessment, and, c) lack of budgetary

independence (IIC 1st Interim Report, 2005). As a consequence the Inquiry Committee made the recommendations that could resolve the observed deficiencies at the Office of Internal Oversight functioning. Further below I will discuss whether these recommendations were implemented and how far they were sufficient to definitely resolve the weaknesses encountered by the Inquiry Committee. What is clear is that the Inquiry Committee failed to link the Office of Internal Oversight' failures with the (un)ethical environment where it operated and was unable, like the Board of Auditors and the Joint Inspection Unit were also unable, to grasp that the history of decades the UN had increased the number of staff and financial resources entrusted to operational oversight showed these efforts were unfruitful to improve the situation. The Inquiry Committee did nothing else than any commercial auditing company would have done, concluding that the causes of the failures were rooted in "rules of the game" and "governance structures". It was unable to go to the transcendent, looking inside the engrained culture, and understand and spell out the underlying root cause of the systemic problem – ethics, starting at the very top of the organization, where, paraphrasing McCloskey (2006, p. 271), the example stories and characters from which the staff could learn and imitate were not for good, but for evil.

The above cannot be fully interpreted without considering other events that surrounded the oversight of the Oil-for-Food Programme by the Office of Internal Oversight and reported by the Inquiry Committee in its 1st interim report (IIC 1st Interim Report, 2005). In August 2000 the Office of Internal Oversight considered the Oil-for-Food Programme a high risk activity and therefore identified it as an audit priority area, but could not obtain the approval of Mr. Benon Sevan, the head of the Office of the Iraq Programme, of the expenditure necessary to incur for the risk assessment exercise. While preventing the Office of Internal Oversight from an important audit tool, Mr. Sevan managed to diminish the potential for the Office of Internal Oversight getting to the critical areas of the Oil-for-Food Programme where internal controls and risks would be weaker and therefore more exposed to fraudulent activity.

Another important adverse event that precluded the Office of Internal Oversight action regarding the Oil-for-Food Programme is connected with the reporting lines which, the way they were pre-established, had revealed unsatisfactory. As a matter of fact instead of reporting to the General Assembly through the Secretary-General once a year, Mr. Nair "attempted to develop a direct line of reporting to the Security Council" (p. 184), a wise judgment of the peculiar situation

of the Oil-for-Food Programme management set-up. In interviews given to the IIC in January 2005, Mr. Nair stated:

> (1) he had limited opportunity to report to the General Assembly; (2) he did not want to overwhelm the member states with paper; and, (3) he included items in the OIOS Annual Reports either in light of the concerns expressed by the member states or because he and OIOS believed them to be important. Because he had received only one question from a member state during the Progamme's duration, Mr. Nair did not think the member states were particularly interested in the oversight of the Programme (Iraq had questioned him on a specific comment contained in the 2001 OIOS Report to the General Assembly). Mr. Nair nevertheless included comments about the programme in annual reports, but they were limited (IIC 1st Interim Report, 2005, p. 185).

These Mr. Nair's statements are contradictory with the 2000 Office of Internal Oversight's findings and identification of the Oil-for-Food Programme as high risk area in 2000 and the attempt to conduct a detailed wide risk assessment of the Programme. What Mr. Nair's statements induce is his lack of independence to report a more accurate picture of the Office of Internal Oversight's findings to the General Assembly, and this was due to the fact that the Office of Internal Oversight functional reporting was not made directly but had the "invisible hand" of the Secretary-General Annan.

To the better understanding of Mr. Nair's statements, the Inquiry Committee adds information about an exchange of inter-office memorandum between Mr. Sevan and Mr. Nair which let us know that "Those occasions when OIOS did report to the General Assembly on the Programme were marked by difficult negotiations with Mr. Sevan, who complained, even after the fact, about disclosures to the General Assembly. It is likely that these negotiations reduced the candor and information value of the reports" (IIC 1st Interim Report, 2005, p. 185).

The Inquiry Committee goes further in its critic to the Office of Internal Oversight reporting to the General Assembly mentioning that there was a discrepancy between the findings contained in the individual reports and the soft descriptions presented in the Office of Internal Oversight annual activities report. It also concludes that "the OIOS Annual Reports from 1997 to

2003 never presented any overall assessment of Programme related risk, no note of any limitations on OIOS' resources, instances of non-cooperation, or restrictions on scope" (p. 185). However nothing about the Secretary-General infringing the Office of Internal Oversight independence and of lack of effective interest on the part of the General Assembly to obtain the information was mentioned.

Finally the Inquiry Committee also noted that Mr. Nair endeavored to report to the Security Council directly regarding the Oil-for-Food Programme matters. However he was blocked by Mr. Sevan and also by the Secretary-General Annan, through his Deputy Secretary-General. Mr. Sevan argued that "if OIOS were to communicate directly to the Security Council it would compromise the division of responsibility between internal and external audit, and thus [he did] not support the proposed course of action". In his turn the Deputy Secretary-General voicing the Secretary-General's decision through a phone call refused his proposal. Mr. Nair then abandoned the matter. A clear failure of probity in TCE terms.

The Oil-for-Food Programme oversight omissions and absences however were not limited to the Office of Internal Oversight, but extended to both the Board of Auditors and the Joint Inspection Unit. In its "Management of the Oil-for-Food Programme" report dated 7 September, 2005 (IIC Report on Management of the Oil-for-Food Programme, 2005), the Inquiry Committee did analyze the role and work these two UN operational oversight bodies played during the seven years of the Programme duration to come to the conclusion of the Board of Auditors "complete failure to identify any fraud or corruption" (p. 57) and "the United Nations bodies conceptually most equipped to provide a disciplined, professional view of the management of the Oil-for-Food Programme failed to rise the challenge" (p. 57). Also in this case the Inquiry Committee did not explicitly qualify these failures as lack of professional care and excellence and therefore, in terms of TCE lack of probity.

In this management report the Inquiry Committee also assessed the situation of the Office of Internal Oversight Investigation Division. It describes the mission of the division as fact-finding, but observed that it had received relatively few Oil-for-Food Programme connected complaints most of them as late as 2002 and 2003 but limited investigation was conducted due to lack of adequate funding as well as lack of cooperation by the Iraqi authorities (IIC Report on Management of the Oil-for-Food Programme, 2005, p. 58).

The Inquiry Committee concluded that there was an ostensive absence of acceptance of the Office of Internal Oversight Investigation Division up and down the line throughout the organization aggravated by inadequate staffing, missing "whistleblower" protection, and absent managers' willingness to support aggressive investigation, notably in connection with the Oil-for-Food Programme (p. 58). Moreover, the operational difficulties evidenced by the investigation division were not in any manner supplanted by the two other UN offices with inspection and oversight authority; neither the Office of Internal Oversight Monitoring, Evaluation, and Consulting Division, nor the Joint Inspection Unit, performed any review or evaluation of the Oil-for-Food Programme.

In sum, the overall IIC's assessment of the oversight of the Oil-for-Food Programme concluded that the staffing levels of internal audit, investigation, and external audit were insufficient as it required many times audit resources given the Programme's magnitude and complexity. But of course, the responsibility in this regard is shared among the UN governing bodies "Because none of the existing governing bodies – the General Assembly, the Security Council, or the Agencies' governing bodies – addressed all the Programme's many inter connected aspects, appropriate funding and staffing were never allocated for the coordinated review of risks and audit planning across the Programme" (p. 74); "Internal and external auditors failed to audit and test properly some of the Programme's most critical areas … and to assess their impact on the Programme's financial statements" (p. 75); "BOA audit planning appears to have been inconsistent, and the areas subject to review varied by year. Furthermore, despite the Programme's increasing complexity in 2000, the number of areas addressed in BOA's audit reports declined significantly" (p. 75);"BOA paid insufficient attention to the risks of fraudulent manipulations of Programme income and spending by the Iraqi regime and that, by the 2000-01 biennium should have qualified its attentions regarding the Programme's financial statements" (p. 76); and "BOA, which was the longstanding independent oversight body with extensive authority and mandate for auditing the Organization as a whole, interpreted its mandate narrowly, focusing mainly on the financial accounts of the Programme" (p. 59).

The Oil-for-Food Programme was an enterprise and a set up running under the Secretary-General's remit of authority as far as the oversight of the Office of the Iraq Programme was concerned and the Security-Council as far as the overall oversight of the Programme was

concerned. As to the oversight responsibilities (namely administrative but also political) of the Secretary-General Annan, the Inquiry Committee was of the opinion that he exercised little real oversight of Mr. Sevan's activities, in particular over the Iraqi's abuses of the Programme to obtain illicit income from oil surcharges and humanitarian kickbacks:

> The record amply demonstrates a number of instances where there was a lack of support for and oversight of the Programme by the Secretary-General. Some of the problems identified by the Committee are: (1) a delegation to Deputy Secretary-General Fréchette that was neither clear nor appropriately monitored; (2) an inadequate response to investigation of reports of Iraqi abuses and corruption of the Programme, in part by failing to ensure that reports of Programme violations were brought to the attention of the 661 Committee and the Security Council; (3) a lack of adequately ensuring that the sanctions objective of the Programme received appropriate attention; and (4) a failure to provide adequate oversight of the Executive Director of OIP, Benon Sevan" (p. 48).

The Security Council's oversight responsibilities were of political nature, and according to the Inquiry Committee, the Security Council struggled. And it struggled from the Progamme's inception failing in clearly defining the broad purposes, policies, and administrative control of the Programme: "on one hand, far too much initiative and decision-making was left to the Iraqi regime while on the other, the Security Council took the extraordinary step of retaining, through its 661 Committee, substantial elements of administrative, and therefore, operational, control. That turned out to be a recipe for the dilution of individual and institutional responsibility. When things went awry – and they did – when troublesome questions of conflict between political objectives and administrative effectiveness arose, decisions were delayed, bungled, or simply avoided – no one was in charge" (IIC Report on Management of the Oil-for-Food Programme, 2005, p. 60). These were all probity / ethics breaches, but as we peoples of this world found out at the end, is that none of these actors were punished for their misdeeds. Not a good sign in terms of what citizens would be learning from this story and these characters that they will tend to imitate.

VI.4.4. Critical Events Surrounding the Inquiry Process

In this section I present extracts of some selected newspapers' articles published during the period when the Inquiry Committee's inquiry was developing to bring evidence of the account given by journalists and reporters of events unfolding in the sidelines of the inquiry but that had a bearing in the final results presented by the Inquiry Committee. These pieces of news also help contextualize and understand the complexity and sensitivity of the issues at stake at the time.

> **Judith Miller, 3 nations blocked UN oil-for-food probe, report says, International Herald Tribune, October 4, 2004:** [US House committee] […] investigators say that France, Russia, and China systematically sabotaged the former United Nations oil-for-food program in Iraq by preventing the United States and Britain from investigating whether Saddam Hussein was diverting billions of dollars…. The paper suggests that [the three countries]…blocked inquiries…because their companies had much to gain from maintaining the status quo…. The paper also accuses the UN [Iraq program] office … of having pressed contractors not to rigorously inspect Iraqi oil being sold and the foreign goods being bought…[The subcommittee chairman], Christopher Shays…said…that there was no doubt that the abuses were systemic and that blame for the widespread corruption must be shared by Security Council members, the UN office that administered the program and the contractors hired by the United Nations to inspect Iraq's oil exports and aid purchases…. The paper concludes that the program's greatest weakness was the lack of transparency. 'Most transactions involving the program were done behind closed doors or sometimes illicitly', the paper states. The list of oil purchasers was not known. The list of humanitarian providers was not known.

> **Judith Miller, Senators accuse U.N. leader of blocking their fraud inquiry, The New York Times, November 10, 2004:** Leaders of a United States Senate subcommittee investigating allegations of fraud in the oil-for-food program in Iraq have accused Kofi Annan, the United Nations secretary general, of

> obstructing their inquiry…[In a letter sent to Mr. Annan] the senators said it had taken four months for Mr. Annan to reply to the subcommittees requests, and when he finally did, he refused to cooperate with the Senate inquiry. 'We are concerned that the U.N.'s nondisclosure policy is being used as both a sword and a shield', the senators wrote, 'sharing such 'internal records' when it favors the U.N., but then declining to do so when such disclosure could have negative implications'…. Edward Mortimer, director of communications in the secretary general's office, said United Nations officials would carefully look into what is clearly a very awkward and troubling letter. 'The subcommittee also announced…that it would hold the first of several hearings into allegations of widespread corruption in the $64 billion program'…. The [senators'] letter also asks Mr. Annan to permit the Senate investigators to interview 11 senior United Nations officials.

In late November and early December 2004, the Oil-for-Food Programme investigations blew up into a front-page crisis in the media worldwide. Investigators in the US Congress called for Mr. Annan's resignation, as shown by the following quotes, including the response of Mr. Annan and his supporters:

> **Edith M. Lederer, Son's payments on deal disappoint Annan, Associated Press, November 30, 2004:** Secretary-General Kofi Annan said he was unaware his son received $30,000 a year for over five years from [Swiss-based Cotecna which is] under investigation in connection with suspected corruption in the U.N. oil-for-food program in Iraq. The disclosure…was the latest embarrassment for Annan and the United Nations … Annan told reporters Monday that he had been working on the understanding that payments to his son Kojo … stopped in 1998…. But on Friday…Kojo Annan's lawyer had informed the [Volcker panel] that the younger Annan continued to receive payments through February 2004. The Secretary-General reiterated that in his U.N. job he 'has no involvement with granting of contracts, either on this Cotecna one or others'. But he said he understood the perception problem for the U.N. or the perception of conflict of interests and wrongdoing. Five U.S.

congressional panels have been pressing the [Volcker panel] to hand over internal U.N. documents for their own oil-for-food probes … [UN spokesman Fred Eckhard] said it was up to Volcker to decide whether the Kojo Annan contract involved wrongdoing. 'We feel there is not. We have looked into it and we can find no evidence', he said.

Norm Coleman, Kofi Annan must go, Opinion Journal, Wall Street Journal, December 1, 2004 [Note: Senator Coleman is also a member of the US Senate Foreign Relations Committee]**:** It's time for U.N. Secretary-General Kofi Annan to resign. Over the past seven months, the Senate Permanent Subcommittee on Investigations, which I chair, has conducted an exhaustive, bipartisan investigation into the scandal surrounding the U.N. Oil-for-food program…. Our Investigative Subcommittee has gathered overwhelming evidence that Saddam turned this program on its head … Mr. Annan was at the helm of the U.N. for all but a few days of the Oil-for-food program, and he must, therefore, be held accountable for the U.N.'s utter failure to detect or stop Saddam's abuses…. As a former prosecutor, I believe in the presumption of innocence. Such revelations [as those of a high UN official's and his son's involvement], however, cast a dark cloud over Mr. Annan's ability to address the U.N.'s quagmire. To get to the bottom of the murk, there needs to be a change at the top…[including] a truly independent examination to ensure complete transparency, and to restore the credibility of the U.N.… If this widespread corruption had occurred in any legitimate organization around the world, its CEO would have been ousted long ago, in disgrace. Why is the U.N. different?

Warren Hoge, Annan is teetering on his perch, The New York Times, December 3, 2004e: Today Annan is the embattled head of an organization at odds with its most powerful constituent, the United States …. Diplomats at the United Nations … are alarmed at evidence that a campaign they [viewed as narrow] … is spreading so rapidly…. There is no provision in the United Nations charter for the removal of a secretary-general…. Five [Security]

> Council members and…other countries made public declarations backing him … United Nations staff members [supported him with a] circulating e-mail saying that many of the charges against him were totally unfounded and verge on the hysterical…. A [UN official] said the turnout reflected … also disappointment at the failures of senior management to mount an effective response. "The dismay is palpable", he said. 'This is upsetting the staff, morale is at an all-time low'. Wirth, a former [US] Senator, said "It's not the oil for food program alone that generated all of this … it's the involvement of the son, Kojo".

Even if there was no impropriety in Mr. Annan's son's involvement with contractors for the UN Oil-for-Food Programme (an issue still far from being resolved), much valid criticism properly focuses on how poorly Mr. Annan and the UN have handled the allegations since they appeared. Two knowledgeable quotes underscore the remaining grave problems for the UN leadership and for the organization's diminishing reputation.

> **Associated Press, Firm in UN scandal draws harsh criticism: Investigator disputes Annan comments, in the International Herald Tribune, March 31, 2005:** [Investigator] Mark Pieth…rejected [Kofi] Annan's declaration that the [Volcker] report … exonerated him on the matter of Cotecna winning a $10 million a year UN contract, while he was secretary-general, and while it employed his son, Kojo. 'We did not exonerate Kofi Annan', Pieth said in an interview. 'We should not brush this off. A certain mea culpa would have been appropriate'… Annan, when asked if he planned to step down, replied 'Hell, no….After so many distressing and untrue allegations…made against me, this exoneration…is a great relief'. But the report clearly faulted [his] management…and his oversight of the scandal-ridden oil-for-food program…[concerning Cotecna,]. 'It's a continuous history of us confronting them, their owning up to something and then backtracking', said Pieth, a professor of criminal law and criminology at the University of Basel, in Switzerland. [He cited an April 2004 Cotecna letter, not included in the report, which stated] … that after Kojo Annan left the company in 1998, it paid him no

more money. But the report issued Tuesday concluded that Kojo Annan was paid as much as $484,000 after he left the company.

FoxNews.com, Published March 30, 2005: Independent Inquiry Committee on Tuesday revealed that Iqbal Riza, the former chief of staff, shredded thousands of documents that might have shed light on Annan's involvement in the Oil-for-Food scandal and that Riza acted in contravention of one of his own directives. The report says Riza didn't tell the IIC that he approved the destruction of three years of his documents when first interviewed in the investigation on Dec. 20, 2004. Two days later, Riza called the IIC to say that some documents couldn't be located because they had been destroyed. He then produced a copy of his memorandum authorizing the shredding. Riza claimed he was aware of the investigation when he OK'd the shredding, but that he did not connect those files to those that may be relevant to the Oil-for-Food investigation. He thought the files in question were simply copies of records already stored in a central U.N. system. But Volcker's committee found evidence that proved otherwise.

The Economist, Kofi, Kojo and a lot of shredded documents: There are still too many unanswered questions at the United Nations, April 2d, 2005: Kofi Annan, the United Nations' embattled secretary general, claims to have been 'exonerated' by the Volcker committee's second report into the organisation's oil-for-food scandal. He was not. The committee … did indeed find no evidence of impropriety by Mr. Annan in the UN giving a hefty contact to Cotecna, a Swiss firm that employed his son Kojo. But the report is riddled with unanswered questions and ambiguities. Kojo, in particular, comes in for damning criticism … accused of repeatedly lying, of seeking to conceal the true nature of his relationship with Cotecna … and of refusing to cooperate fully with the committee. The committee will continue to investigate his role … and his financial dealings … [and, inter alia, it] … point[s] out that Kojo had close contacts in the UN's procurement office…. The committee's main conclusion is

> carefully worded, not to say opaque…. This is hardly the full exoneration that Mr. Annan wanted. Some of his many American critics are once again baying for his blood. Asked this week if he would resign, Mr. Annan's answer was clear: 'Hell, no!' But his reputation has been besmirched, his credibility undermined and his moral authority badly eroded.
>
> **Mark Turner, Fury at UN plan to pay legal fee from Iraq revenue, Financial Times (UK), March 24, 2005:** Leading members of the United Nations Security Council yesterday demanded to know why the UN secretariat had offered to use Iraqi oil revenues to pay the legal fees of Benon Sevan, the disgraced former head of Iraq's oil-for-food programme. The UN said on Tuesday that it had promised to pay Mr. Sevan reasonable legal fees to ensure his cooperation with the Volcker Commission … [and] proposed to cover the costs from a special account funded by Iraqi oil revenues to administer the oil-for-food programme. Feisal Istrabadi, Iraq's ambassador to the UN, expressed outrage. The idea that Iraqi state assets are being used to defray the legal fees of someone alleged to have stolen money from the people of Iraq is shameful. This is like a bank employee accused of stealing funds, and requiring the depositor to pay his legal fees…'When I saw that I thought, that's not possible', said another diplomat. 'Why should the Iraqi people pay for that? It's dreadful, the UN is making one mistake after another'. The disclosures are seen as a further blow … [before next week's report] assessing whether Kojo Annan … used his family connections to obtain oil-for-food inspection contracts.

VI.4.5. The impact of the "externalization" decision

The impact of the choice for a certain oversight governance structure is assessed through the lens of the TCE expounded in Chapter II searching for its observable elements in the reality and to test for their adherence to the theory predictions.

Transactions

The "inquiry" into the Oil-for-Food Programme constituted a single unique idiosyncratic transaction (Williamson, 1985, p. 79). What type of transaction was it then?

In reference to the Secretary-General's mandate addressed to the Inquiry Committee, presented in Section VI.4.1, the inquiry aimed at determining: if there were procedures violated for the processing and approval of contracts under the Programme, whether personnel, agents or contractors engaged in any illicit or corrupt activities, and whether the accounts of the Programme were maintained in accordance with Financial Regulations and rules of the United Nations. Notably, the mandate did not include any review of the Office of Internal Oversight's functioning and performance.

Considering the definitions adopted in the preceding Section VI.1.1, the Secretary-Genearl's mandate explicitly embodied elements of both audit, and administrative and criminal investigation, thus, in the surface the inquiry mandate contained elements of sovereign and judiciary transactions in terms of Williamson's (1999) definitions. Illicit or corrupt activities are of criminal (judiciary) investigation transactions nature, the checking if the accounts of the Programme were maintained in accordance with Financial Regulations and rules of the United Nations are audit type of transaction, and procedures violated for the processing and approval of contracts under the Programme may be classified as of administrative nature therefore falling in an administrative investigation transaction type.

Recalling, judiciary transactions are those that the system of law courts administers to produce or deliver justice, and constitute the judicial branch of any "sovereignty". The most important attribute of judiciary transactions is "independence" (Williamson, 1999, p. 321). But, independence is not the only distinctive unique attribute of judiciary transactions. There are other distinguishing attributes that are unique to judiciary transactions: the subpoena[8] power, the power to produce judgment, the power to issue sentence, and enforcement powers.

Following this line of reasoning, the judiciary transaction dimension of the inquiry to which independence is attached could have been determinant in the back of the mind of those pressing and claiming for an "external" entity to carry out the inquiry, pretending that being the

[8] A writen ordering a person to attend a court: a subpoena may be issued to compel a person's attendance to testify.

Inquiry Committee an external autonomous structure, the independence was assured that way. But this was not the case at all, independence is not synonymous of external. Going deeply on what is required to classify a the transaction as judiciary investigation, it becomes evident that the distinctive attributes that should verify in such a judiciary investigation were not present in the "outsourcing" contract established between the Secretary-General and the Inquiry Committee. None of the above identified distinctive dimensions of judiciary were present in the Inquiry Committee arrangement. The Inquiry Committee was not independent from the Secretary-General, the structure that appointed it and negotiated all administrative and funding for the same. The Inquiry Committee had no subpoena powers, it had no power to produce judgment, it had no sentence power, and it had no enforcement power: these powers are endowed only to the Secretary-General through the UN Charter and cannot be sub-delegated. Most importantly, the power to waive both the functional and the diplomatic immunities accorded to UN staff, documents and premises (Appendix C), when the decision to turning over to national judiciary authorities alleged criminal cases for prosecution purposes arises is also exclusively endowed to the Secretary-General. But the Charter (Appendix A) has no provision allowing the Secretary-General the sub delegation of any of these powers.

By contrast the Office of Internal Oversight was endowed with the power to conduct investigations by the General Assembly (see Appendix D), the legislative organ of the UN. Hence, the Office of Internal Oversight would have been better equipped and more powerful to conduct the investigation because it was empowered by the General Assembly to do so. While appointing the Inquiry Committee to conduct the investigation the Secretary-General may have trumpeted General Assembly's decision and authority establishing the Office of Internal Oversight.

If the transactions engaged with the Inquiry Committee do not qualify for "judiciary" classification, do they classify for "sovereign" classification?

Recalling, a sovereign transaction, as defined by Williamson (1999, p. 320), contains the following elements: special needs for probity; implicate the security of the state; and the executive is chiefly responsible. Attributes of these transactions include efficiency, equity, accountability, and authority (Wilson, 1989). In Section VI.1.1 I have considered the definitions of the General Assembly for the internal audit, monitoring, and inspections and evaluation

transactions to fit the sovereign type Williamson's definition. Looking at the audit transactions included in the Inquiry Committee's mandate it becomes clear that the mandate lacked the "security and the authority of the state" as the Inquiry Committee was an external autonomous entity working under an outsourcing type of contract without having been endowed with the powers to audit, inspect, evaluate and monitor, by the legislative organ, the General Assembly. Also in this case the Office of Internal Oversight would have been better equipped, formally legitimate, to carry out such audits benefiting from the "security" of the General Assembly which was not granted to the Inquiry Committee.

Concerning authority, the Chairman of the Inquiry Committee had realized soon that it would be an issue to the task at hand. In Meyer and Califano (2006, p. xiv), Mr. Volcker states:

> Success, in any event, would be dependent on the perception and reality of absolute independence in staffing and investigative approaches…. Beyond the Secretary-General's personal reassurance in those respects, I thought it crucially important that the Security Council itself provide authority for the "Inquiry" and call upon all member states, as well as all UN staff and organizations, for their full cooperation and support. The need for a formal resolution was a matter of some controversy, but agreement was reached in the Security Council rather promptly on a satisfactory language explicitly calling upon all member states and their agencies to cooperate with the inquiry.

The conclusion is therefore that the transactions effected by the UN Secretary-General and the Inquiry Committee were neither judiciary nor sovereign (see Section II.2.1 and Williamson, 1999, pp. 319-321). The inquiry to work would have to be set up as judiciary and sovereign transaction entrusted to a governance structure that could be positioned to partake of the authority of the sovereign – the UN Charter (Appendix A) as well as the Convention on Privileges and Immunities of the UN (Appendix C). At the time, two governance structures, the General Assembly and the Office of Internal Oversight, were positioned to partake of the required authority.

Transactions' Attributes

Asset Specificity

Professional knowledge, professional experience and specific professional standards, rules and procedures to safeguard the integrity of the outputs of the inquiry, the equity and fairness were referred by the Inquiry Committee to be essential critical components to assure the quality and the credibility of the results of the inquiry. In this regard Volcker et al. (2006, pp. xiv - xvi) stated:

> When the Secretary-General persisted in his efforts to recruit me, I thus had an instinctive understanding of the issues and emphasized several key points to him. A thorough investigation of the Oil-for-Food Program would require a sizable professional staff…. Reassured by strong qualifications of the proposed Committee members [Goldstone a retired justice, and Pieth a money laundering and corporate corruption expert], an adequate Security Council Resolution, and with transitional funding in hand, I agreed to chair the newly established Independent inquiry Committee into the Oil-for-Food program….A highly experienced investigator was borrowed for a few weeks to help recruit staff and plan the investigation…. A respected senior forensic accountant, …, was lured out of retirement…. It was not so easy to find a capable, widely respected, and experienced chief of staff to accept the professional risks.

Crucial to understand the context and the situation where the events surrounding the decision to contract out the Inquiry Committee developed, is the fact that both the Secretary-General and the Security Council have had direct executive and oversight responsibilities in the Oil-for-Food Programme management: an inquiry which terms of reference and the appointment of the Inquiry Committee chairman, and its members, were decided by the Secretary-General himself, could not claim independence. A Security Council resolution (UN document Security Council Resolution 1538, 2004) that endorsed, but did not add any new element to the terms of reference, decided by the Secretary-General was not powerful enough to give the "authority" that Mr. Volcker claims he needed and seek from the Security Council. The UN Organ that has legislative administrative power to grant the "authority" Mr. Volcker was claiming, is the General Assembly, and it was not involved in the inquiry arrangements in any way. Thus, neither the required authority nor the independence could have been secured through the Secretary-General's terms of reference or the Security Council's resolution.

Uncertainty

While facing the turmoil caused by the events surrounding the Oil-for-Food Programme scandal which were also reaching his personal position with many voices outside the UN claiming for his resignation, the Secretary-General took the lead and the decision to contract out the inquiry, even though the terms of reference he designed to task the Inquiry Committee were not very explicit and complete regarding the objectives, the means and the aftermath consequences of such inquiry to the organization. As a matter of fact, the terms of reference designed by the Secretary-General not only did not specify any assessment or evaluation of the operational oversight of the Programme, which came to be in the forefront of the Inquiry Committee's concerns (the Inquiry Committee had never explained this option in conducting the inquiry), but also did not specify the procedures that would be adopted and follow-up actions to implement the expected recommendations brought about by the Inquiry Committee. Nor even a word on this regard. The estimated cost of this inquiry was USD 36 million involving the work of more than 70 staff and a span of time of nearly two years. But the Secretary-General Annan had not delivered a single word about how to turn effective the expected recommendations that the Inquiry Committee was supposed to produce to the organization. At its inception the uncertainty regarding the effectiveness of the inquiry was very high and the transaction costs were at least USD 36 million.

There is however another important aspect that might be revealing of an opportunistic behavior on the part of the Secretary-General: taking the lead to appoint the Inquiry Committee and establishing himself the terms of reference and the boundaries for the inquiry might have avoided a General Assembly's decision to inquire under its remit of responsibility, which, if it would have materialized, the Secretary-General could not have been in the position to control for its consequences. Thus, he had the opportunity and the means to set the stage himself in a way which better protected his personal position and interests. On the other hand, also for the Security Council the Inquiry Committee might have represented the best solution to protect its members' diverging interests but united by a collective problem which was their direct responsibility in the management of the Oil-for-Food Programme.

Frequency

Frequency was null. The Inquiry Committee inquiry was a one-time *ad hoc* transaction.

Probity

The Inquiry Committee was contracted following a serious break of probity at several instances in the organization at the highest echelons touching the head of the Office of the Iraq Programme, the SG (vertical probity), the Security Council (vertical probity), the UN Controller who managed the Escrow BNP Paribas account, the Director Human Resources who destroyed important documents necessary for the investigation, the Office of Internal Oversight as it did not properly reported its findings regarding the audits to the Oil-for-Food Programme, the Board of Auditors for omission, the Joint Inspection Unit for omission, etc..

The Inquiry Committee took a stance of practicing transparency: "Committee conclusions and analysis would need to be made public in their entirety" (Volker et al., 2006, p. xiv). This was explained to be necessary to repair the reputation of the UN given the debacle of the Oil-for-Food Programme scandal. This was certainly a good step. But was this sufficient in terms of probity? Any inquiry requires high levels of probity, but considering what is known concerning several aspects surrounding the Inquiry Committee's appointment and functioning, it becomes apparent that the necessary safeguards of probity hazards had not been assured from its inception.

Alignment/Misalignment

The Secretary-General's decision to outsource the inquiry into the Oil-for-Food-Programme scandal contradicts Williamson's prediction whereas the public bureaucracy is the most efficient mode for organizing sovereign and judiciary transactions (Williamson 1999). In confrontation with the central hypothesis of TCE the Secretary-General's option was not the most efficacious given that two conditions verified:

- The terms of reference for the inquiry included two types of transactions: sovereign type as far as internal audit dimension of the inquiry was concerned, and judiciary as far as the investigation dimension of the inquiry was concerned;
- Misalignment between the type of transactions, the frequency (single *ad hoc* transaction), the high specificity of human resources required, and the governance structure chosen to administer them.

VI.4.6. Has the Inquiry Worked?

On searching for the answer to this central question I make recourse to a set of subsidiary questions to which I attempt the answer now.

What hazard was implicated on the UN Secretary-General's option for the Inquiry Committee instead of an internal governance structure, the Office of Internal Oversight? Was it a failure of probity?

To answer the above questions it is essential to recall that the highest responsibilities for the political and operational management of the Oil-for-Food Programme were shared by the Secretary-General Annan and the Security Council. At the time the Secretary-General took the decision to opt to contract out the Inquiry Committee, late March 2004, the Inquiry Committee was appointed by the Secretary-General with the endorsement of the Security Council but without the "blessing" of the General Assembly.

Although there are no hard proofs to support a definitive answer to the above questions, there are certain events relevant at the time of the decision that, making recourse to the TCE opportunism behavior factor, may help to come to a conclusion. These events are:

i) The confirmatory results of the Lubbers harassment case investigation carried out by the Office of the Internal Oversight, that Secretary-General Annan had wished to cover up but was not successful because Mr. Nair, the head of the Office of Internal Oversight up stand and did not accept the cover up pretentions of the Secretary-General;

ii) The Office of Internal Oversight had carried out 55 audits of the Oil-for-Food Programme with critical recommendations and findings which Secretary-General Annan did not allow the Security Council and the General Assembly to be informed of. He was resisting to convey these reports to the Inquiry Committee;

iii) While managing to weaken and diminishing the credibility and public image and reputation of the Office of Internal Oversight, through the Inquiry Committee, he could "wash his hands" and have a public explanation to the "world" to justify why he had hidden the 55 audits into the programme and why he terminated all of

a sudden the Office of Internal Oversight's ongoing investigations and contracted out the inquiry into the Oil-for-Food Programme;

iv) By adopting a designation for the Inquiry Committee adding the word "independent" also envisaged to pass the idea the Independent Inquiry Committee was independent and the Office of Internal Oversight was not, in a mere attempt to rebuild UN reputation through a "mirror game".

In TCE these behaviors reflect personal and opportunism, which, combined with external pressures from the largest UN contributor and the leaks to the international media, helped the Secretary-General to follow a solution that may have best served his and the Security Council members' personal interests.

While the Secretary-General Annan and Mr. Benon Sevan (the head of the Office of the Iraq programme reporting directly to SG Annan) failed to recognize grave risks, to ensure and deploy adequate audit resources accordingly, and to act on audit findings, these had been failures of probity, vertically, horizontally, and laterally.

How far the UN Secretary-General's contract with Inquiry Committee into the Oil-for-Food Programme scandal was crafted to economize on bounded rationality while simultaneously safeguarding the effectiveness of the inquiry against the hazards of opportunism?

Secretary-General Annan addressed the Security Council's president on 26 March 2004 informing on his "intention to establish an independent, high-level inquiry concerning matters arising from the public news reports and commentaries that have called into question the administration and management of the Oil-for-Food Programme, including allegations of fraud and corruption" and of the terms of reference of the Inquiry Committee (see Appendix E). And further Secretary-General Annan informed that "The Office of Internal Oversight Services recently commenced an inquiry into the reported allegations of corruption, including criminal acts, in the Oil-for-Food Programme pursuant to the authority granted by the General Assembly" [A/RES/48-218 B, A/RES/54/244]. "I will request that OIOS terminate its inquiry and provide such documents and other materials as they may have collected in connection with that investigation to the extent possible pursuant to the confidentiality requirements for sources of

information as provided in the OIOS mandate" [ST/SGB/273 of September 1994]. However, regarding access to UN documents, in the same letter Secretary-General Annan asserted as well: "To carry out the above-referred tasks, the independent inquiry shall have unrestricted access to all relevant United Nations records and information, written or unwritten". In same letter Secretary-General Annan asserted: "I will employ my authority to ensure that the organization's privileges and immunities do not impede the work of the inquiry".

There are evident contradictions in the Secretary-General's letter to the Security Council's president. The first regards the "independence": while informing that an "independent high-level inquiry" was established to inquiry the Oil-for-Food Programme, by the same token he was informing that "OIOS' investigation be terminated", on a clear interference and violation of the Office of Internal Oversight's independence, authority, and mandate to decide which audits and investigations to conduct, powers which were granted by the General Assembly. The second regards the Inquiry Committee's access to information: he attempted to restrain the access to the Office of Internal Oversight's audits and materials in connection with the Oil-for-Food Programme.

The facts above lead to the conclusion that the answer to the question is negative. The Secretary-General did not safeguard the integrity of the inquiry since its inception for two main reasons: on the one hand he hindered the independence of the Office of Internal Oversight on the other hand he limited the independence of the Inquiry Committee to accessing documents. To appoint an "independent inquiry" he trumpeted the independence of an ongoing Office of Internal Oversight's investigation, and in so doing, he trumpeted the authority of the sovereign, the UN General Assembly. In addition, the Inquiry Committee's mandate could not be performed under the remit of the UN "rules of the game", the Charter and the Convention on Privileges and Immunities (see Appendices A and B) as well as the rules governing the functioning of the Office of Internal Oversight (see Appendix D), the only structure formally legitimized by the General Assembly. A good illustration of the unclear institutional status of the Inquiry Committee was the publication of its own "investigation guidelines" (IIC Investigation Guidelines, 2004) conflicting with those in force in the Office of Internal Oversight. The only manner to enforce these Inquiry Committee's investigation guidelines would have to be through the General Assembly because the Inquiry Committee was not constituted as a governance structure of the UN governance

system. In addition the Inquiry Committee has never disclosed with which criteria, audit standards and procedures it conducted the inquiry. Although these are formal procedural aspects they are essential to safeguard the integrity of any such inquiry, therefore the probity.

Because of the situations such as the Inquiry Committee and the Office of Internal Oversight the General Assembly, in October 2005, felt the need to reaffirm its authority asserting in resolution A/RES/60/1 "We [General Assembly] reaffirm the central position of the General Assembly as the chief deliberative, policy making and representative organ of the United Nations, as well as the role of the Assembly in the process of standard-setting and the codification of international law" (UN document A/RES/60/1, 2005).

It is hard to see how a team of three personalities handpicked by the UN Secretary-General to conduct an inquiry, whose son (Kojo Annan) was himself a subject of investigation, could be considered truly independent. There is also a major question mark over its chairman's neutrality. In addition to the problems outlined above, there is another fact that might have been a conflict of interest situation that could have impaired Mr. Volcker's "independent" status. When Mr. Volcker was appointed to lead the Oil-for-Food Programme inquiry in April 2004, it was not widely known by the public, the world's media, and the USA Congress that he was a director of the United Nations Association of the United States of America (UNA-USA) and the Business Council for the United Nations (BCUN). Mr. Volcker was listed as a director in the 2003-2004 UNA-USA annual report, as well as in the annual reports for 2001-2002 and 2000-2001 (UNA-USA www.unausa.org/pdf/publications). In his biography on the Independent Inquiry Committee's website he did not mention his involvement with the UNA-USA, but disclosed his other institutional affiliations-including the Trilateral Commission, the Institute of International Economics, the American Assembly, and the American Council on Germany. Considering Mr. Volcker's several years as a director of the United Nations Association and the Business Council for the United Nations, it is difficult to see how he could independently cast a critical, objective eye on the UN's leadership.

> ***What attribute is attached to the UN Secretary-General's opting out transaction? Is it a "sovereign" type or a "judiciary" type transaction? Is there any specific and determinant attribute so that the decision taken maximized the efficiency and the outcome of the inquiry?***

In the preceding Section VI.4.5, I arrived to the conclusion that the transactions effected by the UN Secretary-General and the Inquiry Committee were neither judiciary nor sovereign (see Section II.2.1 and Williamson, 1999, pp. 319-321) although the "intention" of the Secretary-General was to make the "world" believe that the Inquiry Committee set up was sufficient to guarantee the integrity of "sovereign" and "judiciary" transactions. The inquiry to effectively work would have to be set up as judiciary and sovereign transaction entrusted to a governance structure that could be positioned to partake of the authority of the sovereign – the UN Charter. Two governance structures in the UN governance system were positioned to partake of the required authority, the General Assembly and the Office of Internal Oversight at that time.

The USA Ambassador to the UN at the time, John Danforth, quoted in Fox News, pointed out that the Inquiry Committee was not equipped with the necessary tools to conduct a thorough investigation:

> The fact that [Volcker] doesn't have subpoena power, he doesn't have a grand jury, he can't compel testimony, he can't compel production of documents and witnesses and documents that are located in other countries might be beyond his reach…. Those are tremendous handicaps…. [W]hat is possible, is that his focus would move from the bad acts, from the criminal offenses to something that he will view as more manageable – namely the procedures and was it a tight enough procedural system, which might be interesting but not the key question to investigate (Fox News, January 8, 2005).

Was the Inquiry Committee the most efficient governance structure to provide the investigation service to the UN Secretary-General and to the UN General Assembly?

The role of Secretary-General Kofi Annan was not investigated as well as the role of each of the Security Council members. The Secretary-General and the member countries' representatives seated in their personal capacity at the UN Security Council enjoy diplomatic immunity under the UN Convention on Privileges and Immunities (Appendix C). The Secretary-General has the power to wave the immunity of UN officials, but not his own. The General Assembly would have the power of authority to waive Secretary-General's immunity for investigation purposes. The complete lack of any criticism, or even mention, of UN Secretary

General Kofi Annan, is an omission that at least casts doubts about the completeness and integrity of the Inquiry Committee's inquiry into the UN's handling of the Oil-for-Food Programme.

Without any kind of external oversight, the Inquiry Committee was clearly open to UN manipulation. Paul Volcker, handpicked by Annan, was under immense pressure from the UN to clear the Secretary-General and restore the reputation of the United Nations. Refusing to hand over to USA Congress the 55 highly critical internal UN Oil-for-Food Programme audits until January 2005 added to the impression of a major cover-up by the UN. This important but at times flawed and incomplete inquiry that leaves many questions unanswered in relation to the role of senior UN officials, including Kofi Annan and his Chief of Cabinet, from 1997 to 2004, Iqbal Riza, was insufficiently scrutinized in relation to his extraordinary decision to shred thousands of UN documents between April and December 2004. Among these documents were the entire UN Chef de Cabinet chronological files for 1997, 1998, and 1999, many of which related to the Oil-for-Food Programme. Mr. Riza's actions gave the impression of a major cover-up at the heart of the UN, and raised further serious concerns over interference with the work of the Inquiry Committee's inquiry by UN officials. Gardiner (2005) analyzing the Inquiry Committee's reports illustrates these flaws of the inquiry as follows:

> The Volcker inquiry was less than forthright in its analysis of possible wrongdoing and incompetence at the very top of the U.N. Secretariat, a point sharply highlighted by the resignation in April of former FBI agent Robert Parton, the IIC's lead investigator on the Kofi Annan/ Kojo Annan issue. Parton resigned on a matter of principle, in protest at the Volcker Committee's unwillingness to take a harder line regarding the actions of the Secretary-General. Parton subsequently handed over thousands of pages of documents relating to the Annan investigation to the House International Relations Committee.

A veil of doubt, widely reported in the media, remained over the UN Secretary-General Anan with regard to his meetings with senior officials from the Swiss Oil-for-Food contractor Cotecna, which employed his son Kojo from 1995 to 1997 and continued to pay him through 2004. Serious questions have also emerged regarding blatant interference with the conclusions of

the Inquiry Committee's inquiry by the office of the UN Secretary-General. The Los Angeles Times revealed an extraordinary last-minute intervention by Mr. Annan to protect his own name and head off the prospect of resignation, raising huge doubts over the independence of the UN Secretary-General-appointed inquiry. Based on an interview with the Inquiry Committee's Chairman, Mr. Volcker, the newspaper concluded:

> Hours before the publication of Volcker's report in September assessing Annan's culpability, the UN chief and his lawyer asked Volcker to change language about business dealings by Kojo Annan that they thought could force his father's resignation. Volcker agreed. It was merely a part of the due process, he said (Farley, M., October 28, 2005).

The "due process" was dealt with the father of the alleged "criminal", not with the alleged "criminal" person directly. What an envious way of conducting due process – a deviation of temperance and justice virtues. Another relevant piece of evidence showing that the inquiry could not work from its inception is the report prepared by the Commission of Inquiry appointed by the South African government which published its report in 2006 concluding "The report amounts to the documentation of a fact finding exercise which the IIC undertook. IIC is not an Organ of the UN. No legal consequences can be attached to its findings. Nor are the findings the subject of a binding Council resolution under Chapter VII. In a press release the Secretary-General of the UN 'called on Member States to take action against illegal practices by companies under their jurisdiction and to prevent recurrences'. He also hoped that 'national authorities will take steps to prevent the recurrence of such practices in the future, and that they will take action where appropriate against companies falling within their jurisdiction" (South Africa Government, Commission of Inquiry into the OFFP, www.justice.gov.za/commissions/17jun2006).

VI.5. The Aftermath Impact of the Oil-for-Food Programme Scandal Inquiry to OIOS and to UN Governance

VI.5.1. 2005 – 2008: "Independenzation" – The creation of the Independent Audit Advisory Committee (IAAC) and the Ethics Office

One of the recommendations put forward by the Inquiry Committee intended to strengthen the oversight and audit was to "Establish an Independent Oversight Board (IOB) with

majority of independent members and independent chairman. In discharging its mandate, the IOB should have functional responsibility for all audit, investigation, and evaluation activities, both internal and external, across the United Nations Secretariat and agencies substantially funded by the United Nations and whose leadership is appointed by the Secretary-General. The IOB should be particularly concerned with overseeing and monitoring:

1. Implementation of risk-based planning across the United Nations system;
2. Implementation of oversight, audit, and investigation best practices;
3. Implementation of a consistent framework for assessing findings and recommendations and bringing significant oversight issues to the attention of the Secretary-General/Director-Generals and the General Assembly/Governing Bodies;
4. Investigations and improvements in the ethics and integrity of the Organization; and,
5. The efficiency and effectiveness of the oversight function.

In the interest of transparency, there should be annual disclosure from the IOB to the General Assembly of the planned audit coverage and the actual results of oversight activity. IOB oversight reports should be publicly accessible. The IOB should consult with and coordinate as appropriate with all UN-related agencies" (IIC, Report on the Management of the Oil-for-Food Programme, 2005, p.6).

Towards the end of the year 2005, as the turmoil caused by a series of scandals continued, namely the Oil-for-Food-Programme one, the Secretary-General adopted an aggressive agenda of reforms, envisaging, among other issues, accountability and oversight. At the 2005 World Summit, the Secretary-General opined to Member States that it was time for "bold decisions" and submitted his report "In Larger Freedom" (UN document A/59/2005, 2005). On management reform in particular, through the World Summit Outcome Document (UN document A/RES/60/1, 2005) the Secretary-General was requested "to submit proposals for implementing management reforms to the General Assembly for consideration and decision in the first quarter of 2006". Regarding oversight the Secretary-General argued:

> Critical both to good management and to ensuring the highest standards of integrity and accountability is a system of proper oversight and audit. Currently, the United Nations is subject to multiple internal and external audit

and review bodies – including the Board of Auditors, the Joint Inspection Unit and the Office of Internal Oversight Services – with varying and somewhat overlapping mandates and remits. In addition, the Office of Internal Oversight Services itself has a complex set of responsibilities that is subject to potential conflicts of interest between its role in providing management advisory services to the United Nations departments and its investigatory and audit functions. This latter role, in which the Office of Internal Oversight Services has traditionally provided internal audits for use by senior management, has also become blurred as a result of the General Assembly's recent decision to have the Office report directly to Member States as well as to the Secretary-General, and to allow Member States direct access to its reports…. By the same token, I was also very pleased by the General Assembly's decisions to approve significant new resources for the Office of Internal Oversight Services in both June and December 2005, and to endorse the creation of an Independent Audit Advisory Committee as an additional resource to ensure that Member States have the independent expert advice that they need in order to better exercise their oversight responsibilities….

I also provided terms of reference for the governance and oversight review that is now under way. I sincerely hope that this review will identify a more rational division of labour and responsibilities among the various audit and oversight bodies, and that it will ensure they are fully equipped with the resources and capacity to carry out their very important role. With specific regard to the Office of Internal Oversight Services, in addition to looking at how to bolster its audit and investigatory capacity, which I believe is essential, I also hope the review will (a) explore the implications of the Office's new direct reporting line to the General Assembly for the Secretariat's ability to draw on its internal audit capacity as an input for management decisions; and (b) explicitly review the appropriateness of the Office retaining its management advisory functions.

In this document and speech the Secretary-General had shown his unease with the most recent General Assembly's resolution regarding the reporting lines of the Office of Internal Oversight to the General Assembly. The Secretary-General had lost "power" - the exclusivity on the control over the Office of Internal Oversight reporting. To this situation had contributed the previous noted Secretary-General Annan's infringement of the Office of Internal Oversight independence when he terminated the investigation into the Oil-for-Food Programme that the Office of Internal Oversight had initiated. The General Assembly decided thereon (UN document A/RES/60/1, 2005, para. 164):

> We recognize the urgent need to substantially improve the United Nations oversight and management processes. We emphasize the importance of ensuring the operational independence of the Office of Internal Oversight Services. Therefore:
>
> (a) The expertise, capacity and resources of the Office of Internal Oversight Services in respect of audit and investigations will be significantly strengthened as a matter of urgency;
>
> (b) We request the Secretary-General to submit an independent external evaluation of the auditing and oversight system of the United Nations, including the specialized agencies, including the roles and responsibilities of management, with due regard to the nature of the auditing and oversight bodies in question. This evaluation will take place within the context of the comprehensive review of the governance arrangements. We ask the General Assembly to adopt measures during its sixtieth session at the earliest possible stage, based on the consideration of recommendations of the evaluation and those made by the Secretary-General;
>
> (c) We recognize that additional measures are needed to enhance the independence of the oversight structures. We therefore request the Secretary-General to submit detailed proposals to the General Assembly at its sixtieth session for its early consideration on the creation of an independent oversight

advisory committee, including its mandate, composition, selection process and qualification of experts.

The General Assembly, after having considered the report of the Secretary-General (see Appendix F) and the related report of the Advisory Committee on Administrative and Budgetary Questions, decided, at the end of 2005, to establish an "Independent Audit Advisory Committee to assist the General Assembly in discharging its oversight responsibilities, and requests the Secretary-General to propose its terms of reference, ensure coherence with the outcome of the ongoing review of oversight and report to the Assembly at the second part of its resumed sixtieth session on related resource requirements" and "Notes that the approved resources would provide for the **establishment of an ethics office** and the undertaking of the evaluation study called for pursuant to paragraph 164 (*b*) of General Assembly resolution 60/1 of 16 September 2005" [emphasis added] (UN document A/RES/60/248, 2005). The implementation of the Independent Audit Advisory Committee decision, consubstantiated in the terms of reference of this new General Assembly's subsidiary body, would come two years later only. The implementation of the Ethics Office was in the remit of the Secretary-General´s authority, thus its implementation followed shortly.

Nearly twelve years had elapsed since Mr. Thornburgh had proposed to the General Assembly the adoption of a code of ethics at the UN. Finally the General Assembly "noted" the ethics subject. The Ethics Office was a proposal of the Secretary-General which he justified as "to ensure ethical conduct, more extensive financial disclosure for United Nations officials and enhanced protection for those who reveal wrongdoing within the Organization". He further explained that "The objective of the ethics office will be to assist the Secretary-General in ensuring that all staff members observe and perform their functions in consistency with the highest standards of integrity, as required by the Charter of the United Nations" (see Appendices A and F). Appendix F also contains the proposals concerning several operational aspects of the functioning of this new Office.

The Charter, the International Civil Service Commission´s "standards of conduct for international civil service", the Staff Regulations and the Staff Rules are a set of rules specifying and prescribing certain duties and rights of the UN staff which existed for a long while at the time. Astonishingly, there is nowhere in the Secretary-General´s document (see Appendix F), or

any other document in the UN, any attempt to tell staff what ethics is about and which are the ethical virtues or principals guiding behavior at the UN. The apparent concern of the Secretary-General, as well as the General Assembly while endorsing such a proposal, was to establish one more governance structure to add to the overall bureaucracy and "show" the world they have done something to sort out the ethics problem at the UN. In terms of the TCE theory this decision would be consistent with the alignment hypothesis since one can assume in the surface that "ethics" is a transaction and it is of "sovereign" type, and therefore should be administered under the public bureaucracy. But the problem here is that "ethics" as a transaction was not even defined, thus cannot be considered existing as such. What then is the "Ethics Office" transacting and to whom? While establishing this Office (Appendix F, Annex I) the objectives and responsibilities were defined as follows:

> Objective
>
> 1. The objective of the ethics office will be to assist the Secretary-General in ensuring that all staff members observe and perform their functions in consistency with the highest standards of integrity, as required by the Charter of the United Nations, through:
>
> (a) Fostering a culture of ethics, transparency and accountability;
>
> (b) Developing and disseminating standards for appropriate professional conduct;
>
> (c) Providing leadership, management and oversight of the United Nations ethics infrastructure.
>
> Main responsibilities
>
> 2. The main responsibilities of the ethics office will be as follows (further details of each of these activities are set out in section B below):
>
> (a) Administering the Organization's financial disclosure programme;
>
> (b) Undertaking the responsibilities assigned to it under the Organization's policy for the protection of staff against retaliation for reporting misconduct;

> (c) Providing confidential advice and guidance to staff on ethical issues (e.g., conflict of interest), including administering an ethics helpline;
>
> (d) Developing standards, training and education on ethics issues, in coordination with the Office of Human Resources Management and other offices as appropriate, including ensuring annual ethics training for all staff.

How this Office contributes to improve the ethical environment at the UN and the ethical behavior of the UN staff is not clear since the UN was unable to give the staff a referential ethical framework from which they can learn and imitate behavior whenever it warrants. Another relevant issue regards the people appointed to work in this office: what is their ethical framework? What is the process of the UN staff's education towards an ethics culture that is supposed to be absorbed by the UN staff, but it is not known? These are questions without an answer. The creation of this Ethics Office seems to have been a move to rebuild reputation on the short term and in the aftermath of numerous sandals at the UN, which in TCE terms turns to be an adaptation move. But in terms of McCloskey´s virtues ethics, they are both absent in this Office structure: "We can return to radical behaviorism and speak only of prevailing rewards and punishment [Prudence only]. But Aristotle and other philosophers concerned with virtue persuasively argue, actions undertaken solely for external reasons cannot be considered virtuous, because they are coaxed or coerced, carroted or sticked" (p. 340). Definitely and undeniably, in terms of TCE, the costs added by this Office are all transaction costs as they are not connected or necessary to the fulfillment of the UN mission, and, most probably, this Office will not resolve the problem at source at the UN — the character of its leaders, the character of its staff and its culture. The Joint Inspection Unit´s analysis of the situation of the "Ethics in the United Nations System" in 2010 (JIU, 2010) concluded in the same vein:

> The ethical health of the organizations will be strongly influenced by the behaviour of those at the top. Executive heads should recognize their own obligations in this regard and take steps to demonstrate a strong personal commitment to the ethics function…and filing their own financial disclosure statement (p.v)….

> Establishing the ethics function is not enough however; the implementation of the function, with the development and dissemination of policies and procedures with respect to the application of minimum acceptable standards of behaviour, is required. A necessary corollary is the understanding of and adherence to the principles and practices of ethical behaviour by all staff members (including executive heads), as well as consultants and contractors, elected officials and oversight bodies. This applies to everyone working in any capacity for the organization; no one is excluded or exempted (p. 1).

The Washington Post offers evidence, among many others available in the press, that the "ethics" situation at the UN continued to be cumbersome in an article published on 3 May, 2010, "U.N. head Ban Ki-Moon refusing orders from internal personnel court" (Lynch, 2010):

> [An American [whistleblower], James Wasserstrom, was forced from a top U.N. job in Kosovo. In February 2007, … he began cooperating with a U.N. investigation of possible kickbacks to top U.N. officials responsible for Kosovo's energy sector. [In April the UN said it was] shutting down his department…and that his contract would expire by June 30. In May, [he] signed a consultancy contract to advise executives of Kosovo's main airport, triggering a conflict-of-interest investigation. On June 1, … Wasserstrom was detained by U.N. police, his home searched.[…] his office cordoned off, and…[UN officials were instructed to keep him off UN premises] … Wasserstrom filed a retaliation complaint with the U.N. ethics office, … which ruled his treatment appeared … [excessive', but found no evidence of retaliatory activities]…. [He] is challenging … the ethics office's finding. But the UN argues that its…dispute tribunal has no jurisdiction … because the ethics office is an independent entity and does not answer to the secretary general. The new … [tribunal may provide him] recourse. They [finally] have rules in place', he said. [The independent judges] 'seem to be taking this stuff pretty seriously'.

After decades, and probably hundreds, to say the least, of instances of the formal use of the term "accountability" in UN documents, on 8 May, 2006, the General Assembly requested the Secretary-General to specifically define accountability as well as clear accountability

mechanisms, including to the General Assembly, and to propose clear parameters for its application and the instruments for its rigorous enforcement, without exception, at all levels (UN document A/RES/60/260, 2006). Soon after this request the General Assembly requested the Secretary-General to further strengthen the existing framework by establishing and ensuring an effective system of accountability that clearly defines the lines of authority and responsibility, as well as the respective roles of the individual elements of the framework, and efforts aimed at improving coordination between them in order to avoid duplication (UN document A/RES/60/254, 2006). This circumstance is revealing of a contingent environment where principals' behavior, member states' representatives, determine the increase of transaction costs due to bounded rationality positions.

The year 2006 started marked by the initiatives of both the Secretary-General and the Joint Inspection Unit in connection with oversight in general, and the Office of Internal Oversight in particular. The Secretary-General appointed the Steering Committee for the Comprehensive Review of Governance and Oversight within the United Nations and its Funds, Programmes and Specialized Agencies (Appendix F). This "independent" external evaluation consisted of two main elements: a governance and oversight review, to be completed within two phases; and a review of the Office of Internal Oversight Services".

A Steering Committee, composed of five member countries' representatives, "independent" experts in the field of governance and oversight, including expertise in international public management, was to be established by the Secretary-General, with the responsibility to coordinate and supervise the development and implementation of the entire project. Its mission was intended to be performed through regular meetings. Appendix F shows the very extensive and detailed terms of reference of the work of this Steering Committee. The five members of the Steering Committee, chosen by the Secretary-General Annan were: Mervyn E. King, South Africa; Chairman, Guy Almeida Andrade, Brazil; Jean-Pierre Halbwachs, Mauritius; Shinji Hatta, Japan; Andrew Likierman; United Kingdom; Kamlesh S. Vikamsey, India. Mr. Jean-Pierre Halbwachs, from Mauritius, was the former (most recent) UN Controller (a position he held from 1997 up to February 2005 - UN website http://www.un.org) who was responsible for the management and control of the Escrow Account of the Oil-for-Food Programme. Mr. Halbwachs was forced to retire from his UN Controller's position following the

1st Inquiry Committee´s report (IIC 1st Interim Report, 2005) which reported his responsibilities on the mismanagement of the Oil-for-Food Programme BNP Paribas Escrow Account. Contemporarily, Mr. Halbwachs was also playing the role of Chair of the International Advisory and Monitoring Board (IAMB) for the Iraq Development Fund, and UN Representative (UN website http://www.un.org). An outsider observer cannot see how this Mauritian representative appointed by SG Annan could have plaid an independent role in the Steering Committee to review the UN governance. This situation adds to too many other described throughout this thesis whereas failures of probity are acute and systematic and present in many instances of decisions and actions of the UN Secretary-General as well as of other high rank UN officials, failures that continued unnoticed and tolerated, if not promoted, by the General Assembly governments' representatives.

The Inquiry Commitee inquiry into the Oil-for-Food Programme had raised so many sensitive and important aspects of the UN governance. The Joint Inspection Unit build on this wave and issued its "Oversight Lacunae in the United Nations System" (JIU, 2006) early 2006. A salient aspect of this report, which no other assessment or review reports ever touched before within the UN, was to establish, as a primary purpose, "whether internal mechanisms were in place to review allegations of wrongdoing against officials from the highest echelons of the organizations, to assess the adequacy of such mechanisms that did exist, and to determine where the final responsibility for the outcome of such cases should lie" (p. 1). This critical and very sensitive aspect came out at a proper time when the probity of the UN Secretary-General was being questioned by the Inquiry Committee into the Oil-for-Food Programme scandal [but not sanctioned publicly as Aristotle would recommend and ancient Athens was practicing, (Karayiannis and Hatzis, 2012)], but also simultaneously elsewhere in the UN system, other scandals exploded where the protagonists were the heads of UN Programmes or Specialized Agencies such as the alleged sexual harassment UNHCR´s High Commissioner Lubbers case , the UN Office of Internal Oversight Under Secretary-General Nair misconduct case, the World Meteorological Organization´s Secretary-General Michel Jarraud corruption case, and the World Intellectual Property Organization´s Director General Idris misconduct case, just to mention a few. In this connection the Joint Inspection Unit reported on the "lack of investigative capacity in respect of executive heads and internal oversight heads" (p. 8):

> Recent cases of alleged wrongdoing by officials from the highest echelons of the organizations have received intensive media coverage that has been very damaging to the reputation of the United Nations system. Most of the organizations are ill equipped to deal with such cases, and many indicated that there were no policies or procedures in place to handle these matters (p. 8).

The Joint Inspection Unit suggested that in such cases an independent external body should oversee investigations of alleged wrongdoing by the executive heads and internal oversight heads of the United Nations system when these arise. In its opinion, the Joint Inspection Unit itself is the only external oversight body of the UN system mandated to undertake investigations, and since it does not report to the executive head of any organization, its independence in these matters would be assured. If they would acknowledge such wrongdoing instances, the external oversight boards (such as the Board of Auditors) of the organizations could call upon the Joint Inspection Unit to undertake such investigations as the need arose. Despite having made these observations and suggestions the Joint Inspection Unit did not formalized any specific recommendation to resolve this issue. But in 2010 it restated this issue in its report "Ethics in the United Nations System": "In each organization, an internal mechanism needs to be established to set out the modalities for the ethics office and/or the internal oversight service to investigate or review allegations brought against the executive head of the organization, including reporting the outcome of the investigation or review directly to the legislative body" (JIU, 2010).

The second relevant aspect discussed in the Joint Inspection Unit's "Oversight Lacunae" report was to examine the external oversight bodies of the United Nations system and the internal oversight services of each organization. More broadly, the report would assess the capacity of existing oversight mechanisms to deal with major risks that may arise in the UN system. The Joint Inspection Unit views Member States to have the responsibility for oversight in the organizations of the UN system who then delegate some authority for oversight to the secretariats of the organizations and some to the external oversight bodies. Oversight is an integral part of the system of governance established by Member States within the United Nations system to provide them with assurance that a) the activities of the organizations are fully in accordance with legislative mandates; b) the funds provided to the organizations are fully accounted for; c) the

activities of the organizations are conducted in the most efficient and effective manner; and, d) the staff and all other officials of the organizations adhere to the highest standards of professionalism, integrity and ethics. In addition, the Charter of the United Nations provides for system-wide oversight – mainly by the Economic and Social Council and the General Assembly – with a view to avoiding programmatic overlap and duplication and the concomitant waste of resources (JIU, 2006, p.2). In so doing Member States have to balance their need for assurance with the costs (transaction costs) of providing such assurance, as the higher the level of assurance, the greater the costs (transaction costs). Reasonable assurance is generally considered to be the goal of oversight functions, with reasonableness defined by reference to a risk assessment conducted for each organization. On this basis, Member States can determine the level of assurance that they wish to obtain as a result of the activities of the oversight bodies, which in turn would enable them to fulfil their oversight responsibilities. Member States must be aware of the need to maintain the appropriate balance between external and internal oversight mechanisms in order to discharge their own oversight functions effectively. These managerial concerns and references put in evidence the efficiency mediated by a "reasonableness" criterion (JIU, 2006, p.2). In TCE terms Williamson (1999, p. 316-318) puts forward the "remediableness" criterion which "holds that an extant mode of organization for which no superior feasible alternative can be described and implemented with expected net gains is presumed to be efficient" (p. 316).

Options regarding the size of the oversight bodies, internal vs external, have to be equated as a function of assets quality (therefore specificity), risks or uncertainty, and a balance between vertical integration and externalization. In this connection the Joint Inspection Unit addressed the UN fragmentation of oversight responsibilities among many oversight governance structures. Recalling, the UN has several policy review governance structures, i.e. the Advisory Committee on Administrative and Budgetary Questions, the Committee for Programme and Coordination, and the International Civil Service Commission, and several operational oversight governance structures, i.e., external structures Board of Auditors and Joint Inspection Unit and internal structure the Office of Internal Oversight. To these structures the General Assembly has already decided to add a new "external" structure (UN document A/RES/60/248, 2005), one more hierarchical "buffer" layer on the top of the Office of Internal Oversight, the designated Independent Audit Advisory Committee but which was not appointed at the time yet. The Joint

Inspection Unit highlighted the complexity involved in the required coordination of such complex arrangements and consequently the high transaction costs supported by the UN maintain all these structures. As a matter of fact the Joint Inspection Unit opined that "the creation of internal oversight committees can lead to duplication of responsibilities that properly belong to the head of internal oversight in each organization [the new Ethics Office is a case in point in overlapping some compliance functions with the Internal Audit Division]. There is also potential conflict of interests in the composition of such committees. Furthermore, the lack of representation of Member States, who are the primary stakeholders, is a serious issue" (p. 5).

The third relevant aspect of oversight lacuna dealt by the Joint Inspection Unit refers to "Lack of provision for the investigations function" (p. 11) characterized by: fragmentation of responsibility for the investigations function within the organizations; need for a clear mandate, including jurisdictions and authorities; insufficient operational independence; lack of strong support from the executive head; shortness of qualified investigators; lack of whistleblowing policies and procedures to encourage reporting of suspected wrongdoing. The lack of independence is critical due to the fact that the budgetary requirements of the internal oversight unit being subjected to the scrutiny and control by managers in other functional areas such as budget and finance, and ultimately by the executive head. Reasons justifying total operational and financial independence from the executive head for investigations were the handling of the cases of alleged wrongdoing by officials from the highest echelons of some organizations at the time under investigation and which brought this issue sharply into focus and brought to light a major oversight lacuna. Direct access by the head of internal oversight to an independent, external oversight board was considered to be essential.

At the end of 2006 the General Assembly finally decided what to do with the report of the Secretary-General on the comprehensive review of governance and oversight within the United Nations and the report of the Joint Inspection Unit on "Oversight Lacunae in the United Nations system", but the mountain gave birth to a mouse given the expectations raised concerning the change *momentum* created by the Oil-for-Food Programme scandal.

As mentioned above, Appendix F contains the vast, detailed and supposedly comprehensive mandate of the Secretary-General's Annan to the Steering Committee to carry out a "comprehensive review of governance and oversight within the United Nations and its funds,

programmes and specialized agencies". The technical work was carried out by external consultants selected through an international competitive process. (PricewaterhouseCoopers supported by Dalberg Global Development Advisors). The Steering Committee's reports, containing about 250 pages, with 37 recommendations, 7 relating to governance, 7 to oversight and 23 to strengthening the Office of Internal Oversight Services (UN document A/60/883, 2006; UN document A/60/883/Add.**1,** 2006; UN document A/60/883/Add.2 2006) were made available in July 2006 and thereon subject to the comments of the Office of Internal Oversight, the Joint Inspection Unit, the Advisory Committee on Administrative and Budgetary Questions, and the United Nations System Chief Executives Board for Coordination, so that a decision could be taken by the General Assembly. At the end, the General Assembly's resolution (UN document A/RES/61/245, 2007) simply procrastinate any decisive action as follows:

> 2. Endorses the conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions on the comprehensive review of governance and oversight within the United Nations and its funds, programmes and specialized agencies;
>
> 3. Requests the Secretary-General to submit to the General Assembly for consideration at the first part of its resumed sixty-first session reports on the following:
>
> (a) Revised terms of reference for the Independent Audit Advisory Committee;
>
> (b) Strengthening of the Office of Internal Oversight Services;
>
> 4. Also requests the Secretary-General to submit to the General Assembly for consideration at the second part of its resumed sixty-first session if possible, but no later than by the end of its sixty-first session, reports on the following:
>
> (a) Enterprise risk management and internal control framework;
>
> (b) Results-based management;
>
> (c) Accountability framework.

General Assembly's decision on the terms of reference for the Independent Audit Advisory Committee was taken in July 2007 (see Appendix G). Relevant provisions directed to the internal oversight established:

> **Internal oversight**
>
> (c) To examine the workplan of the Office of Internal Oversight Services, taking into account the workplans of the other oversight bodies, with the Under-Secretary-General for Internal Oversight Services and to advise the Assembly thereon;
>
> (d) To review the budget proposal of the Office of Internal Oversight Services, taking into account its workplan, and to make recommendations to the Assembly through the Advisory Committee on Administrative and Budgetary Questions; the formal report of the Independent Audit Advisory Committee should be made available to the Assembly and to the Advisory Committee on Administrative and Budgetary Questions prior to their consideration of the budget;
>
> (e) To advise the Assembly on the effectiveness, efficiency and impact of the audit activities and other oversight functions of the Office of Internal Oversight Services.

Besides these prerogatives of advisory monitoring of the internal oversight, the terms of reference also entrusted the Independent Audit Advisory Committee with advisory functions regarding management of risk and internal controls, financial reporting, the Board of Auditors reporting, and cooperation among oversight bodies.

Most importantly the terms of reference (Appendix G) provide for a definition of "Independence" as follows:

> 10. All members of the Committee shall reflect the highest level of integrity and shall serve in their personal capacity, and in performing their duties they shall not seek or receive instructions from any Government. They shall be independent of the Board of Auditors, the Joint Inspection Unit and the

> Secretariat and shall not hold any position or engage in any activity that could impair their independence from the Secretariat or from companies that maintain a business relationship with the United Nations, in fact or perception.

This definition of independence leads me to raise the question of whether this same definition applies to the Office of Internal Oversight or not. What is then the independence definition applicable to the Office of Internal Oversight and how is the Office of Internal Oversight interacting?

Since then the Independent Audit Advisory Committee has been established as a new and one more oversight governance structure at the UN through an "independenzation" process. With this new structure a shift and rebalancing of power was operated between the Secretary-General, the Office of Internal Oversight, and the General Assembly; the Office of Internal Oversight lost some "independence" as far as the power of initiative on building its workplans is concerned. The areas and subjects to be audited and the funding are now under monitoring of the Independent Audit Advisory Committee. In sum, the integrity of the internal oversight transactions are now governed within a triangular somehow ambiguous context where the Office of Internal Oversight reports administratively to the Secretary-General and functionally to Independent Audit Advisory Committee and where the strategic aspects of its mission are decided by the General Assembly through the mediation of the Independent Audit Advisory Committee (see Figure 5.2, Chapter V). The complexity for the Office of Internal Oversight operations greatly increased the transaction costs also because more coordination and interactions (frictions in Williamson´s terms) are now necessary. It is difficult to grasp how effectiveness of the internal oversight will be improved in the UN and the true objectives underlying the reforms operated. Is it that the General Assembly genuinely wishes the Office of Internal Oversight to be effective?

The Independent Audit Advisory Committee started its functioning on 1 January 2008. Its members were appointed following the dispositions of the terms of reference (Appendix G), i.e., comprise five members, appointed by the General Assembly on the basis of equitable geographical representation, personal qualifications and experience. The committee submits an annual summary report of its activities and related advice. The first report covering the period 1 January to 31 July 2008 was submitted to the 63rd General Assembly session of same year (UN document A/63/328, 2008).

Looking back to the last twenty years we can count more than a dozen initiatives to improve the UN Secretariat oversight. In general they blur responsibility for oversight reform and create confusion among the various initiatives, actions, and proposals underway. The fact is that so many reform initiatives give the impression of energetic and decisive Secretariat response to the events that adversely affected the UN reputation. Out there in the media journalists are not yet convinced of the good intentions of what may be a Williamson's remediable solution (Williamson, 1999). Rosett (2010) gives us an outsider's view of the UN capacity to reform itself:

> If you don't like your tax bill now, watch out for the plans of the United Nations.… Since its founding in 1945, as essentially a diplomatic talking shop, … the U.N. has ballooned into a sort of postcolonial global empire. […] With that has come a voracious hunger for money.… [But] while U.N. ambitions and spending have soared, U.N. reform efforts have largely fizzled. Oversight has been receding to dismal levels, [as newly reported by] John Heilprin of the Associated Press.… Right now, despite President Barack Obama's professed interest in the U.N., the U.S. is largely missing in action on U.N. oversight, … [and] the U.S. Congress has also largely lost interest in how the U.N. handles the money of U.S. taxpayers. There are few subjects more tedious than audits and oversight of the alphabet soup empire of the U.N. But the current mix of an ever-greedier U.N. with less and less oversight has the makings of scandals ahead that will dwarf Oil-for-Food. With President … Obama lauding the U.N. as a forum for global peace and progress, what's Washington going to do about this mess?

VI.5.2. 2005 – 2010: The third OIOS Under Secretary-General – Mrs. Ingrid-Brit Ahlenius

As soon as Mr. Nair was disgraced removed from his position (he left his position on 23 April 2005), on 20 April, 2005, the Secretary-General, proposed for approval by the General Assembly the appointment of Inga-Britt Ahlenius of Sweden as Office of Internal Oversight Under-Secretary-General for a five-year non-renewable term. She took office on 15 July 2005. Mrs. Ahlenius was at the time the Auditor General of Kosovo and was previously Auditor General of Sweden. Prior to her appointment as Auditor General, Mrs. Ahlenius worked for the

Swedish Ministry of Finance as Head of the Budget Department from 1987 to 1993. During her tenure as Auditor-General of Sweden, Mrs. Ahlenius chaired the INTOSAI Auditing Standards Committee for eight years. She was chairman of the Governing Board of the European Organization for Supreme Audit Institutions (EUROSAI) during 1993 to 1996. Mrs. Ahlenius was also a member of the Committee of Independent Experts that was called by the European Parliament with a mandate to examine the way in which the European Commission detects and deals with fraud, mismanagement and nepotism. Their report led to the resignation of the Commission (UN website - http://www.un.org). Contrary to her predecessors in the position Office of Internal Oversight Under Secretary-General, Mrs. Ahlenius was a professional, experienced audit official, a requirement included by the General Assembly back in 1994 in its resolution for the creation of the Office. This requirement was met for the first time but only after ten years of successive scandals have elapsed.

Mrs. Ahlenius started her term (15 July, 2005) at very convoluted times in the UN: the Inquiry Committee was inquiring the Oil-for-Food Programme and had issued its first two interim reports (the second of which led to the Secretary-General's charge letter against Mr. Nair to remove him from office); the Inquiry Committee had several critical aspects of the functioning of the Office of Internal Oversight such as its independence, its operational capacity, the professional practices, the inadequate level of the staff which was long dragging. On the top of these problems intrinsic to the Office, the Organization continued to lack real performance measurement, evaluation and accountability mechanisms embedded in programme's, and organization's management culture.

Mrs. Ahlenius submitted her first annual activities report in September (UN document A/60/346, 2005) through which, following a 2004 self-evaluation review exercise of the mandate of the Office of Internal Oversight, she reported areas in need of improvement in order to ensure its continued efficiency and effectiveness. For the first time, the Office of Internal Oversight annual report was being transmitted to the General Assembly directly in compliance with a resolution adopted by the General Assembly in February 2005 (UN document A/RES/59/272, 2005) following its review of the initial resolution through which OIOS was established (UN document A/RES/48/218 B 1994): "3. Further decides that reports of the Office of Internal Oversight Services shall be submitted directly to the General Assembly as submitted by the

Office and that the comments of the Secretary-General may be submitted in a separate report". In her first annual report Mrs. Ahlenius disclosed, for the first time in the history of the Office of Internal Oversight, a critical aspect of its functioning – its independence status and the hindrances impairing it. She reported the situation as follows:

> The independence of the Office is potentially restricted in a number of ways: due to limited resources, OIOS is unable to conduct a full-fledged risk analysis on which to base its oversight coverage of the United Nations programmes and activities. The Office has limited authority on personnel actions, which might also hamper its independence. The Office also views its funding arrangements with funds and programmes as seriously flawed and thus constituting a potential conflict of interest and an infringement on its independence (funds and programmes reimburse OIOS for audit and investigation services on an ad hoc basis through memoranda of understanding). OIOS is taking steps to draw attention to this weakness in its funding, expecting that, when established, the oversight committee will advise the General Assembly on this issue (p. 6).

In her second annual activities report covering the period July 2005 to June 2006 she reported on "Impediments to the work of the Office of Internal Oversight Services" (UN document A/61/264, 2006, p. 6-7): "Resource allocation to OIOS has not kept pace with the demand for oversight services. This has often curtailed or reduced the scope of assignments and has occasionally made it impossible for the Office to provide any oversight whatsoever….The above-mentioned cases violate the most fundamental element of resolution 48/218 B". To obviate such impairments to the Office of Internal Oversight's functioning and independence, she proposed to the General Assembly (UN document A/60/901, 2006) a new budget process based on a single budget allocation and justified by the assessment of risks facing the Organization sustaining that, if approved, that proposal would significantly enhance the Office's independence, eliminating the conflict-of-interest issues associated with multi-source funding by oversight clients and enabling the Office of Internal Oversight to effectively address key areas of risk. It was probably with dismay that she must have received the General Assembly´s above resolution realizing that no decision to effectively strengthen the Office of Internal Oversight capacity and independence had been taken. On 1 January 2007 Mr. Ban Ki-Moon took office as Secretary-

General replacing Mr. Annan. Mrs. Ahlenius continued to report impairments to her Office´s independence and operational capacity as well as lack of sufficient resources in all her subsequent annual activities reports up to the term of her office (UN document A/62/281, Part I, 2007; UN document A/63/302, Part I, 2008; UN document A/64/326, Part I, 2009; UN document A/65/271, Part I, 2010). In 2009 the situation was even aggravated due to the high level of vacant positions, including the Director of the Investigations Division, long waiting to be filled: "The long impasse on this issue has been duly noted by the report of the Independent Audit Advisory Committee" (UN document A/64/326, Part I, 2009, p. 12).

On leaving the UN, Mrs. Ahlenius addressed voluntarily an "end-of-assignment-report" to the Secretary-General Ban Ki-Moon (Ahlenius, 2010) through which she took stock of her five year term as Office of Internal Oversight's Under-Secretary-General. From this report emerges a rather dark picture of the UN inside dealings, and dysfunctional, even pathological, organization (Barnett and Finnemore, 1999). Some of the passages are striking as they bring to light the difficulties and hindrances surrounding the internal oversight at the UN showing a function that seems caught in a "trap" that, as it surfaces, was created to exist but not to effectively function.

In Page 2 she states "Rather than supporting OIOS as an important part of a well performing organization as the office especially established to assist you in the discharge of your responsibilities as the CAO [Chief Administrative Officer], you have strived to control it which is to undermine its position". With this statement Mrs. Ahlenius was pointing the finger to the Secretary-General´s failure of vertical probity in terms of TCE. To support her argument she offers many examples and instances of a broken organization. The following paragraphs are selected extracts from Mrs. Ahlenius end-of-assignment report, which speak on her behalf and give a picture of the Office of Internal Oversight functioning and the problems encountered, most of them of the ethics realm, during her five year tenure.

> The United Nations is a publicly funded organization: it should provide its stakeholders – the Member States, and ultimately the citizens and taxpayers of the world – access to OIOS reports. In such discussions I suggested that, rather than devoting attention to concerns about the Transparency Resolution [UN document A/RES/59/272, 2005], efforts should be made to implement the request by the General Assembly that the Secretariat implement a policy on

public access to documentation. The availability of OIOS reports is only a small part of the wider question of increasing transparency of the Organization by providing public access to documentation (pp. 11-12).

A new internal justice system was established a year ago including a professionalized and more transparent formal process for disputes that could not be solved informally. In course of such a process, you have been requested to submit certain documents to the Judge in the Dispute Tribunal pertaining also to a complaint in case of a promotion. The Secretariat, you, have declined to submit such documents referring to a fairly peculiar legal opinion asserting that your position was to be compared with that of a Head of State and that you consequently are not under obligation to comply with such a request (p. 12).

Of the four recent instances where senior staff members were subject to investigation, the absence of a day-to-day, line manager supervision created in different respects significant challenges for OIOS investigators. Moreover, none of these investigations reports resulted in a charge of misconduct. In two cases, the staff members resigned. One staff member publicly claimed to resign immediately after the report was issued, although he remained on the Organization's payroll until his contract expired. The other accepted an agreed separation before the final subject interview and has since assumed a position in another international organization. The other two cases had no apparent charge, sanction or other result" (p.18).

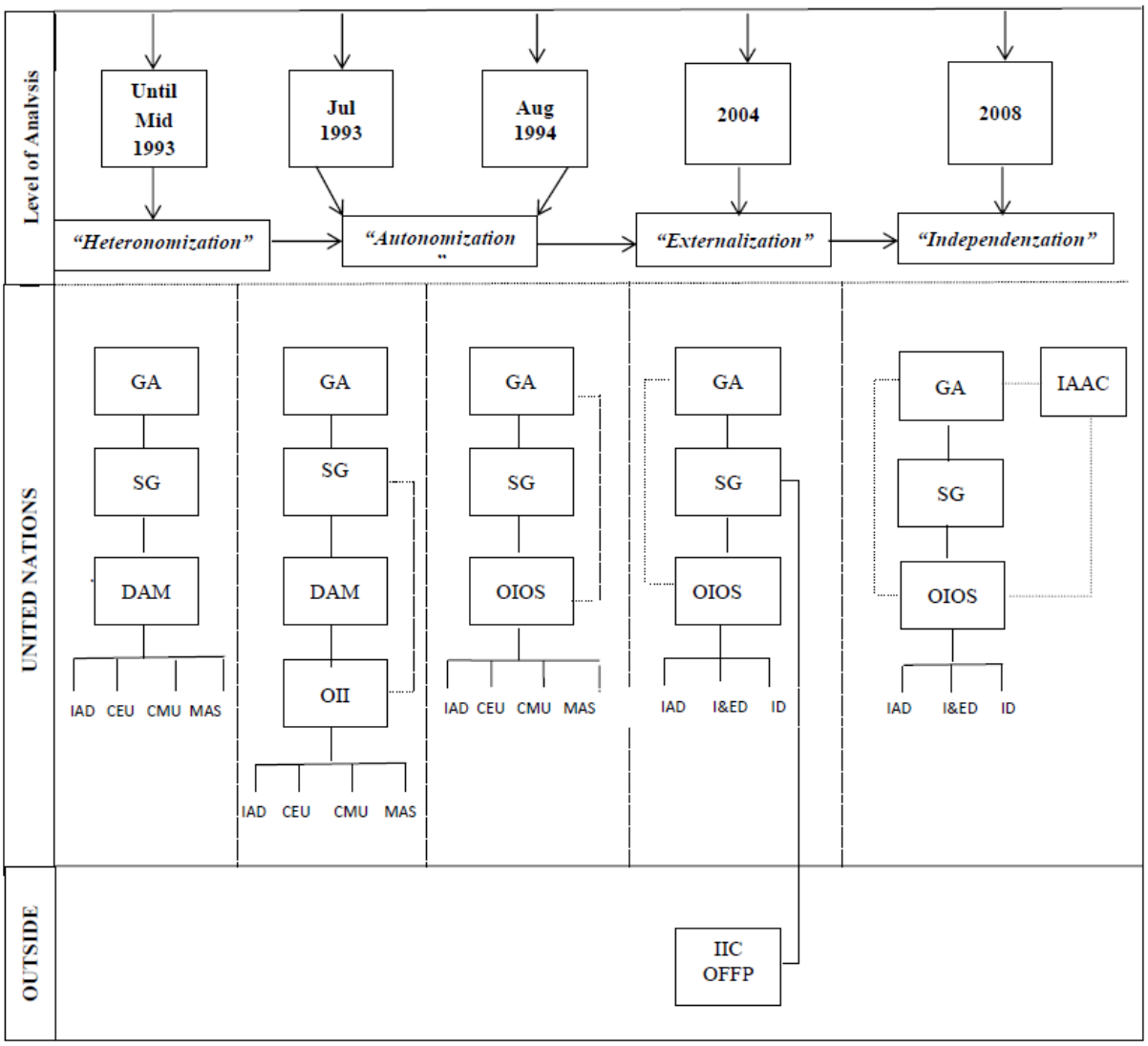
It was obvious in the course of the Autumn of 2007 that your interest in controlling the investigations remained. You stated openly in an SMG [senior management] meeting that the Procurement Task Force (PTF) had to be kept "for political reasons" but otherwise a change must be brought about for investigations. It is interesting to note that your reasons for keeping the PTF were political, not following any ambitions to handle signs of corruption, mismanagement and negligence in core processes of the Organization. (And political reason can only be interpreted to the effect that keeping the PTF was a pronounced strong interest of some Member States). However, you were

> mistaken in your belief that Member States would not be interested in the investigations function as such and to protect its independence. They were, and they are. That same morning Mr. Kim [Assistant Secretary-General's Office] requested a meeting with me to discuss the issue of investigations, which took place later that day. I recall it as a very unpleasant meeting and where Mr. Kim clearly stated that the investigations should come under the authority of the Secretary-General (p. 20).
>
> […] it is necessary to point out that it is the General Assembly that carries out evaluations and review of the functions and reporting procedures of OIOS, normally every five years. Therefore this cannot be part of the work of a secretariat task force. In this context, I would like to draw your attention to paragraph 11 of that same resolution: 'Reaffirms the role of the Board of Auditors and the Joint Inspection Unit as external oversight bodies, and, in this regard, affirms that any external review, audit, inspection, monitoring, evaluation or investigation of the Office can be undertaken only by such bodies or those mandated to do so by the General assembly (pp. 21-22).
>
> Mr. Secretary-General, I have expanded on this issue at some length, as I would like to ensure that my successor, the incoming USG/OIOS, will not have to spend three years defending OIOS mandate and the operational independence of the Office against the Secretary-General himself; be it investigations or any of the other disciplines of the Office, audit or evaluations (p. 22).

VI.6. Overview of the Evolvement of the Internal Oversight Governance Structures at the United Nations

Making recourse to a timeline diagram to looking back to more than twenty years of history of the internal oversight at the UN, allows the picture of its evolvement in Figure 6.2 below.

Figure 6.2 UN's Internal Oversight Structures Evolvement



Legend: GA-General Assembly; SG-Secretary-General; DAM-Department Administration and Management; IAD-Internal Audit Division; CEU-Central Evaluation Unit; CMU-Central Monitoring Unit; MAS-Management Advisory Service; OII-Office Inspections and Investigations; OIOS-Office of the Internal Oversight Services; I&ED-Inspection and Evaluation Division; ID-Investigation Division; IIC OFFP-Independent Inquiry Committee into the Oil-for-Food Programme; IAAC-Independent Advisory Audit Committee.

Having covered the period from the midst 80's of last century up to 2010, the study brought to light a series of reform momentum in a row: 1993, 1994, 2004 and 2008. The story of this case study brought to the surface that any time a public scandal exploded in the international media by widely reporting repeating patterns of extreme events of fraud and corruption at several instances at the UN, the response, first of the executive powers up to 1993, the Secretary-General,

and then from 1994 onwards also of the legislative powers, the General Assembly, was to take decisions to introduce substantial reforms in the internal oversight structures by adding more structure ,i.e., increasing the hierarchical reporting lines, and by broadening the access to its reports to legislative organs.

Unrevealing the complex myriad of events, interrelations and arrangements was fundamental, to understand the forces and the power struggles that propelled changes at certain given historical moments, and not at others. To pursue this objective I made recourse to cycles of tenures in office of the key personalities - the heads of the internal oversight structures - to inform my longitudinal periodization-based historical account of relevant events which allowed then the linking of these with the institutional changes observed.

What is observable in the diagram in Figure 6.2 above is an organizational dynamic which brought up the line the extant four internal oversight units which in 1993 were hierarchically located and dependent on the Director Department Administration and Management, which I designated the "heteronomization" governance structure, to a layer up in a movement first of "autonomization" that evolved then towards an "independenzation" governance structure with the creation of the Independent Audit Advisory Committee in 2008. These reforms started timidly in 1993 by a decision of the Secretary-General consolidating and merging the four units (IAD, CEU, EMU, and MAS) in a single internal oversight governance structure, the Office for Inspections and Investigations, and, a year later, the General Assembly taking the lead further, "autonomized" the internal oversight governance structure claiming for the first time, for itself, a direct oversight over the overseer, when it established that the internal oversight reports would be transmitted then on to the General Assembly through the Secretary-General who could add its comments. The role of the Secretary-General defined in the UN Charter is the Chief Administrative Officer, therefore, the executive power organ, and its decision in 1993 was taken at this level of power. An investigation unit was for the first time formally created. One year later, in 1994 the decision to create a new internal oversight governance structure, the Office of Internal Oversight Services, was taken by the UN General Assembly, the legislative organ, hence this decision was taken at the political level bearing the maximum level of authority and enforcement power in the organization.

Because of the Oil-for-Food Programme scandal that burst early in 2004, combined with other internal alleged misconduct cases that were under investigation, the Lubbers' case and later Mr. Nair, the head of Office of Internal Oversight case, the Secretary-General, facing adverse pressures and even threats to its position as Secretary-General, from some quarters of the largest contributor to the UN budget, the USA, as well as in the international media, took the lead and contracted out the designated "independent inquiry committee" to perform the inquiry into the Oil-for-Food Programme scandal. The Secretary-General set the terms of reference of the inquiry and invited Mr. Volcker (the former Chairman of the USA Federal Reserve) to chair the inquiry as well as two other experts with consolidated and long experience in criminal investigations and money laundering. While taking this decision the Secretary-General ignored the Office of Internal Oversight's authority (endowed by the General Assembly) to carry out investigations in the UN and left it aside, unduly terminated the Office of Internal Oversight´s ongoing investigation into the Oil-for-Food Programme hindering the Office of Internal Oversight's independence – an organizational dysfunctional and deviant behavior (Barnett and Finnemore, 1999) without consequences.

In the wake, and as a consequence of the Oil-for-Food Programme scandal, the General Assembly, in late 2004, further changed the reporting lines of the Office of Internal Oversight by determining that the Office of Internal Oversight should then onwards report functionally directly to the General Assembly and not to the Secretary-General who would transmit its comments to the General Assembly separately.

Concluding, to the exception of the "externalization" decision in 2004 connected with the investigation of the Oil-for-Food Programme, the decisions to reform the internal oversight governance structures at the UN during the period 1994-2010 confirm that "adaptation" had been central to the organizational response to externalities (pressures from the international press as well as from the USA) as well as confirm the alignment between transactions' attributes and governance structures as predicted by the TCE theory. But, on the contrary, the decision to "externalize" the inquiry into the Oil-for-Food Programme does not confirm TCE central alignment hypothesis.

Failures of probity were acute and were pointed out at several instances, both internally and externally to the UN, leading to "systemic extreme events" such as fraud and corruption, and

this may have been the underlying cause that led finally to adjustments in governance structures. The problem is that this is a problem: the story told in this thesis shows that adjustments (adaptation) in governance structures did not relieve systemic "probity" concerns and hazards, contradicting Williamson's (1999, p. 323) prediction. Probity in TCE is dealt with as a transaction's attribute, however, it is a function of human behavior, more specifically, ethical behavior, but TCE lacks an ethical framework to help explain probity hazards. Since TCE lacks a referential ethical framework, it requires to be modified so to include "virtues ethics" (McCloskey, 2006) as individual's behavioral assumption along with "bounded rationality", "opportunism" and "farsighted behavior", a framework that allow the linking of the realm of "social embeddedness" with the realm of "governance" in the backdrop of TCE. Concurring with Karayiannis and Hatzis (2012, p. 639) such a framework "reinforce legal rules and contribute significantly to the reduction of transaction costs".

The picture of the evolvement of the internal oversight at the UN would not be complete without looking at some numerical data which complements the information contained in Figure 6.2 above.

Table 6.2. Indicators of the Evolvement of the Internal Oversight at the United Nations

INDICATORS	PERIOD		
	1992-1993	2004-2005	2010-2011
Staff Allocated to Internal Oversight	66	180	293
UN biannual budget	$2.4 billion	$3.2 billion	$5.1 billion
Dollars per audit staff	0.036	0.018	0.017

Source: United Nations Programme Budget and OIOS' annual Activities Reports

The UN could well look at the steadily increase of the financial resources entrusted to internal oversight and find out whether this is the proxy measure for the increased corruption in the organization.

CHAPTER VII - CONCLUSIONS

The time has arrived to come to conclusions about this case study which concerns the evolvement of internal oversight governance structures at the UN over nearly twenty years of its history, covering events located in late 80's of the past century up to 2010. Given I am studying the UN institution and organization, the preceding Chapter II introduced the importance of institutions in the literature, and thereon Chapter III discussed the TCE theoretical background relevance to frame the study of "make-or-buy" type of decisions such as those found in the present case study. Chapter V introduced and explored the UN institutional level of analysis and Chapter VI led to the exploration of the historical events and decisions which revealed determinant to the way the internal oversight at the UN evolved along the way. I shall then now turn to the central research question and look forward to final conclusions. I therefore asked

"Why was an *ad hoc* Inquiry Committee mandated in 2004 by the UN Secretary-General Kofi Annan with the United Nations Security Council's endorsement to investigate the Oil-for-Food Programme scandal instead of the UN Office of the Internal Oversight Services? Has the inquiry worked?" which, in terms of TCE, can be formulated another way,

"Does TCE's discriminating alignment hypothesis verify in the case of the OFFP scandal inquiry?"

VII. 1 Summary of the Study

A scandal of fraud and corruption in the management of the Oil-for-Food Program unfolded in early 2004 widely exposed by the international media and was connected with the UN's management and oversight of the Programme direct responsibilities. The United Nation's Secretary-General Annan, terminated the ongoing investigation into the scandal conducted by the extant Office of the Internal Oversight Services, and, with the endorsement of the UN Security-Council, appointed an independent inquiry committee to investigate the administration and management of the Oil-for-Food Programme for Iraq. The extant autonomous internal oversight governance structure, the Office of the Internal

Oversight Services, was not involved in the investigation into the alleged corruption and mismanagement of the Oil-for-Food Programme although it had the mandate by the General Assembly to do so. The lack of a reasonable number of studies about internal audit and investigations in their natural settings, aggravated by the gaps found in the literature about the contexts and the impact of "deviant from the norm decisions" about internal oversight, stressed the research opportunity.

Exploring the historical evolvement of the internal oversight governance structures at the UN was then important to understand the events and facts that could help explain the Secretary-General Annan's decision to contract the inquiry into the Oil-for-Food Programme scandal outside the UN (terminating all of a sudden the OIOS already ongoing investigation) leaving the Office of Internal Oversight aside of the inquiry. This decision in the New Institutional Economic literature is assimilated to a "make-or-by" decision, which led to the design of an intensive, in-depth case study that could help study the historical evolvement of the last two decades of the internal oversight governance structures at the UN through the lens of the Transaction Cost Economics. Transaction Cost Economics is a branch of the New Institutional Economic which have focused namely on the study of "make-or-buy" decisions, both in the private and the public sectors. The historical events narrated, explored and explained in Chapters V and VI are confronted with the theoretical background set in Chapters II and III.

TCE, specifically intended to be applied to public bureaucracies "puzzle[s]" (Williamson, 1999, p. 306), was a good candidate to test in the present case study since the case at issue concerns consecutive decisions taken by both executive and legislative UN's Organs that induced substantial changes overtime in the governance structures that administer the internal oversight transactions at the UN, i.e., namely audit and investigations. TCE postulates that any problem that can be formulated, directly or indirectly, as a contractual one, can be usefully studied in transaction cost economizing terms. TCE central hypothesis concerns the economizing alignment between governance structures and transactions' attributes whenever a "make-or-buy" transaction warrant.

The investigation demonstrated that any time a public scandal exploded in the international media by widely reporting repeating patterns of extreme events of fraud and

corruption at several instances at the UN, the response, first of the executive powers up to 1993, the Secretary-General, and then from 1994 onwards also of the legislative powers, the General Assembly, was to take decisions to introduce substantial reforms in the internal oversight structures by adding more hierarchical reporting lines to the previous extant governance structure, and by broadening the access to its reporting to legislative organs. Having covered the period from the midst 80's of last century up to 2010, the study brought to light a series of reform momentum in a row: 1993, 1994, 2004 and 2008.

Unrevealing the complex myriad of events, interrelations and arrangements was fundamental, to understand the forces and the power struggles that propelled changes at certain given historical moments, and not at others. To pursue this objective I made recourse to cycles of tenures in office of the key personalities - the heads of the internal oversight structures - to inform my longitudinal periodization-based historical account of relevant events which allowed then the linking of these with the institutional changes observed. Figure 6.2 included in Section VI.6 above sets out this approach.

What is observable in the diagram in Figure 6.2 above is an organizational dynamic which brought up the line the extant four internal oversight units which in 1993 were hierarchically located and dependent on the Director Department Administration and Management, which I designated the "heteronomization" governance structure, to a layer up in a movement first of "autonomization" that evolved then towards an "independenzation" governance structure with the creation of the Independent Audit Advisory Committee in 2008. These reforms started timidly in 1993 by a decision of the Secretary-General consolidating and merging the four units (IAD, CEU, EMU, and MAS) in a single internal oversight governance structure, the Office for Inspections and Investigations, and, a year later the General Assembly taking the lead further "autonomized" the internal oversight governance structure claiming for the first time, for itself, a direct oversight over the overseer, when it established that the internal oversight reports would be transmitted to the General Assembly through the Secretary-General who could add its comments. The role of the Secretary-General defined in the UN Charter is the Chief Administrative Officer, therefore, the executive power organ, and its decision in 1993 was taken at this level of power. An investigation unit was for the first time formally

created. One year later, in 1994 the decision to create a new internal oversight governance structure, the Office of Internal Oversight Services, was taken by the UN General Assembly, the legislative organ, hence this decision was taken at the political level bearing the maximum level of authority and enforcement power in the organization.

Because of the Oil-for-Food Programme scandal that exploded early in 2004, combined with other internal alleged misconduct cases that were under investigation, the Lubbers' case and later Mr. Nair, the head of the Office of Internal Oversight Services, case, the Secretary-General, facing adverse pressures and even threats to its position, from some quarters of the largest contributor to the UN budget, the USA, as well as in the international media, took the lead and contracted out the designated "independent inquiry committee" to perform the inquiry into the Oil-for-Food Programme scandal. The Secretary-General set the terms of reference of the inquiry and invited Mr. Volcker (the former Chairman of the USA Federal Reserve) to chair the inquiry as well as two other experts with consolidated and long experience in criminal investigations and money laundering. While taking this decision the Secretary-General ignored the Office of Internal Oversight's authority (endowed by the General Assembly) to carry out investigations in the UN and left it aside, unduly terminated the Office of Internal Oversight's ongoing investigation into the Oil-for-Food Programme hindering the Office of Internal Oversight's independence – an organizational dysfunctional and deviant behavior (Barnett and Finnemore, 1999).

In the wake, and as a consequence of the Oil-for-Food Programme scandal, the General Assembly in late 2004 further strengthened the reporting lines of the Office of Internal Oversight by determining that it should then onwards report functionally directly to the General Assembly and not to the Secretary-General who would transmit its comments to the General Assembly separately.

Despite the fact that the terms of reference established by the Secretary-General for the inquiry into the Oil-for-Food Programme did not include or mandate any review or assessment of the Office of Internal Oversight's performance, the Inquiry Committee did produce an assessment of the Office in connection with the Oil-for-Food Programme and from there extrapolated overall conclusions and drew recommendations which it asserted

aimed at strengthening the operational independence and capacity of the Office of Internal Oversight. One of the Inquiry Committee´s recommendations was targeted at the need for the UN governance to include an "Independent Oversight Board" with majority of independent members and independent chairman. The implementation of this recommendation came in 2008, and not before, due to several vicissitudes and power struggles.

This summary gives a thorough picture of the complexity of the transactions going on in the UN during the last 20 and more years just around its internal oversight mechanisms and governance arrangements. It took a great deal of interactions to support the adaptive organizational dynamics as *ex post* reaction to "systemic extreme events" threatening the UN reputation and even its survival.

VII.2 Theoretical Contributions

In Chapter III I presented an overview of the relevant empirical work with applications of the TCE theory published so far as well as the critics towards the same. The review allowed me to learn that there are several aspects of the TCE theory that are still either not sufficiently tested, or theoretically underdeveloped. I hope to have contributed with some bricks to the TCE construction with the present case study by having both extended its extant empirical applications and suggesting a modification to its theoretical foundations.

From the literature review I concluded that internal audit and even accounting are scientific fields where TCE have not been extensively tested, contrary to other academic fields in economics, marketing or human resources. I also came to the conclusion that there is not a single study of the internal audit, internal oversight, in the context of any international organization. In this vein, my theoretical contributions are twofold. The first contribution is having developed the first case study applying TCE to study the "make-or-buy" decisions concerning internal oversight, in the context of the UN, an international organization in the international public sector. The second contribution of this case study regards the using of a longitudinal work in TCE both across the context, within the UN, and

across time, covering a period of more than twenty years, contributing to fill in the gap that David and Han (2004, p. 55) had identified.

Williamson's (1999, p.321) definition of "sovereign" and "judiciary" transactions type had not been applied and tested yet. The definitions offered by Williamson are somehow imprecise and the case study required rendering them adherent to the context at issue. Thus this study not only presents a real case where applying first time Williamson's definitions and putting forward clarifications of "sovereign" and "judiciary" transactions' definitions. This application led to the conclusion that a third, new type, hybrid type of transaction, was warrant in the case and therefore I had to add to the TCE theory a new definition, an extension to TCE, the "quasi-judiciary" transactions, to accommodate the investigations transactions conducted within the remit of the Office of Internal Oversight at the UN. These definitions can be applicable to the private sector insofar as, no matter which the organization and which rules of the game, it would have endowed the "sovereign" authority(ies) to certain governance structures. In this sense, both private and public organizations require a certain type of sovereign transactions which are more efficiently governed under a bureaucracy governance structure than by the market or by any alternative mode of governance.

Uncertainty hazards originated in the high complexity of the environment[9] (IIC, Report on the Management of the Oil-for-Food Programme, 2005, p. 78) as well as in the behavior of the actors involved proved to be critical impending upon the internal oversight performance.

Regarding transactions attributes the case study observations revealed rather confirmatory towards TCE predictions. An important contribution of the present case study to TCE theory concerns "probity" transactions' attribute. This is a contribution to the

[9]The United Nations system presents one of the most complex and demanding oversight environments. It operates across cultures and languages, addressing emergency situations in parts of the world that face political uncertainty, economic hardship, and under-developed infrastructure. The United Nations system is intricate, subject to political pressures, and filled with staff and management from diverse backgrounds. Proper oversight subsequently demands appropriate leadership, qualified staff members, sufficient resources, structural independence, and coordination (IIC, Report on the Management of the Oil-for-Food Programme (2005, p. 78).

development of TCE with a real case study exploring the "probity" attribute. The case demonstrates that this was as important as the UN, an international organization which mission is of a political nature set to be responsive to the world's peoples' best interest, is expected to have institutional safeguards to govern the integrity of its transactions, i.e., probity down and up the line. Internal oversight is infused of probity. Williamson (1999, p. 322) asserts that probity is important for all transactions, public and private alike. To internal oversight, "probity" is its core and its lungs. Some academics have even neglected this transactions' attribute (Ruiter, 2005; Genugten, 2008, Holterman, 2011) and apparently this is one of the few applications after Williamson's Foreign Affairs example (1999), if not the first one, which tests probity hazard. The case confirms Williamson's predictions insofar as many instances of failures of probity were observed: vertical, internal and horizontal. What the case also demonstrates is that the root causes for such extensive and repetitive probity failures may be found at the level of the "embeddeness" as well as the level of the rules of the game, the institutional design placated in the UN Charter as far as the property rights regarding distribution of powers and the lack of a separation of the executive from the judiciary are concerned. These "pathologies" (Barnett and Finnemore, 2004) are aggravated by grants contained in the UN Convention on Privileges and Immunities (Appendix C): the Secretary-General is vested with both executive and judiciary powers and there is no oversight mechanism that can mitigate the risks of probity failures on the part of the executive power at the UN.

Failures of probity were acute and were pointed out at several instances, both internally and externally to the UN, leading to "systemic extreme events" such as fraud and corruption, and this may have been the underlying cause that led finally to adjustments in governance structures. The problem is that this is a problem: the story told in this thesis shows that adjustments (adaptation) in governance structures did not relieve systemic "probity" concerns and hazards, contradicting Williamson's (1999, p. 323) prediction. Probity in TCE is dealt with as a transaction's attribute, however, it is a function of human behavior, more specifically, ethical behavior, but TCE lacks an ethical framework to help explain probity hazards. Since TCE lacks a referential ethical framework, it requires to be modified so to include "virtues ethics" (McCloskey, 2006) as individual's behavioral assumption along with "bounded rationality", "opportunism" and "farsighted behavior", a

framework that allow the linking of the realm of "social embeddedness" with the realm of "governance" in the backdrop of TCE. Concurring with Karayiannis and Hatzis (2012, p. 639) such a framework "reinforce legal rules and contribute significantly to the reduction of transaction costs", thus I suggest such a framework to be considered in the model as a transaction cost reduction device.

In its turn, independence, which Williamson elects as being the most important and distinctive attribute for judiciary type of transactions, it is also the most important attribute for internal audit. But the independence of the judiciary and the operational independence attached to the internal audit transactions have different dimensions, and are at different levels. Using as a reference the Institute of Internal Auditors independence internal audit attribute standard, helped to come to the conclusion that, internal audit does not qualify as judiciary type of transactions since it does not embody the other attributes of the judiciary. In this line of reasoning I found that it was necessary to find a classification for internal audit transactions that could fit their also specific and unique dimensions. I put forward a new type to add to those identified by Williamson, which I designated as "quasi-judiciary" transactions.

Probity, uncertainty, and independence are the transactions' attributes at the core of this case. Independence is an additional attribute to the model that resulted as contribution from this research. "Virtues ethics" is what links the individual behavior assumption with probity attribute of transactions, therefore should be added as such to TCE model (Table 2.2 Behavioral Assumptions and Transactions' Attributes include Virtues Ethics as I adapted). Where the three attributes were explored simultaneously, I concluded that for the internal oversight transactions probity and independence seem to outweigh asset specificity in terms of governance structure performance efficiency. I reflected on the addition of the independence attribute in Figure 7.1 below (highlighted by the shadowed area right column and last two rows).

All internal oversight attributes considered together allow the extensions in table 7.2 which shows the intensity of the contractual hazards impending upon a certain number of public sector specific transactions, including internal oversight as observed in the UN case.

Table 7.1 – Contractual Hazards
Adapted from: Williamson (1999, p. 339)

Composite Transaction	*Contractual Hazards*			
	Cost Control	*Asset Specificity*	*Probity*	*Independence*
Foreign Affairs	+	+	++	+
Defense Procurement	++	++	+	0
Office Supplies	+	0	0	0
Income Tax Collection	+	0	+	++
Prisons	+	++[a]	+	0
Internal Oversight				
Internal Audit	+	++	++	++
Investigation	0	++	++	++

Legend: ++ = strong; + = semi-strong; 0 = weak; [a] Physical assets

What the case also shows is that going from one extreme event to the following extreme event, threats to its reputation due to systemic fraud and corruption cases widely divulged in the international media and political external pressures, coming namely from the main contributor, the UN took adaptive *ex post* action and reformed internal oversight governance structures in a movement that might have been devised mainly to help rebuild reputation and secure funding continuation but which intrinsically changed little. The root cause of the problem is "ethics" and this has not been resolved, because it has been hardly diagnosed and spelled out. Only in 2005 the UN spelled out the problem creating an Ethics Office, however without having diagnosed the roots of such a systemic and endemic problem. The creation of this office was not preceded by any type of self-reflection of which ethical references should the UN embed in its culture, or which type of transformation the organization requires to become a credible "ethical" organization. This is a long way to go and at the end the ethics office represents only one more governance structure which added more transaction costs.

I covered a period of time of more than twenty years and observed that its *ex post* adaptive dynamic, the internal oversight at the UN had started to be governed under a governance mode that I designated "heteronomization" structure which in the aftermath of the following extreme event evolved to an "autonomization" structure type, and then, in the aftermath of the Oil-for-Food Programme scandal inquiry was toppled with a new mode of

governance which I designated "independenzation" structure. In sum, the research shows that the mechanisms that pushed the internal oversight governance structure towards its realignment after the Oil-for-Food Programme scandal inquiry were, as in the past: extreme events, external pressures, adaptation and power struggles. Table 7.2 below presents a sketch of the internal oversight structures as observed in the UN during the period studied, which is an adaptation from Williamson.

Table 7.2 - Comparative UN Internal Oversight Structures
Adapted from: Williamson (1999, p. 336)

	Governance Structures		
	Independenzation	***Autonomization***	***Heteronomization***
Instruments			
Incentive intensity	++	+	0
Bureaucratization	0	++	++
Performance attributes			
Adaptive autonomy	++	+	0
Adaptive integrity	0	+	++
Contract Law			
Employment relation			
Executive autonomy	++	+	0
Staff security	0	+	+
Legalistic dispute settlement	0	+	+

Legend: ++ = strong; + = semi-strong; 0 = weak

Finally, on answering the central question formulated to explore this case study which stands as *"Does TCE's discriminating alignment hypothesis verify in the case of the OFFP scandal inquiry? Has the inquiry worked?*". The answer is no. In the present case the central TCE hypothesis did not verify. Williamson (1999, p. 321) entertains that, as compared with alternative feasible forms (all of which are flawed), the public bureaucracy is the most efficient mode for organizing sovereign transactions and I add, also judiciary.

As a matter of fact, the transaction contracted out to the Inquiry Committee had elements of audit and investigation. Audits in the UN are sovereign type of transactions and investigations quasi-judiciary type. Because this particular inquiry into the Oil-for-Food Programme was contracted out, two important dimensions of both sovereign and quasi-judiciary were lost: the authority of the sovereign and the independence; if the inquiry would have been conducted internally by the Office of Internal Oversight Services, the

transactions would not have lost these two properties. The conclusion is that "authority of the sovereign" and the "independence" are not transferable attributes and cannot be transacted. These two fundamental transactions' attributes are intrinsic and indivisible to any organization, no matter public or private.

Moreover, the UN was already equipped with a dedicated governance structure, the Office of Internal Oversight Services with the responsibilities to carry out audits and investigations. Opting out to govern the Oil-for-Food Programme scandal inquiry, a single transaction, through "externalization" mode of governance, not only did not work for the inquiry, but also carried high transaction costs that, in simple economizing terms, could have been avoided.

The Secretary-General acted opportunistically in so deciding by taking the lead and avoiding a likely initiative of the General Assembly. The Secretary-General had incentives to act in conflict of interest trumpeting the General Assembly's authority, given it had established the extant internal oversight structure, because he was directly involved in the management of the Oil-for-Food Programme as was the UN Security Council. These were serious breaches of probity, which may flourish given the institutional flaws of the rules of the game, the UN Charter and the Convention on Privileges and Immunities of the United Nations and an environment and culture where "ethics" is the just the name of an new Office since 2005.

The boundaries of the contract were blurred, and uncertainty very high: The Independent Inquiry Committee assessed the Office of the Internal Oversight Services performance without having the mandate to do so. This may have also derived from opportunistic behavior on the part of the Secretary-General in an attempt to weaken its position and legitimacy in a moment when he personally was under threat due to adverse news in the international media and political pressures to resign.

Summarizing, to the exception of the "externalization" decision in 2004 connected with the investigation of the Oil-for-Food Programme, the decisions to reform the internal oversight governance structures at the UN during the period 1994-2010 confirm that "adaptation" had been central to the organizational response to externalities (pressures from

the international press as well as from the USA) as well as confirm the alignment between transactions' attributes and governance structures as predicted by the TCE theory. But, by the contrary, the decision to "externalize" the inquiry into the Oil-for-Food Programme does not confirm TCE central alignment hypothesis.

Finally, I should note that also this case demonstrates that the interdisciplinary nature of decisions affecting the governance of transactions call into the play disciplines such as accounting, economics, law, sociology, phycology, international relations, and, in this particular case ethics, confirming Williamson's efforts to build an encompassing theory that help learn and predict the boundaries of the internal functioning of organizations.

VII.3 Practical Contributions

In the following few paragraphs I lay some practical findings that resulted from the present case study, and hopefully may be useful to those in charge of making of the UN a better organization.

The consecutive attempts to "reform" the UN have been always pushed by some sort of "reputation crisis", forced by adverse news in the media which is the only mean that the peoples of the world have to get some information about the functioning of the UN and the way tax payers' money is being used. The Office of Internal Oversight Services has been always in the frontline of the UN attempts to reform itself. So far the reforms have always failed. The solution passed through adding a certain degree of autonomy/independence, adding more human assets, adding more formal and standardized procedures, and, above all, adding more structure and consequently increased transaction costs. Even though it was not possible to contain the drain, fraud and corruption scandals continued. So the problem is "ethics". Considering the endless failures, history helped to bring it to light, it should be now evident that the General Assembly picked the wrong first target to reform the UN. An organization must be reformed in the substance when, as in the present case, the attempts to reform the governance structure, the form, of the internal oversight governance structure, revealed to be insufficient and fruitless as the cause of the problem is not to be found in the internal oversight transactions, but at the realm of the moral principles. The probity failures bring to the surface that ethics is at the core of the

entire preceding UN crisis, not the internal oversight functioning. I am persuaded that with or without operational oversight (internal or external), history has shown, the scandals will continue to unfold. The last recourse to the Independent Audit Advisory Committee oversight governance structure (what I have designated by the "independenzation" governance structure) as well as the Ethics Office most probably will not be an impediment for failures of probity in the future when they are primarily located at the very top of the organization and deeply engrained in the character of leaders and staff. Probity is a consequence of behavior of human beings, therefore concerns the very quality of the human beings that are chosen to serve and lead the UN. Is there any way or anyone capable of infusing ethics to the UN? This may help resolve the problem and reduce the high and steadily increasing transaction costs associated with the need for internal oversight caused by the deeply engrained lack of ethics in the organization.

To the problem of widely failures of probity at the UN most probably concurs also the weaken administration of judiciary transactions governance structure(s), and, at certain instances, even inexistent. The Oil-for-Food Programme scandal was not investigated in its full extension as far as the UN officials' role and responsibilities in the fraud and corruption were concerned. Notably, the personal role of the Secretary-General Annan as well as of the representatives of the Security Council (who act in their personal capacities in their positions at the Security Council), who had direct formal responsibilities in the management of the Oil-for-Food Programme were not investigated by the Inquiry Committee and in some cases such as the case of Mr. Iqbal Riza (the Chef de Cabinet of the SG Kofi Annan, 1997-2004) who shredded more than 3000 documents relevant for the inquiry, were not punished at all. What happened in the UN did not contribute to increase perceived trust in the UN, nor the Inquiry Committee's inquiry results helped rebuild UN's reputation. But this organization has an invaluable mission of which the peoples of this world are in need.

The problem is even more extensive than the UN proper. It is extended to the entire UN system. Many serious crimes, such as fraud, corruption, sexual harassment, rape, homicide, etc., committed by officials at all levels under the jurisdiction of the UN proper and the UN system's organizations go unpunished as the case of the Oil-for-Food

Programme scandal put in evidence. There is no UN official jailed following the Inquiry Committee´s inquiry although it found guilty of fraud and corruption at least two officials, Mr. Benon Sevan, and Mr. Yakovlev (see Section VI.4.2). The UN system lacks a true effective single truly independent judiciary governance structure to administer judiciary transactions as far as its staff of all levels from the Secretary-General level down the line to the lower level of UN echelons are concerned, which includes all representatives acting under diplomatic immunity when serving at any UN organs. Nowadays the judiciary investigation and prosecution depend on the Secretary-Generals' willing (of the UN proper and of each of the UN specialized agencies) to waive immunities (both functional and diplomatic and both of personnel and premises and documentation) and his/her personal decision to exercise of the constitutional power (UN Charter) vested on the Secretary-General's/Director General's positions to turn the allegations to local national judiciary authorities. This system had proved insufficient and above all unfair in many senses: there are sensible differences among national judiciary systems regarding criminal investigation and prosecution; there are sensible differences even between the UN proper labor administrative justice system, and the International Labor Organization Administrative Tribunal which entertains the labor administrative conflicts for practically all the Specialized Agencies of the UN system. Such fragmented systems, both administrative and criminal, would better be dealt by a single unitary judiciary governance system, one administrative and the other one criminal, for the entire UN system´s organizations. This could probably be built adjacent to the International Court of Justice which would allow the tribunal to work inside the UN and Specialized Agencies conventions on Privileges and Immunities without the need of the un-independent interference in the administration of justice by the heads of the organizations, also with the advantage of contributing to an improved separation of powers at the UN governance system.

A lesson should be learned, the Inquiry Committee´s inquiry has not worked for many reasons, some of them pointed out throughout this thesis. Important to the future of the UN governance will be the possibility of extension and strict application and compliance with the definition of independence and of integrity imposed upon the status and behavior of the Independent Audit Advisory Committee members (cf. Appendix G) to **any high level, review, inquiry, assessment, evaluation, etc., Committees that may**

come to be created in the future, i.e., the General Assembly should adopt a resolution whereas "All members of… [any high level, review, inquiry, assessment, evaluation, etc., Committees] shall reflect the highest level of integrity and shall serve in their personal capacity, and in performing their duties they shall not seek or receive instructions from any Government. They shall be independent of the Board of Auditors, the Joint Inspection Unit and the Secretariat and shall not hold any position or engage in any activity that could impair their independence from the Secretariat or from companies that maintain a business relationship with the United Nations, in fact or perception" to prevent situations such as the case of Mr. Halbwachs, as exemplified in Sections VI.4.3 and VI.5.1.

Another important aspect that failed was the fact that the mandate of the Inquiry Committee, set by the Secretary-General, although legitimate, could not have been executed under the remit of the UN rules of the game, the Charter (Appendix A), the UN Convention on Privileges and Immunities (Appendix C), and the UN Financial and Staff Regulations, to refer to the least. By the same token, it could not as well be performed in compliance with the rules and procedures in force governing the functioning of the Office of Internal Oversight Services for audit and investigations. The Office of Internal Oversight Services was, and still is, the only oversight governance structure formally legitimized by the General Assembly to conduct internal investigations and audits. A good illustration of the unclear institutional status of the Inquiry Committee was the publication of its own "investigation guidelines" (IIC Investigations Guidelines, 2004) conflicting with those in force in the Office of Internal Oversight Services. The only manner to enforce these investigation guidelines would have to be through the General Assembly because the Inquiry Committee was not a governance structure of the UN governance system. It missed the endowment of the "authority of the sovereign". In addition the Inquiry Committee never disclosed with which criteria, audit standards and procedures conducted the inquiry. Although these are formal procedural aspects they are essential to safeguard the integrity of any such inquiry.

Finally I put forward a suggestion for a bold move for the General Assembly to undertake at the level of the UN Charter introducing changes that may open the possibility

to some kind of public scrutiny of the UN functioning to improve accountability of the UN's "governors".

VII.4 Limitations of the Research

Limitations to any such studies include those attached to the risks incurred by the choices of methodology, the process for analyzing data and the results of the study. This research was conducted on the basis of a holistic intensive historical narrative of a single case of an international organization, the UN. No other studies of similar scope and objectives are yet available and were not undertaken, thus a comparison of the results could not be made. This limitation is due to the fact that the researcher, having realized that no other similar study with same scope and in a comparable organization had been conducted yet, could not carry out further in-depth, holistic research in other international organizations within the limited time allowed to a PhD research and of the authorized length of the thesis. Consequently, the results herewith presented provide little basis for generalization (Yin, 2011; Ryan et. al, 2). Similar research needs to be replicated in other international organizations as well as in other public and private organizations where extreme events lead to structural substantial changes introduced in the internal oversight or internal audit governance structures.

Another limitation was the infeasibility to interview the UN officials directly involved in the historical events narrated throughout the research as well as the three Independent Inquiry Committee's members since none of this people is any longer serving at the UN; locating them and succeeding on having them talking with the researcher about past sensitive, although public events, revealed a practical impossible mission. Notwithstanding, the researcher considers that the interviews may have not be as important since she had access to primary sources of written UN internal documents which give the official version of the events and facts narrated in the case study. The difficulty then arose from how to amass a large amount of written documents and data to extract the relevant pieces of evidence necessary to make the main argument.

The period studied stopped in 2010, covering more than twenty years, which one may wonder why the study does not cover up to the current time. In this case, the

researcher purposely made the option to stop in 2010 coinciding with the end of the term of office of Mrs. Ahlenius, since the Under Secretary-General that followed her is still in office. The present case study is based on an historical narrative approach, thus, including the current time, would have meant introducing a break in a historical continuum, a methodological inconsistency in comparison to the previous historical periods covered by the study.

VII.5 Suggestions for Future Research

In this study Williamson's (1999, p. 336) comparative public sector organization governance structures, public agency/bureaucracy, regulation, and privatization, were used as a departure framework in the analysis. However adjustments to this set had to be introduced to progress in the analysis and a new set of governance structures was put forward: heteronomization, autonomization, and independenzation. This was necessary to formulate performance assessments and alignment/misalignment predictions. Further research to confirm and /or capture other differentiations in comparison to the original Williamson's set in order to extend the theory is necessary. In this line more longitudinal across context, across time, and across sectional studies within the public international sector are necessary, both in International Organizations within the United Nations system and elsewhere, as for instance in the European Union, this to allow to increase the data set to strengthen the predictive power of the TCE theory. More case studies of international organizations to verify whether the patterns observed in the UN verify, and if so using this data are needed.

Probity, uncertainty, and independence are the transactions' attributes at the core of this case. Apparently this seems to be the first case study where this three attributes were explored simultaneously. I concluded that for the internal oversight probity and independence seem to outweigh asset specificity in terms of governance structure performance efficiency as far as internal oversight transactions are concerned. This opens a new avenue for research in the area of internal and external oversight and should be further developed and explored.

The last decision at the UN was to create one more internal oversight governance structure, the Independent Audit Advisory Committee which started operating in 2008. As soon as the term of office of the present Office of Internal Oversight Services' Under Secretary-General ends, it will be opportune to investigate whether the new "independenzation" arrangement is more efficacious than the previous one.

This case study presents a rich level of complexity therefore further research is warrant to explore it through the lens of other theories such as Public Choice Theory (Buchanan, 1975). Public Choice would be used to explore what were the individual incentives of the decision makers and the underlying factors of the power struggle going on.

BIBLIOGRAPHY

Aceves, W.J. (1996), Economic analysis of international law: transaction cost economics and the concept of state practice, *Journal of International Law*, 17(4), 995-1068.

Allen, D.W. (1991), What are transaction costs?, *Research in Law and Economics*, 14(3), 1-18.

Alston, L.J. (2008), The "case" for case studies in new institutional economics, in Brousseau, E., and J.M. Glachant, *New Institutional Economics: a Guidebook*. Cambridge, UK: Cambridge University Press, 103-121.

Aman, A., N. Hamzah, R. Amiruddin and R. Maelah (2012), Transaction costs in finance and accounting offshore outsourcing: a case of Malaysia, *Strategic Outsourcing: an International Journal*, 5(1), 72-88.

Aristotle, (1981), *Nicomachean Ethics* (H. Rackham Trans.), Cambridge, MA, Harvard University Press, London, William Heinemann Ltd.

Arrow, K.J. (1969), The organization of economic activity: issues pertinent to the choice of market versus non-market allocation, in US Joint Economic Committee, *The Analysis and Evaluation of Public Expenditures, the PBP System*, Washington, DC: Government Printing Office, 47–64.

Bailey, M. T. (1992), Do physicists use case studies? Thoughts on public administration research, *Public Administration Review*, 52(1), 47-54.

Baker, C. R. and M.S. Bettner (1997), Interpretive and critical research in accounting: a commentary on its absence from mainstream accounting research, *Critical Perspectives on Accounting*, 8(4), 293-310.

Baldwin, C. Y. (2008), Where do transactions come from? Modularity, transactions, and the boundaries of firms, *Industrial and corporate change*, 17(1), 155-195.

Barnett, M. and Finnemore M. (1999), The politics, power, and pathologies of international organizations, *International Organization*, 53(4), 699-732.

Barnett, M. and M. Finnemore (2004), *Rules for the World: International Organizations in Global Politics*, Ithaca, NY: Cornell University Press.

Barzel, Y. (1982), Measurement cost and the organization of markets, *Journal of Law and Economics*, 25(1), 27-48.

Barzel, Y. (1989), *Economic Analysis of Property Rights*, Cambridge, UK: Cambridge University Press.

Berry, A.J. and D.T. Otley (2004), Case-based research in accounting, in Humphrey, C. and B. Lee, (Ed), *The Real Life Guide to Accounting Research: A Behind the Scenes View of Using Qualitative Research Methods*, Oxford, UK: Elsevier, 231-255.

Bradach, J.L. and R.G. Eccles (1989), Price, authority, and trust: from ideal types to plural forms, *Annual Review of Sociology*, 15(1), 97-118.

Bradley, C. A. and J.G. Kelley (2008), The concept of international delegation, *Law and Contemporary Problems*, 71(1), 1-36.

Brown, T.L. and M. Potoski (2003), Transaction costs and institutional explanations for government service production decisions, *Journal of Public Administration Research and Theory*, 13(4), 441-468.

Brousseau, E. and J.M. Glachant (2008), *New Institutional Economics: A Guidebook*, Cambridge, UK: Cambridge University Press.

Buchanan, J.M. (1975), A contractarian paradigm for applying economic theory, *American Economic Review*, 65(2), 225-230.

Carey, P., N. Subramaniam and K.C.W. Ching (2006), Internal audit outsourcing in Australia, *Accounting and Finance*, 46(1), 11-30.

Carnegie, G.D. and C.J. Napier (2010), Traditional accountants and business professionals: portraying the accounting profession after Enron, *Accounting, Organizations and Society*, 35(3), 360-376.

Carter, R. and G.M. Hodgson (2006), The impact of empirical tests of transaction cost economics on the debate on the nature of the firm, *Strategic Management Journal*, 27(5), 461-476.

Chen, C.C., M.W. Peng and P.A. Saparito (2002), Individualism, collectivism, and opportunism: a cultural perspective on transaction cost economics, *Journal of Management*, 28(4), 567-583.

Chua, W.F. (1986), Radical developments in accounting thought, *The Accounting Review*, 61(4), 601-632.

Ciccotello, C.S., M.J. Hornyak and M.S. Piwowar (2004), Research and development alliances: evidence from a Federal Contracts repository, *Journal of Law and Economics*, 47(1), 123-166.

Coase, R.H. (1937), The nature of the firm, *Economica*, 4(16), 386-405.

Coase, R.H. (1959), The federal communications commission, *Journal of Law and Economics*, 2(1), 1-40.

Coase, R.H. (1960), Problem of social cost, *The Journal of Law and Economics*, 3(1), 1-44.

Coase, R H. (1988), Nature of the firm: origin, evolution, and development, *The Journal of Law, Economics and Organizations*, 4(1), 3-13.

Coase, R.H. (1990), Accounting and the theory of the firm, *Journal of Accounting and Economics*, 12(1), 3-13.

Coase, R.H. and E.W. Williams Jr. (1964), Discussion, *American Economic Review*, 54(3), 194-197.

Cohen, S.S. and G. Boyd (Ed.) (2000), *Corporate Governance and Globalization, Long Range Planning Issues,* Cheltenham, UK: Edward Elgar.

Commons, J. R. (1924), *Legal foundations of capitalism*, New York, NY: MacMillan.

Commons, J. R. (1931), Institutional Economics, *American Economic Review*, 26(1), 648–657.

Commons, J.R. (1934), *Institutional Economics: Its Place in Political Economy*, New York, NY: MacMillan.

Conforti, B. (2005), *The Law and Practice of the United Nations,* Leiden, Netherlands: Martinus Nijhoff Publishers.

Crocker, K.J. and S.E. Masten (1996), Regulation and administered contracts revisited: lessons from transaction-cost economics for public utility regulation, *Journal of Regulatory Economics*, 9(1), 5-39.

Cruz, I., M. Major and R.W. Scapens (2009), Institutionalization and practice variation in the management control of a global/local setting, *Accounting, Auditing & Accountability Journal*, 22(1), 91-117.

Cruz, I., R.W. Scapens and M. Major (2011), The localization of a global management control system, *Accounting, Organizations and Society*, 36(7), 412-427.

David, R.J. and S-K. Han (2004), A systematic assessment of the empirical support for transaction cost economics, *Strategic Management Journal*, *25*(1), 39-58.

Delmas, M., and A. Marcus (2004), Firms' choice of regulatory instruments to reduce pollution: a transaction cost approach, *Business and Politics*, 6(3), 1-20.

Demsetz, H. (1968), The cost of transacting, *Quarterly Journal of Economics*, 82(1), 33-53.

Denzin N.K. and Y.S. Lincoln (2005), Introduction: the discipline and practice of qualitative research, in N.K. Denzin and Y.S Lincoln (Ed.), *The Handbook of Qualitative Research*, Thousand Oaks, California: Sage Publications, 1-32.

DiMaggio, PJ. and W.W. Powell (1983), The iron cage revisited: institutional isomorphism and collective rationality in organizational fields, *American Sociological Review*, 48(2), 147-60.

Dixit, A. (2009), Governance institutions and economic activity, *American Economic Review*, 99 (1), 5-24.

Duran, X., and P. McNutt, (2010), Kantian ethics within transaction cost economics, *International Journal of Social Economics*, *37*(10), 755-763.

Donaldson, L. (1990), The ethereal hand: organizational economics and management theory, *Academy of Management Review*, 15(3), 369-381.

Eggertsson, T. (1990), The role of transaction costs and property rights in economic analysis, *European Economic Review*, 34(2), 450-457.

Eisenhardt, K.M. (1989), Building theories from case study research, *Academy of Management Review*, 14(4), 532-550.

Epstein, D. and S. O'Halloran (1999), *Delegating Powers: A Transaction Cost Politics Approach to Policy Making Under Separate Powers*, Cambridge, UK: Cambridge University Press.

Epstein, D. and S. O'Halloran (2008), Sovereignty and delegation in international organizations, *Law and Contemporary Problems*, 71 (1), 77-92.

Faure-Grimaud, A., J.J. Laffont and D. Martimort (1999), The endogenous transaction costs of delegated auditing, *European Economic Review*, 43(4), 1039-1048.

Flyvbjerg, B. (2006), Five misunderstandings about case-study research, *Qualitative Inquiry*, 12(2), 219-245.

Fredland, J.E. (2004). Outsourcing military force: a transactions cost perspective on the role of military companies, *Defence and Peace Economics*, 15(3), 205-219.

Furubotn, E.G. and R. Richter (2000), *Institutions and Economic Theory: The Contribution of the New Institutional Economics*, Ann Arbour, Mi: University of Michigan Press.

Furubotn, E.G. and R. Richter (2005). *Institutions and Economic Theory: The Contribution of the New Institutional Economics (2nd edition)*, Ann Arbour, Mi: University of Michigan Press.

Gendron, Y. and L.F. Spira (2009), Identity narratives under threat: a study of former members of Arthur Andersen, *Accounting, Organizations and Society*, 35(3), 275-300.

Genugten, M.L. (2008), *The art of alignment transaction cost economics and the provision of public services at the local level*. Ph. D. Thesis, University of Twente.

George, A. and A. Bennett (2005), *Case Studies and Theory Development in the Social Sciences*, Cambridge, Mass: MIT Press.

Ghoshal, S. and Moran, P. (1996), Bad for practice: A critique of the transaction cost theory, *Academy of Management Review*, 21(1), 13-47.

Gibbons, R. (2010), Transaction-cost economics: past, present, and future?, *The Scandinavian Journal of Economics*, 112(2), 263-288.

Goldberg, V.P. (1976), Regulation and administered contracts, *The Bell Journal of Economics*, 7(2), 426-448.

Gordon, J. (2002), Cool war: economic sanctions as a weapon of mass destruction, *Harper's Magazine*, 11, 43-49.

Graaf, G. and L.W. Huberts (2008), Portraying the nature of corruption using an explorative case study design, *Public Administration Review*, 68(4), 640-653.

Granovetter, M. (1985), Economic action and social structure: the problem of embeddedness, *American Journal of Sociology*, 91(3), 481-510.

Granovetter, M. (1992), Economic institutions as social constructions: a framework for analysis, *Acta sociologica*, 35(1), 3-11.

Grigorescu, A. (2008), Horizontal accountability in intergovernmental organizations, *Ethics and International Affairs*, 22(3), 285-308.

Grigorescu, A. (2010). The spread of bureaucratic oversight mechanisms across intergovernmental organizations, *International Studies Quarterly*, 54(3), 871-886.

Grossman, S. J. and O.D. Hart (1986), The costs and benefits of ownership: a theory of vertical and lateral integration, *The Journal of Political Economy*, 94(4), 691-719.

Guénin-Paracini, H. and Y. Gendron (2010), Auditors as modern pharmakoi: legitimacy paradoxes and the production of economic order, *Critical Perspectives on Accounting*, 21(2), 134–158.

Hart, O. (1989), An economist's perspective on the theory of the firm, C*olumbia Law Review*, 89(7), 1757-1774.

Hart, O. and J. Moore (1990), Property rights and the nature of the firm, *Journal of Political Economy*, 98(6), 1119-1158.

Hart, O., A. Shileifer, and R.W. Vishny (1997), The proper scope of government: theory and application to prisons, *The Quarterly Journal of Economics*, 112(4), 1127-1161.

Hall, P.A. and R.C. Taylor (1996), Political science and the three new institutionalisms, *Political studies*, 44(5), 936-957.

Hawkins, D., D. Lake, D. Nielson and M. Tierney (Ed.) (2006), *Delegation and Agency in International Organizations*, Cambridge, UK: Cambridge University Press.

Heath, J. and W. Norman (2004), Stakeholder theory, corporate governance and public management: what can the history of state-run enterprises teach us in the post-eron Era?, *Journal of Business Ethics*, 53(3), 247-265.

Heaton, P. (2005), Oil for what?–illicit Iraqi oil contracts and the U.N. Security Council, *Journal of Economic Perspectives*, 19(4), 193-206.

Hirsch, P.M., R. Friedman, R. and M.P. Koza (1990), Collaboration or paradigm shift? Caveat emptor and the risk of romance with economic models for strategy and policy research, *Organization Science*, 1(1), 87-97.

Hodgson, G.M. (1998), The approach of institutional economics, *Journal of Economic literature*, 36(1), 166-192.

Hodgson, G.M. (2007), Institutions and individuals: interaction and evolution, *Organization Studies*, 28(1), 95-116.

Hodgson, G.M. (2010), Limits of transaction cost analysis, in Klein P. and M. Sykuta (Ed.), *The Elgar Companion to Transaction Cost Economics*, Cheltenham UK: Edward Elgar, 297-306.

Holterman, M. (2011), The Transaction Costs of Semi-Public Institutions: Railway History as a Challenge for Coase. Ph.D. Thesis, University of Twente.

Hopper, T. and M. Major (2007), Extending institutional analysis through theoretical triangulation: regulation and activity-based costing in Portuguese telecommunications, *European Accounting Review*, 16(1), 59-97.

Hopper, T. and A. Powell (1985), Making sense of research into the organizational and social aspects of management accounting: a review of its underlying assumptions, *Journal of Management Studies*, 22(5), 429-465.

Hopwood, A.G. (1983), On trying to study accounting in the contexts in which it operates, *Accounting, Organizations and Society*, 8(2/3), 287-305.

Huet, F. and S. Saussier (2003), Contractual arrangements and the provision of public interest services: a transaction cost analysis, *European Business Organization Law Review*, 4(3), 403-27.

Humphrey, C. (2001), Paper prophets and the continuing case for thinking differently about accounting research, *British Accounting Review*, 33(1), 91–103.

Humphrey, C. and R.W. Scapens (1996), Theories and case studies of organizational accounting practices: limitation or liberation?, *Accounting, Accountability and Auditing Journal*, 9(4), 86-106.

Humphrey, C. and B. Lee (2004), *The Real Life Guide to Accounting Research: a Behind of the Scenes: a View of Using Qualitative Research Methods*, Oxford, UK: Elsevier.

Joskow, P.L. (1985), Vertical integration and long-term contracts: the case of coal-burning electric generating plants, *Journal of Law, Economics and Organization*, 1(1*)*, 33-80.

Joskow, P.L. (1988), Asset specificity and the structure of vertical relationships: Empirical evidence, *Journal of Law, Economics and Organization*, 4(1), 95-117.

Karayiannis, A. D. and A. N. Hatzis (2012), Morality, social norms and the rule of law as transaction cost-saving devices: the case of ancient Athens, *European Journal of Law and Economics, 33*(3), 621-643.

Karns, M. P. and K.A. Mingst (2004), *International Organizations: The Politics and Processes of Global Governance,* London, UK: Lynne Rienner Publishers.

Kavanagh, I. and D. Parker (2000), Managing the contract: a transaction cost analysis of externalization, *Local Government Studies*, 26(4), 1-22.

Kersbergen, V.K. and F.W. Waarden (2004), 'Governance' as a bridge between disciplines. Cross-disciplinary inspiration regarding shifts in governance and problems of governability, accountability and legitimacy, *European Journal of Political Research* 43(2), 143–171.

Khurana, R. (2007), *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession*, Princeton, NJ: Princeton University Press.

Kim, J. and J.T. Mahoney (2005), Property rights theory, transaction costs theory, and agency theory: an organizational economics approach to strategic management. *Managerial and Decision Economics*, 26(4), 223-242.

Klamer, A. and D.N. McCloskey (1992), Accounting as the master metaphor of economics, *European Accounting Review*, 1(1), 145-160.

Klein, P.G. (2000), New institutional economics, in B. Bouckaert and G. de Geest (Ed.), *Encyclopedia of Law and Economics, The History and Methodology of Law and Economics*, Cheltenham, UK: Edward Elgar, 456-489.

Klein, P.G. (2008), The make-or-buy decisions: Lessons from empirical studies, in C. Menard and Shirley M. (Ed.), *Handbook of New Institutional Economics*, New York, NY: Springer, 435-464.

Klein, P.G., R.G. Crawford and A. Alchian (1978), Vertical integration, appropriable rents, and the competitive contracting process, *Journal of Law and Economics*, 21(2), 297-326.

Krämer, W. (2011), The cult of statistical significance: what economists should and should not do to make their data talk, *Working Paper n.176*, Series des Rates für Sozial-und Wirtschaftsdaten.

Langfield-Smith, K. and D. Smith (2003), Management control systems and trust in outsourcing relationships, *Management Accounting Research*, 14(3), 281-307.

Lee, T.A. (2004), Accounting and auditing research in the United States, *The Real Life Guide to Accounting Research*, Oxford, UK: Elsevier, 57-71.

Leonard-Barton, D. (1990), A dual methodology for case studies: synergistic use of a longitudinal single site with replicated multiple sites, *Organization Science*, 1(3), 248-266.

Levin, J. and S. Tadelis (2010), Contracting for government services: theory and evidence from US cities, *The Journal of Industrial Economics*, 58(3), 507-541.

Levy, B. and P.T. Spiller, (1994), Institutional foundations of regulatory commitment: a comparative analysis of telecommunications regulation, *The Journal of Law, Economics and Organization*, 10(2), 201-246.

Lieberman, E.S. (2001), Causal inference in historical institutional analysis: a specification of periodization strategies, *Comparative Political Studies*, 34(9), 1011-1035.

Lieberman, E.S. (2010), Bridging the qualitative-quantitative divide: best practices in the development of historically oriented replication databases, *Annual Review of Political Science*, 13(1), 37-59.

Lipson, M. (2004), Transaction cost estimation and international regimes: of crystal balls and sheriff's posses, I*nternational Studies Review*, 6(1), 1-20.

Llewellyn, S. (1996), Theories for theorists or theories for practice? Liberating academic accounting research?, *Accounting Auditing and Accountability Journal*, 9(4), 112-118.

Lynn, Jr. L.E. (1998), The new public management: how to transform a theme into a legacy, *Public Administration Review*, 58(3): 231–238.

Lukka, K. and E. Kasanen, (1995), The problem of generalizability: Anecdotes and evidence in accounting research, *Accounting, Auditing and Accountability Journal*, 8(5), 71-90.

Macher, J.T., and B.D. Richman (2008), Transaction cost economics: an assessment of empirical research in the social sciences, *Business and Politics*, 10(1), 1-63.

Mack, A. (2004), The Security Council is to blame, *International Herald Tribune*, May 12.

Major, M. and T. Hopper (2005), Managers divided: implementing ABC in a Portuguese telecommunications company, *Management Accounting Research*, 16(2), 205-229.

March, J.G. and J.P. Olsen (1998), The institutional dynamics of international political orders, *International Organization*, 52(4), 943-969.

March, J.G., L. Sproul, L. and M. Tamuz (1991), Learning from samples of one or fewer, *Organization Science*, 2(1), 1-13.

Martin, R. (2010), The battleground that is business research, *Financial Times*, 31 Oct.

Mason, J. (2002), *Qualitative Researching*, Thousand Oaks, California: Sage.

Masten, S.E. (1984), Organization of production: evidence from the aerospace industry, *The Journal of Law and Economics*, 27(2), 403-417.

Masten, S.E. (1996a), Empirical research in transaction cost economics: challenges, progress, directions, in Groenewegen J. (Ed.), *Transaction Cost Economics and Beyond*, The Hague, Netherlands: Springer, 43-64.

Masten, S.E. (Ed.) (1996b), *Case Studies in Contracting and Organization*, Oxford, Mass.: Oxford University Press.

Masten, S.E., J.W. Meehan and E.A. Snyder (1991), The costs of organization, *Journal of Law, Economics and Organization*, 7(1), 1-25.

Masten, S.E. and S. Saussier, (2000), Econometrics of contracts: an assessment of developments in the empirical literature on contracting, *Revue d'économie industrielle*, 92(1), 215-236.

Mazower, M. (2009), *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*, Princeton, NJ: Princeton University Press.

McCloskey, D.N. (1983), The rhetoric of economics, *Journal of Economic Literature*, 21(2), 481-517.

McCloskey, D.N. (1989), *The Rhetoric of Disagreement*, Madison, Wisconsin: University of Wisconsin Press.

McCloskey, D.N. (1994), The neglected economics of talk, *Planning for Higher Education*, *22*(4), 11-16.

McCloskey, D.N. (2002), *The Secret Sins of Economics*, Chicago, Il: Prickly Paradigm Pamphlets.

McCloskey, D. N. (2006), *The bourgeois virtues: Ethics for an age of commerce*, Chicago, Il: University of Chicago Press.

McCloskey, D.N. (2010), *Bourgeois Dignity: Why Economics Can't Explain the Modern World*, Chicago, Il: University of Chicago Press.

Mearsheimer, J.J. (1994), The false promise of international institutions, *International security*, 19(3), 5-49.

Ménard, C. (1995), Markets as institutions versus organizations as markets? Disentangling some fundamental concepts. *Journal of Economic Behavior & Organization*, 28(2), 161-182.

Ménard, C. (2001), Methodological issues in new institutional economics, *Journal of Economic Methodology*, 8(1), 85-92.

Ménard, C. and S. Saussier (2000), Contractual choice and performance the case of water supply in France, *Revue d'économie industrielle*, 92(2/3), 385-404

Ménard, C. and M. Shirley (Ed.) (2008), *Handbook of New Institutional Economics*, The Hague, Netherlands: Springer.

Ménard, C. and M. Shirley (2001), Reforming public utilities: lessons from urban water system in six developing countries, *Working Paper*, The World Bank.

Ménard, C. and M. Shirley (2012), New institutional economics: from early intuitions to a new paradigm?, *Working Paper*, Ronald Coase Institute.

Meramveliotakis, G. and D. Milonakis (2010), Surveying the transaction cost foundations of new institutional economics: a critical inquiry, *Journal of Economic Issues*, 44(4), 1045-1072.

Merino, B.D. and A.G. Mayper (2001), Securities legislation and the accounting profession in the 1930's: the rhetoric and reality of the American dream, *Critical Perspectives on Accounting*, 12(4), 501-526.

Myers, C. (2002), *From Public Sector Management to Governance: Changing ideas about economic development, the State, and the World Bank.* Ph.D. Thesis University of Michigan.

Meyer, J.A. and M.G. Califano (2006), *Good Intentions Corrupted: The Oil-for-Food Scandal and the Threat to the UN*, New York, NY: Public Affairs.

Meyer, J.W. and B. Rowan, (1977), Institutionalised organisations: formal structures as myth and ceremony, *American Journal of Sociology*, 83(2), 310-63 (reprinted in Powell, W.W. and P.J. DiMaggio, (Ed.) (1991), *The New Institutionalism in Organizational Analysis*, Chicago, Il: University of Chicago Press, 41-62.

Merriam S. (1998), *Qualitative Research and Case Study Research in Education*, San Francisco, Ca: Jossey Bass Publisher.

Miles, M., and A. Huberman (1984), Drawing valid meaning from qualitative data: some techniques of data reduction and display, *Quality and Quantity*, 17(17), 281-339.

Miles, M., and A. Huberman (1994), *Qualitative Data Analysis: An Expanded Sourcebook*, second edition, Thousand Oaks, CA: Sage Publications.

Miller, A.J. (2009), Privileges and immunities of the United Nations, *International Organization Law Review*, 6(1), 7-115.

Mitchell, R.K., R. Agle and D.J. Wood (1997), Toward a theory of stakeholder identification and salience: defining who and what really counts, *Academy of Management Review*, 22 (4), 853-886.

Moe, T.M. (1990), The politics of structural choice: toward a theory of public bureaucracy, in Williamson O. (Ed), *Organization theory: From Chester Barnard to the present and beyond*, Oxford, Mass: Oxford University Press, 116-153.

Monteverde, K. and D.J. Teece (1982), Supplier switching costs and vertical integration in the automobile industry, *Bell Journal of Economics*, 13(1), 206-213.

Morrill, C. and J. Morrill (2003), Internal auditors and the external audit: a transaction cost perspective, *Managerial Auditing Journal*, 18(6/7), 490-504.

Nelson, M.A. (1997), Municipal government approaches to service delivery: an analysis from a transactions cost perspective, *Economic Inquiry*, 35(1), 82-96.

Nelson, R. and B.N.Sampat (2001), Making sense of institutions as a factor shaping economic performance, *Revista de Economía Institucional*, 3(5), 17-51.

Nobel Memorial Prize in Economics Science (2009), http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2009/williamson.

Noorderhaven, N.G. (1996), Opportunism and trust in transaction cost economics, in Groenewegen J. (Ed.), *Transaction Cost Economics and Beyond*, The Hague, Netherlands: Springer, 105-128.

Norman, S.C., A.M. Rose and J.M. Rose (2010), Internal audit reporting lines, fraud risk decomposition, and assessments of fraud risk, *Accounting, Organizations and Society*, 35(5), 546-557.

North, D. C. (1984), Transaction costs, institutions, and economic history, *Zeitschrift für die gesamte Staatswissenschaft / Journal of institutional and theoretical economics*, 7-17.

North, D.C. (1990a), *Institutions, Institutional Change, and Economic Performance*, Cambridge, Mass: Cambridge University Press.

North, D.C. (1990b), A transaction cost theory of politics, *Journal of Theoretical Politics*, 2(4), 355-67.

North, D.C. (1994), Economic performance through time, *American Economic Review* 84(3), 359-368.

North, D.C. (2000), Big-bang transformations of economic systems: an introductory note, *Journal of Institutional and Theoretical Economics*, 156(1), 3-8.

North, D.C. and B.R. Weingast (1989), Constitutions and commitment: the evolution of institutions governing public choice in seventeenth-century England, *The Journal of Economic History*, 49(4), 803-832.

OECD (2001), *Glossary of Statistical Terms*, https://stats.oecd.org/glossary/detail, retrieved on 4 January 2014.

O'Hara, P.A. (1993), Methodological principles of institutional political economy: holism, evolution and contradiction, *Methodus*, 5(1), 51-71.

Ouchi, W.G. (1979), A conceptual framework for the design of organizational control mechanisms, *Management Science*, 25(9), 833-848.

Ouchi, W.G. (1980), Markets, bureaucracies, and clans, *Administrative Science Quarterly*, 25(1), 129-141.

Perrow, C., H.L. Wilensky and A.J. Reiss, (1986), *Complex Organizations: A Critical Essay*, New York, NY: McGraw-Hill.

Pessali, H.F. (2006), The rhetoric of Oliver Williamson's transaction cost economics, *Journal of Institutional Economics*, 2(1), 45-65.

Pessali, H.F. (2009), Metaphors of transaction cost economics, *Review of Social Economy*, 67(3), 313-328.

Posner, R.A. (2010), From the new institutional economics to organization economics: with applications to corporate governance, government agencies, and legal institutions, *Journal of Institutional Economics*, 6(1), 1-37.

Power, M. (1993), The politics of financial auditing, *The Political Quarterly*, 64(1), 272-284.

Power, M. (1994), *The Audit Explosion*, London: Demos.

Power, M. (1995), Auditing, expertise and the sociology of technique, *Critical Perspectives on Accounting*, 6(4), 317-339.

Power, M. (1996), Making things auditable, *Accounting, Organizations and Society*, 21(2/3), 289-315.

Power, M. (1997), Expertise and the construction of relevance: accountants and environmental audit, *Accounting, Organizations and Society*, 22(2), 123-146.

Power, M. (1999), *The Audit Society: Rituals of Verification* (2nd ed.), Oxford, Mass: Oxford University Press.

Power, M. (2000), *The Audit Implosion: Regulating Risk from the Inside*, London: Institute of Chartered Accountants in England and Wales.

Power, M. (2003), Auditing and the production of legitimacy, *Accounting, Organizations and Society*, 28(4), 379-94.

Ramstad, T. (1986), A pragmatic quest for holistic knowledge: the scientific methodology of John R. Commons, *Journal of Economic Issues*, 20, December: 1067-1105.

Reed, M. (2005), Beyond the iron cage? Bureaucracy and democracy in the knowledge economy and society, in du Gay P. (Ed.), *The Values of Bureaucracy*, Oxford, Mass: University Press, 115-140

Reinisch, A. (2008), The immunity of international organizations and the jurisdiction of their administrative tribunals, *Chinese Journal of International Law*, 7(2), 285-306.

Reinisch, A. (2009), *Convention on the Privileges and Immunities of the United Nations New York, 13 February 1946*, United Nations Audiovisual Library of International Law, United Nations, www.un.org/law/avl.

Richman, B.D., and C. Boerner (2006), Transaction cost economizing approach to regulation: understanding the NIMBY problem and improving regulatory responses, *Yale Journal of Regulation*, 23(1), 29-76.

Richman, B.D. and J. Macher (2008), Transaction cost economics: an assessment of empirical research in the social sciences, *Business and Politics* 10(1), 1-63.

Richter, R. (2005), The new institutional economics: its start, its meaning, its prospects. *European Business Organization Law Review*, 6(2), 161-200.

Rindfleisch, A. and J.B. Heide (1997), Transaction cost analysis: past, present, and future applications, *Journal of Marketing*, 61(4), 30-54.

Rittenberg, L. E. and M. Covaleski (1999), Outsourcing the internal audit function: the British Government experience with market testing, *International Journal of Auditing*, 3(3), 225-235.

Rittenberg, L. and M. Covaleski (2001). Internalization versus externalization of the internal audit function: an examination of professional and organizational imperatives, *Accounting, Organizations and Society*, 26(7), 617-641.

Ruiter, D.W. (2005), Is transaction cost economics applicable to public governance?, *European Journal of Law and Economics*, 20(3), 287-303.

Rutherford, M. (2001), Institutional economics: then and now, *Journal of Economic Perspectives*, 15(3), 173-194.

Ryan, R., R. Scapens and M. Theobald (2002), *Research Method and Methodology in Finance and Accounting*, 2nd edition, London: Thomson.

Saalfeld, T. (2000), Members of parliament and governments in Western Europe: agency relations and problems of oversight, *European Journal of Political Research*, 37(3), 353-376.

Saussier, S. (2000), Transaction costs and contractual incompleteness: the case of Électricité de France, *Journal of Economic Behavior and Organization*, 42(2), 189-206.

Scapens, R.W. (1990), Researching management accounting practice: the role of case study methods, *British Accounting Review*, 22(3), 259-281.

Scapens, R.W. (2004), Doing case study research, *The real life guide to accounting research: A behind-the-scenes view of using qualitative research methods*, 257-79.

Scott, W.R. (2008), *Institutions and Organizations: Ideas and Interests*, Thousand Oaks, CA: Sage Publications.

Selim, G. and A. Yiannakas (2000), Outsourcing the internal audit function: a survey of the UK public and private sectors, *International Journal of Auditing*, 4(3), 213-226.

Selto, F.H. and S.K. Widener (1999), Management control systems and boundaries of the firm: why do firms outsource internal auditing activities?, *Journal of Management Accounting Research*, 11 (1), 45-73.

Shapiro, S.P. (1987), The social control of impersonal trust, *American Journal of Sociology*, 93(3), 623-658.

Shelanski, H.A. and P.G. Klein, (1995), Empirical research in transaction cost economics: a review and assessment, *Journal of Law, Economics, and Organization*, 11(2), 335-361.

Simon, H.A. (1997), *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization*, New York, NY: Free Press.

Simmons, B. A. and L.L. Martin, (2002), International organizations and institutions, in Carlsnaes W., T. Rise and B.A. *Simmons., Handbook of International Relations*, Thousand Oaks, Ca: Sage Publications, 192-211.

Slaughter, A.M. A.S. Tulumello, and S. Wood (1998), International law and international relations theory: a new generation of interdisciplinary scholarship, *American Journal of International Law*, 92(3), 367-397.

Sobel, R.S. (1994), The League of Nations Covenant and the United Nations Charter: an analysis of two international constitutions, *Constitutional Political Economy*, 5(2), 173-192.

Soros, G. (2013), Fallibility, reflexivity, and the human uncertainty principle, *Journal of Economic Methodology*, 20(4), 309-329.

Speklé, R.F. (2001), Explaining management control structure variety: a transaction cost economics perspective, *Accounting, Organizations and Society*, 26(4), 419-441.

Speklé, R.F., H.J. Van Elten and A.M. Kruis, (2007), Sourcing of internal auditing: an empirical study, *Management Accounting Research*, 18(1), 102-124.

Spiller, P.T. (2008), An institutional theory of public contracts: regulatory implications, *Working Paper*, National Bureau of Economic Research.

Spiller, P. T. and M. Tommasi, (2003), The institutional foundations of public policy: a transactions approach with application to Argentina, *Journal of Law, Economics, and Organization*, 19(2), 281-306.

Spithoven, A. (2012), Public governance of healthcare in the United States: a transaction costs economics (TCE) analysis of the 2010 reform, *Journal of Institutional Economics*, 8(4), 429.

Spraakman, G. (1997), Transaction cost economics: a theory for internal audit?. *Managerial Auditing Journal*, 12(7), 323-330.

Stake, R.E. (1994), Case studies, in Denzin N.K. and Y.S. Lincoln (Ed.), *Handbook of Qualitative Research*, Thousand Oaks, Ca: Sage Publications, 236-247.

Stake, R.E. (1995), *The Art of Case Study Research*, Thousand Oaks, Ca: Sage Publications.

Stake, R.E. (2005), Qualitative case studies, in Norman, K., N.K. Denzin, and Y.S. Lincoln (Ed.), *The Sage Handbook of Qualitative Research*, Thousand Oaks, Ca: Sage Publications, 443-466.

Subramaniam, N., C.Ng and P. Carey (2004), Outsourcing internal audit services: an empirical study on Queensland public-sector entities, *Australian Accounting Review*, 14(34), 86-95.

Tadelis, S. and O. Williamson (2012), Transaction cost economics, *International Journal of Industrial Organization*, 30 (3), 297-302 .

Ter Bogt, H.J. (2003), A transaction cost approach to the autonomization of government organizations: a political transaction cost framework confronted with six cases of autonomization in the Netherlands, *European Journal of Law and Economics*, 16(2), 149-186.

Tinker, T. (2001), Paper prophets: an autocritique, *The British Accounting Review*, 33(1), 77-89.

Treib, O., H. Bähr and G. Falkner (2007), Modes of governance: towards a conceptual clarification, *Journal of European Public Policy*, 14(1), 1-20.

Vannoni, D. (2002), Empirical studies of vertical integration: the transaction cost orthodoxy, *Rivista Internazionale di Scienze Economiche e Commerciali*, 49(1), 113-141.

Voigt, S. (2011), Positive constitutional economics II-a survey of recent developments, *Public Choice*, 146(1-2), 205-256.

Volcker, P., R.J. Goldstone and M. Pieth (2005), *Independent Inquire Committee into The United Nations Oil-for-Food Program, Manipulation of the Oil-for-Food Program by the Iraqi Regime*, http://www.iic-offp.org.

von Bernstorff, J. (2010), Procedures of decision-making and the role of law in international organizations, in von Bogdandy A., R. Wolfrum., J. Bernstorff, P. Dann and M. Goldmann (Ed.), *The Exercise of Public Authority by International Institutions*, Heidelberg: Springer, 777-806.

Weingast, B.R. (1995), Economic role of political institutions: market-preserving federalism and economic development, *Journal of Law, Economics and Organization*, 11 (1), 1-31.

Weingast, B.R. and W.J. Marshall (1988), The industrial organization of Congress; or, why legislatures, like firms, are not organized as markets, *Journal of Political Economy*, 96(1), 132-163.

Weiss, T.G. (2012), Reinvigorating the "second" United Nations: people matter, in Reinalda B. (Ed.), *Routledge Handbook of International Organization*, New York, NY: Routledge, 299-321.

Whinston, M.D. (2003), On the transaction cost determinants of vertical integration, *Journal of Law, Economics, and Organization*, 19(1), 1-23.

Williamson, O.E. (1967), *The Economics of Discretionary Behaviour: Managerial Objectives in a Theory of the Firm*, London: Kershaw Publishing.

Williamson, O.E. (1971), The vertical integration of production: market failure considerations', *American Economic Review*, 61(2), 112-123.

Williamson, O.E. (1973), Markets and hierarchies: some elementary considerations, *The American Economic Review*, 63(2), 316-325.

Williamson, O.E. (1975), *Markets and Hierarchies: Analysis and Antitrust Implications*, New York, NY: The Free Press.

Williamson, O.E. (1976), Franchise bidding for natural monopolies – in general and with respect to CATV, *Bell Journal of Economics*, 7(1), 73-104.

Williamson, O.E. (1977), Predatory pricing: a strategic and welfare analysis', *Yale Law Journal*, 87(2), 284-340.

Williamson, O.E. (1979), Transaction cost economics: the governance of contractual relations, *Journal of Law and Economics*, 22(2), 233-261.

Williamson, O.E. (1981), The economics of organization: the transaction cost approach, *American Journal of Sociology*, 87(3), 548-577.

Williamson, O.E. (1982), Dominant firms and the monopoly problem: market failure considerations, *Harvard Law Review*, 85(8), 1512-1531.

Williamson, O.E. (1983), Credible commitments: using hostages to support exchange, *American Economic Review*, 73(4), 519-540.

Williamson, O.E. (1983), Organization form, residual claimants, and corporate control, *Journal of Law and Economics*, 26(2), 351-366.

Williamson, O.E. (1985), *The Economic Institutions of Capitalism*, New York, NY: The Free Press.

Williamson, O.E. (1987), *Antitrust Economics: Mergers, Contracting, and Strategic Behavior*, Oxford, Mass: Blackwell.

Williamson, O.E. (1988a), Corporate finance and corporate governance, *Journal of Finance*, 43(3), 567-591.

Williamson, O.E. (1988b), Logic of economic organization, *Journal of Law, Economics and Organization*, 4(1), 65-93.

Williamson, O.E. (1991), Comparative economic organization: the analysis of discrete structural alternatives, *Administrative Science Quarterly*, 36(29), 269-296.

Williamson, O.E. (1992), Markets, hierarchies, and the modern corporation: an unfolding perspective, *Journal of Economic Behavior and Organization*, 17(3), 335-352.

Williamson, O.E. (1993a), Calculativeness, trust, and economic organization, *Journal of Law and Economics*, 36(1), 453-486.

Williamson, O.E. (1993b), Transaction cost economics and organization theory, *Industrial and Corporate Change*, 2(1), 107-156.

Williamson, O.E. (1994), Research needs and opportunities in transaction cost economics, *Journal of the Economics of Business*, 1(1), 45-46.

Williamson, O.E. (Ed.) (1995), *Organization Theory: from Chester Barnard to the Present and Beyond*, Oxford, Mass: Oxford University Press.

Williamson, O.E. (1996a), *The Mechanisms of Governance*, Oxford, Mass: Oxford University Press.

Williamson, O.E. (1996b), Economic organization: the case for candor, *Academy of Management Review*, 21(1), 48-57.

Williamson, O.E. (1996c), Transaction cost economics and the Carnegie connection', *Journal of Economic Behavior and Organization*, 31(2), 149-155.

Williamson, O.E. (1996d), The limits of firms: incentive and bureaucratic features, *The Economic Nature of the Firm: A Reader*, 146.

Williamson, O.E. (1997), Transaction cost economics and public administration, in Boorsma P. (Ed.), *Public Priority Setting*: *Rules* and *Costs*, The Hague, Netherlands Springer, 19-37.

Williamson, O.E. (1998a), Transaction cost economics: how it works; where it is headed, De *Economist*, 146(1), 23-58.

Williamson, O.E. (1998b), The institutions of governance, *The American Economic Review*, 88(2), 75-79.

Williamson, O.E. (1999), Public and private bureaucracies: a transaction cost economics perspective, *Journal of Law, Economics, and Organization*, 15(1), 306-342.

Williamson, O.E. (2000), The new institutional economics: taking stock, looking ahead, *Journal of economic literature*, 38(3), 595-613.

Williamson, O.E. (2000), Contract and economic organization, *Revue d'économie industrielle*, 92(1), 55-66.

Williamson, O. E. (2002), The theory of the firm as governance structure: from choice to contract, *Journal of Economic Perspectives*, 16(3), 171-195.

Williamson, O.E. (2005a), The economics of governance, *The American Economic Review*, 95(2), 1-18.

Williamson, O.E. (2005b). Transaction cost economics and business administration. *Scandinavian Journal of Management*, 21(3), 19-40.

Williamson, O.E. (2005c). Why law, economics, and organization?, *Annual Review of Law and Social Science*, 1, 369-396.

Williamson, O.E. (2007), *Transaction cost economics: An introduction* (No. 2007-3). Economics Discussion Papers/Institut für Weltwirtschaft.

Williamson, O.E. (2008), Transaction cost economics, in Ménard, C. and M. M. Shirley, (Ed.), *Handbook of New Institutional Economics,* The Hague, Netherlands*:* Springer, 41-65.

Williamson, O. E. (2010), Transaction cost economics: the natural progression.", *American Economic Review*, 100(3), 673-90.

Williamson, O.E. (2013), *The transaction cost economics project: the theory and practice of the governance of contractual relations*, EEL Ltd, Cheltenham, UK.

Williamson, O.E. and S.E. Masten (Ed.). (1995), *Transaction cost economics*, Brookfield, VT: Edward Elgar.

Williamson, O.E., M.L. Wachter and J.E. Harris (1975), Understanding the employment relation: the analysis of idiosyncratic exchange, *Bell Journal of Economics*, 6(1), 250-278.

Wilson, J.Q. (1989), *Bureaucracy*, New York, NY: Basic Books.

Yarbrough, B.V. and R.M. Yarbrough (1990), International institutions and the new economics of organization, *International Organization*, 44(2), 235-259.

Yin, R.K (2009), *Case Study Research: Design and Methods*, 4th Edition, Thousand Oaks, Ca: Sage Publications.

Yin, R.K. (2011), *Qualitative Research from Start to Finish*, New York, NY: The Guilford Press.

Yvrande-Billon, A. (2003), Contractual choices and performances in public utilities: evidence from the British Railway, *Working Paper*, Atom - University of Paris 1 Panthéon-Sorbonne.

Yvrande-Billon, A. and C. Ménard (2005), Institutional constraints and organizational changes: the case of the British rail reform, *Journal of Economic Behavior and Organization*, 56(4), 675-699.

Zhang, A. (2009), Corruption as a determinant of transaction governance structure, *Strategic Outsourcing: an International Journal*, 2(1), 27-36.

Ziliak, S. T. and D.N. McCloskey (2009), *The cult of statistical significance: How the standard error costs us jobs, justice, and lives*, Ann Arbor, Mi: University of Michigan Press.

APPENDICES

APPENDIX A

CHARTER
OF THE
UNITED NATIONS

TABLE OF CONTENTS

INTRODUCTORY NOTE

The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organisation, and came into force on 24 October 1945. The Statute of the International Court of Justice is an integral part of the Charter.

Amendments to Articles 23, 27 and 61 of the Charter were adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. A further amendment to Article 61 was adopted by the General Assembly on 20 December 1971, and came into force on 24 September 1973. An amendment to Article 109, adopted by the General Assembly on 20 December 1965, came into force on 12 June 1968.

The amendment to Article 23 enlarges the membership of the Security Council from eleven to fifteen. The amended Article 27 provides that decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members (formerly seven) and on all other matters by an affirmative vote of nine members (formerly seven), including the concurring votes of the five permanent members of the Security Council.

The amendment to Article 61, which entered into force on 31 August 1965, enlarged the membership of the Economic and Social Council from eighteen to twenty-seven. The subsequent amendment to that Article, which entered into force on 24 September 1973, further increased the membership of the Council from twenty-seven to fifty-four.

The amendment to Article 109, which relates to the first paragraph of that Article, provides that a General Conference of Member States for the purpose of reviewing the Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members (formerly seven) of the Security Council. Paragraph 3 of Article 109, which deals with the consideration of a possible review conference during the tenth regular session of the General Assembly, has been retained in its original form in its reference to a "vote, of any seven members of the Security Council", the paragraph having been acted upon in 1955 by the General Assembly, at its tenth regular session, and by the Security Council.

PREAMBLE TO THE CHARTER OF THE UNITED NATIONS

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

3.

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organisation to be known as the United Nations.

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

4.

Article 2

The Organisation and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organisation is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organisation shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organisation at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgement of the Organisation, are able and willing to carry out these obligations.
2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council.

CHAPTER III

ORGANS

Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.
2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

CHAPTER IV

THE GENERAL ASSEMBLY

COMPOSITION

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.
2. Each Member shall have not more than five representatives in the General Assembly.

6.

FUNCTIONS AND POWERS

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.
2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.
3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.
2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:
    a) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;

b) promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organisation.

2. The expenses of the Organisation shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

VOTING

Article 18

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with

paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organisation shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

PROCEDURE

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

CHAPTER V

THE SECURITY COUNCIL

COMPOSITION

Article 23

1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first

instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organisation, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

FUNCTIONS AND POWERS

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

VOTING

Article 27

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

PROCEDURE

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organisation.
2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.
3. The Security Council may hold meetings at such places other than the seat of the Organisation as in its judgement will best facilitate its work.

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

11.

CHAPTER VI

PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

13.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they remembers.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organisation may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX

INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a) higher standards of living, full employment, and conditions of economic and social progress and development;

b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

16.

Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organisation shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.

Article 59

The Organisation shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organisation set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X

THE ECONOMIC AND SOCIAL COUNCIL

COMPOSITION

Article 61

1. The Economic and Social Council shall consist of fifty-four Members of the United Nations elected by the General Assembly.
2. Subject to the provisions of paragraph 3, eighteen members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election after the increase in the membership of the Economic and Social Council from twenty-seven to fifty-four members, in addition to the members elected in place of the nine members whose term of office expires at the end of that year, twenty-seven additional members shall be elected. Of these twenty-seven additional members, the term of office of nine members so elected shall expire at the end of one year, and of nine other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

FUNCTIONS AND POWERS

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.
2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.
3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

VOTING

Article 67

1. Each member of the Economic and Social Council shall have one vote.
2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence. Such

arrangements may be made with international organisations and, where appropriate, with national organisations after consultation with the Member of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

CHAPTER XI

DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c) to further international peace and security;

to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

20.

CHAPTER XII

INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

a) to further international peace and security;

b) to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d) to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

   a) territories now held under mandate;

   b) territories which may be detached from enemy states as a result of the Second World War; and

   c) territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.
2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organisation itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment shall be exercised by the Security Council.
2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.
3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority

may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.
2. The Trusteeship Council, operating under the authority of the General Assembly shall assist the General Assembly in carrying out these functions.

CHAPTER XIII

THE TRUSTEESHIP COUNCIL

COMPOSITION

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:
   a) those Members administering trust territories;
   b) such of those Members mentioned by name in Article 23 as are not administering trust territories; and
   c) as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.
2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

FUNCTIONS AND POWERS

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

a) consider reports submitted by the administering authority;
b) accept petitions and examine them in consultation with the administering authority;
c) provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
d) take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

VOTING

Article 89

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.
2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgement rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgement.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.
2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV

THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organisation may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organisation.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organisation.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organisation. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organisation.
2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.
2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.
3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organisation shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105

1. The Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organisation shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation.
3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, 30 October 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organisation as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII

AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX

RATIFICATION AND SIGNATURE

Article 110

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organisation when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland. and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

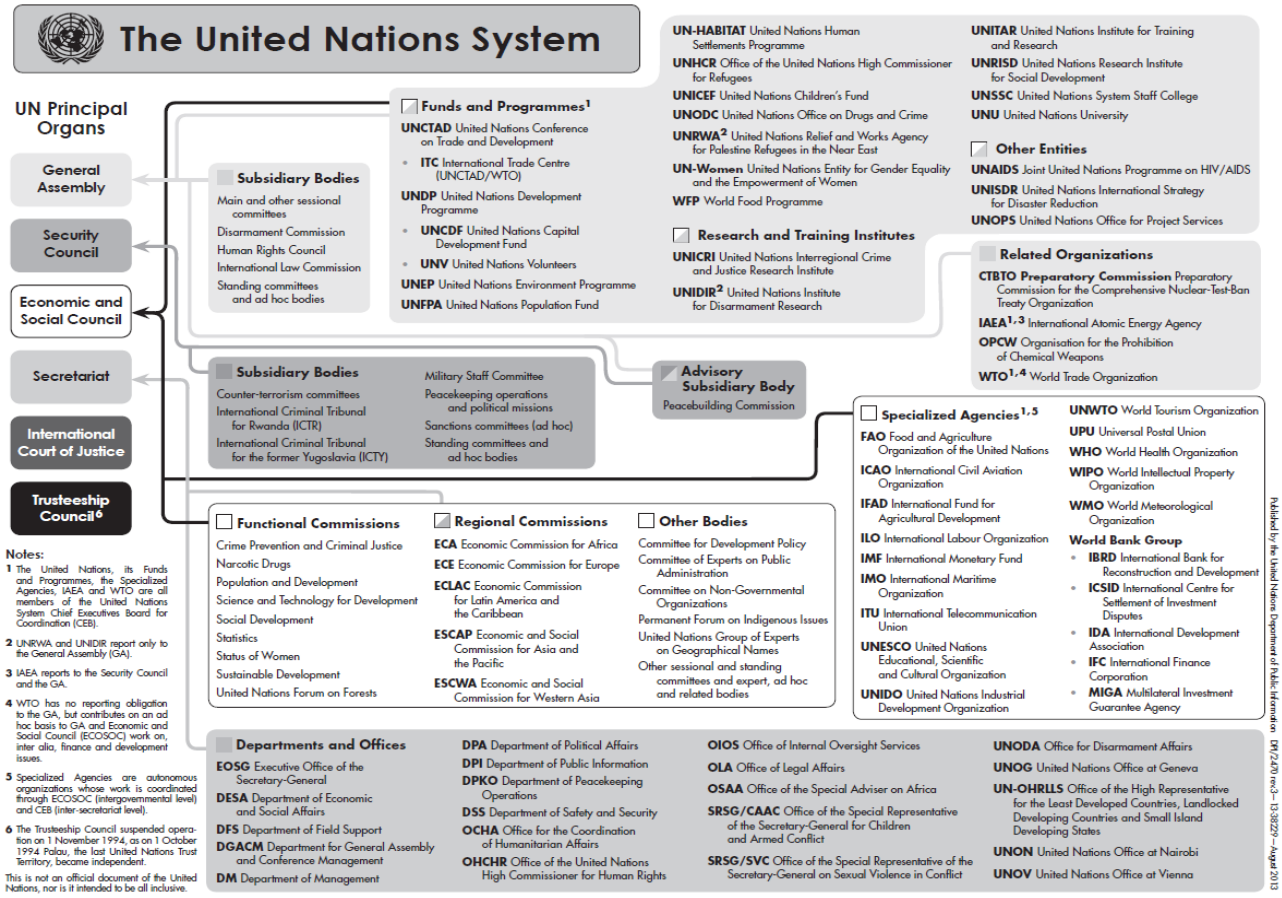
Article 111

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

APPENDIX B


The United Nations System
UN Principal Organs
General Assembly
Security Council
Economic and Social Council
Secretariat
International Court of Justice
Trusteeship Council[6]
Subsidiary Bodies
Main and other sessional committees
Disarmament Commission
Human Rights Council
International Law Commission
Standing committees and ad hoc bodies
Funds and Programmes[1]
UNCTAD United Nations Conference on Trade and Development
ITC International Trade Centre (UNCTAD/WTO)
UNDP United Nations Development Programme
UNCDF United Nations Capital Development Fund
UNV United Nations Volunteers
UNEP United Nations Environment Programme
UNFPA United Nations Population Fund
UN-HABITAT United Nations Human Settlements Programme
UNHCR Office of the United Nations High Commissioner for Refugees
UNICEF United Nations Children's Fund
UNODC United Nations Office on Drugs and Crime
UNRWA[2] United Nations Relief and Works Agency for Palestine Refugees in the Near East
UN-Women United Nations Entity for Gender Equality and the Empowerment of Women
WFP World Food Programme
Research and Training Institutes
UNICRI United Nations Interregional Crime and Justice Research Institute
UNIDIR[2] United Nations Institute for Disarmament Research
UNITAR United Nations Institute for Training and Research
UNRISD United Nations Research Institute for Social Development
UNSSC United Nations System Staff College
UNU United Nations University
Other Entities
UNAIDS Joint United Nations Programme on HIV/AIDS
UNISDR United Nations International Strategy for Disaster Reduction
UNOPS United Nations Office for Project Services
Related Organizations
CTBTO Preparatory Commission Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
IAEA[1,3] International Atomic Energy Agency
OPCW Organisation for the Prohibition of Chemical Weapons
WTO[1,4] World Trade Organization
Subsidiary Bodies
Counter-terrorism committees
International Criminal Tribunal for Rwanda (ICTR)
International Criminal Tribunal for the former Yugoslavia (ICTY)
Military Staff Committee
Peacekeeping operations and political missions
Sanctions committees (ad hoc)
Standing committees and ad hoc bodies
Advisory Subsidiary Body
Peacebuilding Commission
Specialized Agencies[1,5]
FAO Food and Agriculture Organization of the United Nations
ICAO International Civil Aviation Organization
IFAD International Fund for Agricultural Development
ILO International Labour Organization
IMF International Monetary Fund
IMO International Maritime Organization
ITU International Telecommunication Union
UNESCO United Nations Educational, Scientific and Cultural Organization
UNIDO United Nations Industrial Development Organization
UNWTO World Tourism Organization
UPU Universal Postal Union
WHO World Health Organization
WIPO World Intellectual Property Organization
WMO World Meteorological Organization
World Bank Group
IBRD International Bank for Reconstruction and Development
ICSID International Centre for Settlement of Investment Disputes
IDA International Development Association
IFC International Finance Corporation
MIGA Multilateral Investment Guarantee Agency
Functional Commissions
Crime Prevention and Criminal Justice
Narcotic Drugs
Population and Development
Science and Technology for Development
Social Development
Statistics
Status of Women
Sustainable Development
United Nations Forum on Forests
Regional Commissions
ECA Economic Commission for Africa
ECE Economic Commission for Europe
ECLAC Economic Commission for Latin America and the Caribbean
ESCAP Economic and Social Commission for Asia and the Pacific
ESCWA Economic and Social Commission for Western Asia
Other Bodies
Committee for Development Policy
Committee of Experts on Public Administration
Committee on Non-Governmental Organizations
Permanent Forum on Indigenous Issues
United Nations Group of Experts on Geographical Names
Other sessional and standing committees and expert, ad hoc and related bodies
Departments and Offices
EOSG Executive Office of the Secretary-General
DESA Department of Economic and Social Affairs
DFS Department of Field Support
DGACM Department for General Assembly and Conference Management
DM Department of Management
DPA Department of Political Affairs
DPI Department of Public Information
DPKO Department of Peacekeeping Operations
DSS Department of Safety and Security
OCHA Office for the Coordination of Humanitarian Affairs
OHCHR Office of the United Nations High Commissioner for Human Rights
OIOS Office of Internal Oversight Services
OLA Office of Legal Affairs
OSAA Office of the Special Adviser on Africa
SRSG/CAAC Office of the Special Representative of the Secretary-General for Children and Armed Conflict
SRSG/SVC Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict
UNODA Office for Disarmament Affairs
UNOG United Nations Office at Geneva
UN-OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
UNON United Nations Office at Nairobi
UNOV United Nations Office at Vienna
Notes:
1 The United Nations, its Funds and Programmes, the Specialized Agencies, IAEA and WTO are all members of the United Nations System Chief Executives Board for Coordination (CEB).
2 UNRWA and UNIDIR report only to the General Assembly (GA).
3 IAEA reports to the Security Council and the GA.
4 WTO has no reporting obligation to the GA, but contributes on an ad hoc basis to GA and Economic and Social Council (ECOSOC) work on, inter alia, finance and development issues.
5 Specialized Agencies are autonomous organizations whose work is coordinated through ECOSOC (intergovernmental level) and CEB (inter-secretariat level).
6 The Trusteeship Council suspended operation on 1 November 1994, as on 1 October 1994 Palau, the last United Nations Trust Territory, became independent.
This is not an official document of the United Nations, nor is it intended to be all inclusive.
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APPENDIX C

No. 4

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS Adopted by the General Assembly of the United Nations on 13 February 1946

Official texts in English and in French. This Convention was registered ex officio by the Secretariat of the United Nations on 14 December 1946.

CONVENTION SUR LES PRIVILÈGES ET IMMUNITÉS

DES NATIONS UNIES

Approuvée par l'Assemblée générale des Nations Unies le 13 février 1946

Textes officiels anglais et français. Cette Convention a été enregistrée d'office par le Secrétariat de l'Organisation des Nations Unies le. 14 décembre 1946. i6 *United Nations — Treaty Series* 1946-1947

No. 4. CONVENTION^ ON THE PRIVILEGES AND IMMUNI

TIES OF THE UNITED NATIONS, ADOPTED BY THE

GENERAL ASSEMBLY OF THE UNITED NATIONS ON

13 FEBRUARY 1946

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and *Whereas* Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

Consequently the General Assembly by a Resolution adopted on the 13 February 1946, approved the following Convention and proposed it for accession by each Member of the United Nations.

Article I

JURIDICAL PERSONALITY

SECTION i. The United Nations shall possess juridical personality. It shall have the capacity: (a) To contract; (b) To acquire and dispose of immovable and movable property; (c) To institute legal proceedings.

Article II

PROPERTY, FUNDS AND ASSETS

SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of 1 Came into force (see page 263 of this volume) on 17 September 1946 as regards United Kingdom o£ Great Britain and Northern Ireland by the deposit of the instrument of accession. i8 *United Nations Treaty Series* 1946-1947 legal process except insofar as in any particular case it has expressly waived its immunity shall extend to any particular case it has expressly waived its immunity. It is, however, understood that no waiver o£ immunity shall ex tend to any measure of execution.

SECTION 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

SECTION 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

SECTION 5. Without being restricted by financial controls, regulations or moratoria of any kind, (a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(ft) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

SECTION 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

SECTION 7. The United Nations, its assets, income and other property shall be: (a) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services; (6) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country; No. 4 so *United Nations — Treaty Series* 1946-1947 (c) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect o£ its publications.

SECTION 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are charge able, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III FACILITIES IN RESPECT OF COMMUNICATIONS

SECTION 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship

shall be applied to the official correspondence and other official communications of the United Nations.

SECTION 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV THE REPRESENTATIVES OF MEMBERS

SECTION 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during the journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind; (a) Inviolability for all papers and documents; No. 4 22 *United Nations Treaty Series* 1946-1947 (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags; *(d)* Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions; *(e)* The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions; (/) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;

(g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

SECTION 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independance in the discharge of their duties, the

immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the per

sons concerned are no longer the representatives of Members.

SECTION 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

SECTION 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

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SECTION 15. The provisions of Sections n, 12 and 13 are not applicable as between a representative and the authorities o£ the state of which he is a national or of which he is or has been the representative.

SECTION 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article V OFFICIALS

SECTION 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

SECTION 18. Officials of the United Nations shall: (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity; (6) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations; (c) Be immune from national service obligations; (d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration; *(e)* Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned; (/) Be given, together with their spouses and relatives dependent on them, the, same repatriation facilities in time of international crisis as diplomatic envoys; (g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the' country in question.

SECTION 19. In addition to the immunities and privileges specified in Section 18, the 'Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the

No. 4 *United Nations — Treaty Series* 1946-1947 privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law. SECTION 20. Privileges and immunities are granted to officials in the interests o£ the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Counsil shall have the right to waive immunity.

SECTION 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article VI EXPERTS ON MISSIONS FOR THE UNITED NATIONS

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and

immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded: *(a)* Immunity from personal arrest or detention and from seizure of their personal baggage; (6) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations; *(c)* Inviolability for all papers and documents; *(d)* For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

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(e) The Same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions; (/) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

SECTION 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

Article VII UNITED NATIONS LAISSEZ-PASSER

SECTION 24. The United Nations may issue United Nations laissez passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of Section 25.

SECTION 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

SECTION 26. Similar facilities to those specified in Section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

SECTION 27. The Secretary-General, Assistant Secretaries*General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION 28. The provisions of this article may be applied to the com parable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

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Article VIII

SETTLEMENTS OF DISPUTES

SECTION 29. The United Nations shall make provisions for appropriate modes of settlement of: *(a)* Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party; (b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not

been waived by the Secretary-General.

SECTION 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

Final Article

SECTION 31. This convention is submitted to every Member of the United Nations for accession.

SECTION 32. Accession shall be affected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

SECTION 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

SECTION 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

SECTION 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United

No. 4 g2 *United Nations — Treaty Series* 1946-1947 Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

SECTION 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

No. 4 **UNITED NATIONS and LEAGUE OF NATIONS**

Protocol (No. I) concerning the execution of various opera

tions in the transfer to the United Nations of certain

assets of the League of Nations. Signed at Geneva, on

1 August 1946

French official text communicated by the Secretary-General of the United

Nations. The filing and recording took place on 14 December 1946.

ORGANISATION DES NATIONS UNIES

et

SOCIETE DES NATIONS

Protocole (No I) concernant l'exécution de diverses opéra

tions de transfert de certains avoirs de la Société des

Nations aux Nations Unies. Signé à Genève, le 1er août

1946

Fexte officiel français communiqué par le Secrétaire général de l'Organisation des Nations Unies. Le classement et l'inscription au répertoireont eu lieu le 14 décembre 1946.

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TRANSLATION TRADUCTION

No. 4. PROTOCOL (NO. I) CONCERNING THE EXECUTION OF VARIOUS OPERATIONS IN THE TRANSFER TO THE UNITED NATIONS OF CERTAIN ASSETS OF THE LEAGUE OF NATIONS, SIGNED AT GENEVA ON AUGUST 1946

Mr. Scan LESTER, Secretary-General of the League o£ Nations, and Mr. Wlodzimierz MODEROW, Director, Representative of the Secretary-General of the United Nations in Geneva: *Note* that, in application of the Common Plan, approved by a resolution of the General Assembly of the United Nations, dated 12 February 1946, and by a resolution of the Assembly of the League of Nations, dated 18 April 1946, and of a subsequent Agreement1 dated 19 July 1946, concerning the execution of the transfer to the United Nations of certain assets of the League of Nations, the following operations were effected on 1 August 1946:

1. The transfer of rights in respect of the League of Nations buildings and other immovable property was effected on 1 August 1946, and the necessary entries having been made this day in the Land Register of the Republic and Canton of Geneva.

2. The transfer of the ownership and possession of the movable property was also effected on August 1946. In accordance with Article 6 of the Agreement of 19 July 1946, the movable objects transferred have been listed in an inventory drawn up by the League of Nations which is in course of being verified by the United Nations. A protocol will be drawn up placing on record the completion of this operation.

3. A final valuation of the assets will be made in accordance with the terms of the Common Plan. It will be the subject of a special protocol.

(Signed) Scan LESTER

W. MODEROW

Geneva, 1 August 1946.

*See page 109 o£ this volume.

APPENDIX D

UNITED NATIONS **A**

General Assembly

Distr.
GENERAL

A/RES/48/218 B
12 August 1994

Forty-eighth session
Agenda item 121

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Fifth Committee (A/48/801/Add.2)]

48/218. Review of the efficiency of the administrative and financial functioning of the United Nations

B*

The General Assembly,

Recalling its responsibility under Article 17 of the Charter of the United Nations with regard to financial and budgetary measures,

Reaffirming Article 97 of the Charter concerning the responsibility of the Secretary-General as chief administrative officer,

Reaffirming also Article 101 of the Charter,

Recognizing the increased importance, cost and complexity of United Nations activities,

Recalling its resolution 48/218 A of 23 December 1993, in which it, inter alia, resolved that the decision to establish an additional independent entity, taking into account Article 97 of the Charter, to enhance oversight functions, in particular with regard to evaluation, audit, investigation and compliance, be taken subject to the definition of its modalities, including its relationship with existing control mechanisms,

* Consequently, resolution 48/218 of 23 December 1993 becomes resolution 48/218 A.

Reaffirming its resolution 48/218 A, in which it emphasized the need to ensure respect for the separate and distinct roles of internal and external oversight mechanisms, and to strengthen the external oversight mechanisms,

Taking note of the note by the Secretary-General 1/ on the establishment of the Office for Inspections and Investigations,

Taking note also of the note by the Secretary-General 2/ transmitting the letter from the Chairman of the Panel of External Auditors of the United Nations, the specialized agencies and the International Atomic Energy Agency and Chairman of the Board of Auditors relating to the improvement of oversight and as called for in section II, paragraph 8, of resolution 48/218 A,

Taking note further of the note by the Secretary-General 3/ transmitting the report of the Joint Inspection Unit on accountability and oversight in the Secretariat,

1. Reaffirms the role of the Board of Auditors as an external control mechanism pursuant to General Assembly resolution 74 (I) of 7 December 1946, other relevant resolutions of the Assembly and the Financial Regulations and Rules of the United Nations, for oversight, monitoring and control by the Assembly of the administrative and financial functioning of the United Nations;

2. Also reaffirms the role of the Joint Inspection Unit in accordance with its mandate, contained in General Assembly resolution 31/192 of 22 December 1976;

3. Further reaffirms the existing mandates of relevant intergovernmental and expert bodies of the General Assembly in the field of administration, budgetary and management matters;

4. Decides to establish an Office of Internal Oversight Services under the authority of the Secretary-General, the head of which will be at the rank of Under-Secretary-General;

5. Decides also that the Office of Internal Oversight Services shall assume the functions prescribed for the Office for Inspections and Investigations in the note by the Secretary-General, 1/ as amended by the present resolution and subject to the modalities defined below, with a view to strengthening the executive capabilities of the Secretary-General:

(a) Mode of operation

The Office of Internal Oversight Services shall exercise operational independence under the authority of the Secretary-General in the conduct of

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1/ A/48/640.

2/ A/48/876.

3/ A/48/420.

its duties and, in accordance with Article 97 of the Charter, have the authority to initiate, carry out and report on any action which it considers necessary to fulfil its responsibilities with regard to monitoring, internal audit, inspection and evaluation and investigations as set forth in the present resolution;

(b) Appointment

(i) The Under-Secretary-General for Internal Oversight Services shall be an expert in the fields of accounting, auditing, financial analysis and investigations, management, law or public administration;

(ii) The Under-Secretary-General for Internal Oversight Services shall be appointed by the Secretary-General, following consultations with Member States, and approved by the General Assembly. For this purpose, the Secretary-General shall appoint the Under-Secretary-General for Internal Oversight Services with due regard for geographic rotation and in so doing shall be guided by the provisions of paragraph 3 (e) of General Assembly resolution 46/232 of 2 March 1992 whereby the Assembly decided, in particular, that, as a general rule, no national of a Member State should succeed a national of that State in a senior post and that there should be no monopoly on senior posts by nationals of any State or group of States;

(iii) The Under-Secretary-General for Internal Oversight Services shall serve for one fixed term of five years without possibility of renewal;

(iv) The Under-Secretary-General for Internal Oversight Services may be removed by the Secretary-General only for cause and with the approval of the General Assembly;

(c) Functions

The purpose of the Office of Internal Oversight Services is to assist the Secretary-General in fulfilling his internal oversight responsibilities in respect of the resources and staff of the Organization through the exercise of the following functions:

(i) Monitoring

The Office shall assist the Secretary-General in implementing the provisions of article V of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation on monitoring of programme implementation;

(ii) Internal audit

The Office shall, in accordance with the relevant provisions of the Financial Regulations and Rules of the United Nations examine, review and appraise the use of financial resources of the United Nations in order to guarantee the implementation of programmes and legislative mandates, ascertain compliance of programme managers

/...

with the financial and administrative regulations and rules, as well as with the approved recommendations of external oversight bodies, undertake management audits, reviews and surveys to improve the structure of the Organization and its responsiveness to the requirements of programmes and legislative mandates, and monitor the effectiveness of the systems of internal control of the Organization;

(iii) Inspection and evaluation

The Office shall evaluate the efficiency and effectiveness of the implementation of the programmes and legislative mandates of the Organization. It shall conduct programme evaluations with the purpose of establishing analytical and critical evaluations of the implementation of programmes and legislative mandates, examining whether changes therein require review of the methods of delivery, the continued relevance of administrative procedures and whether the activities correspond to the mandates as they may be reflected in the approved budgets and the medium-term plan of the Organization;

(iv) Investigation

The Office shall investigate reports of violations of United Nations regulations, rules and pertinent administrative issuances and transmit to the Secretary-General the results of such investigations together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action to be taken;

(v) Implementation of recommendations and reporting procedures

a. Following the completion of any audits, inspections or investigations undertaken by the Office pursuant to its mandate, as defined by the present resolution, the Office shall submit the reports on such work to the programme managers concerned, in accordance with procedures for transmittal, approval of recommendations and the resolution of disputes to be established by the Secretary-General;

b. The Office shall report to the Secretary-General as and when necessary but at least twice yearly on the implementation of recommendations addressed to the programme managers in accordance with the procedures referred to above;

c. The Secretary-General shall facilitate the prompt and effective implementation of the approved recommendations of the Office, and inform the General Assembly of actions taken in response thereto;

(d) Support and advice to management

The Office of Internal Oversight Services may advise programme managers on the effective discharge of their responsibilities, provide assistance to programme managers in implementing recommendations, ascertain that programme managers are given methodological support, and encourage self-evaluation;

/...

(e) Reporting

(i) In accordance with the provisions of paragraph 5 (c) above, the Office of Internal Oversight Services shall submit to the Secretary-General reports that provide insight into the effective utilization and management of resources and the protection of assets; the Secretary-General shall ensure that all such reports are made available to the General Assembly as submitted by the Office, together with any separate comments the Secretary-General may deem appropriate;

(ii) The Office shall also submit to the Secretary-General for transmittal as received to the General Assembly, together with separate comments the Secretary-General deems appropriate, an annual analytical and summary report on its activities for the year;

(iii) The Board of Auditors and the Joint Inspection Unit shall be provided with copies of all final reports produced by the Office as well as the comments of the Secretary-General on them, and shall provide the General Assembly with their comments as appropriate;

6. Requests the Secretary-General to ensure that the Office of Internal Oversight Services has procedures in place that provide for direct confidential access of staff members to the Office and for protection against repercussions, for the purposes of suggesting improvements for programme delivery and reporting perceived cases of misconduct;

7. Also requests the Secretary-General to ensure that procedures are also in place that protect individual rights, the anonymity of staff members, due process for all parties concerned and fairness during any investigations; that falsely accused staff members are fully cleared; and that disciplinary and/or jurisdictional proceedings are initiated without undue delay in cases where the Secretary-General considers it justified; such procedures shall include any necessary amendments to the Staff Regulations and Rules of the United Nations and to the disciplinary hearing procedures and, to the extent possible, should take into account the relevant recommendations of the Intergovernmental Group established under General Assembly resolution 48/218 A, approved by the Assembly;

8. Decides that the Office of Internal Oversight Services shall be financed from appropriations approved under section 31 (Office for Inspections and Investigations) of the programme budget for the biennium 1994-1995;

9. Decides also that future programme budget proposals of the Office of Internal Oversight Services shall be submitted by it to the Secretary-General who shall, with due regard for the relevant provisions of General Assembly resolution 41/213 of 19 December 1986 and for the necessity of providing adequate resources for the functioning of the Office to be effective, submit proposals to the General Assembly for its consideration and approval according to established procedures;

10. Requests the Secretary-General in this regard, when preparing the budget proposals for the Office of Internal Oversight Services, to take into

/...

account the independence of the Office in the exercise of the functions defined in paragraph 5 above;

11. Also requests the Secretary-General to submit to the General Assembly, at its forty-ninth session, following consultations with the executive boards of the United Nations operational funds and programmes, a detailed report containing recommendations on the implementation of the present resolution as it pertains to the internal oversight functions of such funds and programmes, including methods by which the Office of Internal Oversight Services could assist such funds and programmes in enhancing their internal oversight mechanisms;

12. Decides to include in the provisional agenda of its fiftieth session an item entitled "Report of the Secretary-General on the activities of the Office of Internal Oversight Services";

13. Decides also to evaluate and review the functions and reporting procedures of the Office of Internal Oversight Services at its fifty-third session and to that end to include in the provisional agenda of that session an item entitled "Review of the implementation of General Assembly resolution 48/218 B".

102nd plenary meeting
29 July 1994

APPENDIX E

Annex A

26 March 2004

Dear Mr. President,

This is further to my letter of 19 March 2004, in which I informed you of my intention to establish an independent, high-level inquiry concerning matters arising from the public news reports and commentaries that have called into question the administration and management of the Oil-for-Food Programme, including allegations of fraud and corruption. I have the honour to communicate in the present letter details relating to the organization and the terms of reference of this inquiry. These terms of reference are designed to promote the maximum degree of transparency and effectiveness in examining the conduct of the Organization, contractors and other entities involved in the administration and implementation of the Programme, with a view to ensuring that all appropriate lessons from that experience are derived for the benefit of the Organization, the public, and the Iraqi people.

Composition

In determining the members of the inquiry, I shall select individuals whom I consider to be of the highest integrity and to possess the necessary expertise for carrying out the inquiry in an expeditious and effective manner. The members of the independent inquiry will serve in their personal capacity. I shall inform the Members of the Security Council of the composition of the panel in due course.

His Excellency
Mr. Jean-Marc de La Sablière
President of the Security Council
New York

Terms of Reference

The independent inquiry shall collect and examine information relating to the administration and management of the Oil-for-Food Programme, including allegations of fraud and corruption on the part of United Nations officials, personnel and agents, as well as contractors, including entities that have entered into contracts with the United Nations or with Iraq under the Programme:

(a) to determine whether the procedures established by the Organization, including the Security Council and the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait (hereinafter referred to as the "661 Committee") for the processing and approval of contracts under the Programme, and the monitoring of the sale and delivery of petroleum and petroleum products and the purchase and delivery of humanitarian goods, were violated, bearing in mind the respective roles of United Nations officials, personnel and agents, as well as entities that have entered into contracts with the United Nations or with Iraq under the Programme;

(b) to determine whether any United Nations officials, personnel, agents or contractors engaged in any illicit or corrupt activities in the carrying out of their respective roles in relation to the Programme, including, for example, bribery in relation to oil sales, abuses in regard to surcharges on oil sales and illicit payments in regard to purchases of humanitarian goods;

(c) to determine whether the accounts of the Programme were in order and were maintained in accordance with the relevant Financial Regulations and Rules of the United Nations.

Organization of the inquiry

In performing these functions, the independent inquiry shall take into account Security Council resolution 986 (1995) and other resolutions of the Security Council relating to the Programme; Procedures established by the 661 Committee (S/1996/636*) and the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council resolution 986 (1995), signed on 20 May 1996 (S/1996/356*).

To carry out the above-referred tasks, the independent inquiry shall have unrestricted access to all relevant United Nations records and information, written or unwritten, and to interview all relevant United Nations officials and personnel, regardless of their seniority. In requiring United Nations officials and personnel to cooperate with the inquiry, I shall seek to protect such officials and personnel, as appropriate, from improper repercussions resulting from their cooperation with the inquiry. In addition, I will employ my authority to ensure that the Organization's privileges and immunities do not impede the work of the inquiry.

The independent inquiry shall also seek to obtain records and information and interview persons outside the United Nations Organization that may be relevant to the inquiry. In doing so, the inquiry will accord such confidentiality and protection as it deems appropriate to such records, information and persons, including such as may be necessary to protect such persons, as appropriate, from improper repercussions resulting from their cooperation with the inquiry.

The independent inquiry shall be authorized to approach and seek the cooperation of Member States and their relevant authorities, as appropriate, in order to obtain information needed to carry out its work. In this regard, I look to the Security Council and the Member States to take such measures as are necessary to ensure that they and relevant authorities falling under their jurisdiction provide all assistance and cooperation which the inquiry may require in connection with its work.

The independent inquiry will carry out its work impartially and objectively and without influence by any individual or group, regardless of their status.

The Office of Internal Oversight Services recently commenced an inquiry into the reported allegations of corruption, including criminal acts, in the Oil for Food Programme pursuant to the authority granted by the General Assembly [A/RES/48-218 B, A/RES/ 54/244]. I will request that OIOS terminate its inquiry and provide such documents and other materiels as they may have collected in connection with that investigation to the extent possible pursuant to the confidentiality requirements for sources of information as provided in the OIOS mandate [ST/SGB/273 of 7 September 1994].

The independent inquiry shall be supported by a core staff provided by the United Nations Secretariat to render necessary administrative assistance. In addition, the independent inquiry shall be authorized to engage professional investigators, auditors, accountants, forensic experts, and similar personnel or firms to assist it in carrying out its work.

I will seek the necessary appropriation from the regular budget of the Organization to fund the activities of the independent inquiry.

In carrying out its work, the inquiry shall respect the due process of persons appearing before it. In this connection, any individual named in the reports of the independent inquiry shall, whenever practicable, have been interviewed by the independent inquiry. Any individual or entity named in the reports shall have an opportunity to submit written comments to the independent inquiry, which shall be annexed to the final report.

The independent inquiry may seek and accept information provided on a confidential basis if necessary or appropriate to the completion of its work.

Report of the inquiry

The independent inquiry shall seek to complete its work as soon as practicable, and in any event shall submit to me, within three months after the date of this letter, a report as to the status of its work.

The final report of the independent inquiry shall be submitted to me in five copies, and shall be in two parts: a summary and the underlying report. The underlying report shall provide full explanation to support its findings. The report will be made available to the public in a form that will take into account the rights of staff members and, where necessary, respect any undertakings as to confidentiality that may have been granted by the inquiry.

Taking into account the findings of the report, I will take such action as I may deem appropriate and is within my authority in regard to individuals or entities found to have violated the rules or procedures of the Organization or to have engaged in abusive, illicit or corrupt activities.

Please accept, Mr. President, the assurances of my highest consideration.

Kofi A. Annan

APPENDIX F

United Nations A/60/568

General Assembly

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Sixtieth session
Agenda items 46 and 120

Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields

Follow-up to the outcome of the Millennium Summit

Implementation of decisions from the 2005 World Summit Outcome for action by the Secretary-General

Ethics office; comprehensive review of governance arrangements, including an independent external evaluation of the auditing and oversight system; and the independent audit advisory committee

Report of the Secretary-General

I. Introduction

1. The General Assembly, in its resolution 60/1 of 16 September 2005, entitled "2005 World Summit Outcome", requested the Secretary-General to, inter alia, take a number of actions for strengthening the United Nations in the context of Secretariat and management reform. The present report addresses the issues related to the General Assembly's request that the Secretary-General:

(a) Submit details on an ethics office with independent status, which he intends to create (para. 161 (d));

(b) Submit an independent external evaluation of the auditing and oversight system of the United Nations, including the specialized agencies, and the roles and responsibilities of management, with due regard to the nature of the auditing and oversight bodies in question; the evaluation would take place within the context of the comprehensive review of governance arrangements (para. 164 (b));

(c) Submit detailed proposals on the creation of an independent oversight advisory committee, including its mandate, composition, selection process and qualification of experts (para. 164 (c)).

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II. Ethics office

2. In paragraph 161 (d) of the World Summit Outcome, the General Assembly welcomed the Secretary-General's efforts to ensure ethical conduct, more extensive financial disclosure for United Nations officials and enhanced protection for those who reveal wrongdoing within the Organization. It also urged the Secretary-General to scrupulously apply the existing standards of conduct and develop a system-wide code of ethics for all United Nations personnel. In this connection, the Assembly requested the Secretary-General to submit to it at its sixtieth session details of an ethics office with independent status, which he intends to create.

3. The Charter of the United Nations, in Article 101, paragraph 3, provides that all staff members are required to meet the highest standards of efficiency, competence and integrity. The basic principles governing the conduct of staff members are spelled out in Staff Regulations approved by the General Assembly and the Staff Rules, which are promulgated by the Secretary-General and reported to the General Assembly. At the common system level, in 2001, the International Civil Service Commission revised and adopted the standards of conduct for the international civil service as set out in ST/SGB/2002/13 ("Status, basic rights and duties of United Nations staff members"). Although these documents are readily available to staff, there is currently no effective mechanism in place to coordinate ethics-related initiatives within the Organization and to ensure that all staff are actively aware of, and updated on, ethics issues.

4. Staff members expressed concern about the ethics climate within the United Nations in the 2004 integrity perception survey. Similar concerns were raised by the reports of the Independent Inquiry Committee on the oil-for-food programme. In addition, recent events have created the imperative to establish new mechanisms to improve ethics within the Organization. The creation of an ethics office is central to this effort. At the time of writing, the proposed terms of reference of the ethics office are under consultation with staff representatives.

5. The Secretary-General's report "In larger freedom: towards development, security and human rights for all" (A/59/2005), submitted to the General Assembly in March 2005, included broad proposals to accelerate management reform in the Secretariat, to make it more transparent and accountable and better equipped to deal with the needs and challenges of the twenty-first century. Since that time, some of the specific management reform initiatives considered as means to strengthen transparency, accountability and ethical conduct in the Secretariat have included reforming and expanding the regime of financial disclosure for senior officials, the creation of a policy of protection for staff members against retaliation for reporting suspected misconduct and annual ethics training for all staff. In addition, the establishment of a United Nations ethics office will provide a focal point within the Secretariat for ethics issues.

6. Certain details, including the related resource requirements, of the proposed ethics office are contained in section 1, Overall policymaking, direction and coordination, under part II of the revised estimates of the proposed programme budget for the biennium 2006-2007 (A/60/537), in relation to the World Summit Outcome document. Further details of the ethics office are set out for information purposes in annex I below.

III. Comprehensive review of governance arrangements, including an independent external evaluation of the auditing and oversight system

7. It is recalled that the General Assembly, in its resolution 57/278 A, requested the Secretary-General and the executive heads of the funds and programmes of the United Nations to examine governance structures, principles and accountability throughout the United Nations system and to make proposals on the future format and consideration of the reports of the Board of Auditors by the respective executive boards and the General Assembly. This request was subsequently reiterated in resolution 59/264 A. Pursuant to paragraph 164 (b) of resolution 60/1, the Secretary-General has prepared terms of reference for a comprehensive review of governance arrangements, including an independent external evaluation of the auditing and oversight system of the United Nations, including the specialized agencies, including the roles and responsibilities of management, with due regard to the nature of the auditing and oversight bodies in question.

8. The Audit Operations Committee of the United Nations Board of Auditors, the Office of Internal Oversight Services and members of the High Level Committee on Management of the United Nations System Chief Executives Board for Coordination have been consulted on the terms of reference for the independent external evaluation, which appear in annex II below. The Secretary-General proposes that consultants undertake the review. It is proposed that a steering committee, composed of international independent experts in the field of governance and oversight, be established with the responsibility to coordinate and supervise the development and implementation of the entire project. The steering committee will be assisted in its role by the consultants, who will undertake the technical research and the drafting of the proposed evaluation.

9. The evaluation will consist of two main elements: a governance and oversight review, to be completed in two phases, and a review of the Office of Internal Oversight Services. Phase 1 of the governance and oversight review will apply to the United Nations and its funds, programmes and specialized agencies. Phase 2 will cover only the United Nations and selected representative funds, programmes and specialized agencies. Annex II provides information outlining detailed terms of reference for the evaluation. Some information is also provided, together with estimated resource requirements, under part II of the revised estimates of the proposed programme budget for the biennium 2006-2007 (A/60/537) in relation to the World Summit Outcome document.

IV. Independent Audit Advisory Committee

10. Pursuant to paragraph 164 (c) of General Assembly resolution 60/1, the Secretary-General is submitting herein detailed proposals on the creation of an independent oversight advisory committee. In this connection, it is noted that the Assembly did not assign a particular formal title. It did, however, indicate that the committee would be both independent and advisory with respect to oversight matters. This role would in practice focus on audit matters. It is therefore proposed that the formal title be the Independent Audit Advisory Committee. The provisional terms of reference, as presented for information purposes in annex III below, have

been drafted with this scope in mind. Some information is also provided, together with estimated resource requirements, under part II of the revised estimates of the proposed programme budget for the biennium 2006-2007 (A/60/537) in relation to the World Summit Outcome document.

11. The proposed terms of reference for the Independent Audit Advisory Committee draw on practices of public-sector management aimed at making organizations and Governments accountable for what they do. The purpose is to help the Secretary-General and the General Assembly better exercise governance responsibilities with respect to the various operations of the United Nations and to ensure that the United Nations audit processes are operating efficiently and effectively within their legal and policy responsibilities, pursuant to legislative mandates.

12. As requested by the General Assembly, the terms of reference include details on the required composition, level of independence and qualification of Committee members. It is proposed that the Committee consist of five or seven external experts and meet on a quarterly basis. In keeping with best practices, all Committee members must have relevant financial experience and be independent of the Secretariat and Member State Governments.

13. The above arrangements for the Independent Audit Advisory Committee would be subject to review in the context of the above-mentioned comprehensive review of governance arrangements, including the independent external evaluation of the auditing and oversight system. It should be noted that the proposed Independent Audit Advisory Committee is separate and distinct from the internal mechanism established by the Secretary-General to assist him in ensuring compliance, within the Secretariat, with recommendations arising from audits and investigations.

V. Conclusions and recommendations

14. **The General Assembly may wish to take note of the present report and its annexes and to approve:**

(a) **The establishment of an ethics office, as proposed above;**

(b) **The conduct of an independent external evaluation of governance, oversight and auditing in the United Nations system, as proposed above;**

(c) **The establishment of an Independent Audit Advisory Committee and its mandate, composition, selection process and qualification of experts, as proposed above.**

Annex I

Establishment of an ethics office

A. Overview of functions of the ethics office

Objective

1. The objective of the ethics office will be to assist the Secretary-General in ensuring that all staff members observe and perform their functions in consistency with the highest standards of integrity, as required by the Charter of the United Nations, through:

(a) Fostering a culture of ethics, transparency and accountability;

(b) Developing and disseminating standards for appropriate professional conduct;

(c) Providing leadership, management and oversight of the United Nations ethics infrastructure.

Main responsibilities

2. The main responsibilities of the ethics office will be as follows (further details of each of these activities are set out in section B below):

(a) Administering the Organization's financial disclosure programme;

(b) Undertaking the responsibilities assigned to it under the Organization's policy for the protection of staff against retaliation for reporting misconduct;

(c) Providing confidential advice and guidance to staff on ethical issues (e.g., conflict of interest), including administering an ethics helpline;

(d) Developing standards, training and education on ethics issues, in coordination with the Office of Human Resources Management and other offices as appropriate, including ensuring annual ethics training for all staff.

Confidential records

3. The ethics office will maintain confidential records of advice given by it and reports made to it.

Reporting

4. The ethics office will provide reports regularly to the Secretary-General. The reports will include an overview of the activities of the office and any evaluations and assessments conducted by it relating to such activities. While not disclosing the identity of persons who consult the ethics office, the reports will note the types of issues raised and patterns and trends identified. The office will also comment on rules, regulations, policies, procedures and practices that have come to its attention, and could make recommendations as appropriate.

Relationships with other offices

5. The ethics office will not replace any existing mechanisms available to staff for the reporting of misconduct or the resolution of grievances. For example, if a case of misconduct were reported to the ethics office, it would refer the matter to the Office of Internal Oversight Services for investigation. If the concern raised by a staff member related to an interpersonal problem within a particular office, the ethics office would advise the staff member concerned of the existence of the Office of the Ombudsman, as well as the other informal mechanisms of conflict resolution in the Organization.

6. The ethics office will develop working relationships with other offices and departments, including the Office of Internal Oversight Services, the Office of Human Resources Management, the Office of Legal Affairs and the Office of the Ombudsman, to ensure satisfactory coordination, consistent advice on law and policy and the making of appropriate referrals and/or recommendations.

B. Details of the main responsibilities of the ethics office

Administering the Organization's financial disclosure programme

7. Full disclosure of financial information is a safeguard both for individual staff members and for the Organization. It enables an informed judgement to be made with respect to a staff member's compliance with applicable conflict-of-interest rules and standards of conduct regulations, and it allows the staff member and the Organization to fashion appropriate protections against actual or potential conflicts of interest when they first appear.

8. The Organization's financial disclosure programme requires designated staff members to file a confidential statement of their financial interests every year. Until recently, only staff members at the level of Assistant Secretary-General and above were required to file financial disclosure statements. The Secretary-General has issued new rules on financial disclosure that extend the financial disclosure requirements to staff carrying out procurement and investment functions, in accordance with the request of the General Assembly in paragraph 10 of its resolution 52/252. The new rules also lower the financial disclosure threshold levels considerably: the threshold for assets and income from non-United Nations sources is lowered from $25,000 to $10,000 and the threshold for gifts from $10,000 to $250.

9. In addition, the General Assembly has before it for consideration the Secretary-General's report "Amendments to the Staff Regulations" (A/60/365), in which he has requested that the Assembly approve a change to staff regulation 1.2 (n) which would broaden financial disclosure requirements to include staff at the L-6, D-1, L-7 and D-2 levels and additional staff as deemed necessary by the Secretary-General.

10. The expanded financial disclosure programme will apply to approximately 1,000 staff in the United Nations Secretariat. While the ethics office will be responsible for administering the financial disclosure programme, it is proposed that the actual review and audit of financial disclosure forms be carried out by independent financial experts rather than the staff of the ethics office, in order to safeguard the confidentiality of senior officials' private financial information. This

recommendation is also based on the successful examples of the World Bank Office of Ethics and Business Conduct and the International Monetary Fund, which administer their financial disclosure programmes with the involvement of financial experts who carry out the actual review and audits of the financial disclosure forms. The independent experts would be fully briefed on the United Nations system and would receive copies of the job descriptions of the staff members whose financial disclosure forms they are reviewing in order to be able to identify conflicts of interest. They would also be able to clarify issues with the staff members concerned, directly or via the director of the ethics office. Where information disclosed (or not disclosed) indicated possible misconduct, the matter would be referred to the Office of Internal Oversight Services for investigation.

Protection of staff against retaliation for reporting misconduct

11. The policy for protecting staff against retaliation for reporting misconduct is not yet finalized and will be the subject of further consultations. In developing the draft policy, a review was carried out of whistle-blower protection legislation in many Member States, including the United States of America, the United Kingdom of Great Britain and Northern Ireland, Australia, Canada, South Africa, New Zealand, Israel and South Korea. The inclusion of the United Nations new programme of protection against retaliation as part of the proposed functions of the ethics office was a result of the proposal of an interdepartmental working group made up of representatives of the Office of Internal Oversight Services, the Office of Human Resources Management, the United Nations Development Programme, the Office of Legal Affairs and the Department of Peacekeeping Operations, the Office of the Ombudsman and a consultant recommended by Transparency International. The essential features of the current draft policy are as follows.

12. The ethics office will provide protection against retaliation to persons who report misconduct or who cooperate in official investigations. The programme is designed to encourage good-faith reporting of misconduct, as well as to discourage those who would either interfere with or retaliate for such reporting.

13. The ethics office will not have investigation functions. When a complaint of retaliation is received, the ethics office will conduct a preliminary review of the complaint to determine if there is a credible case of retaliation or threat of retaliation. If the office finds that there is a credible case of retaliation or threat of retaliation, it will refer the matter to the Office of Internal Oversight Services for investigation and may also recommend interim protection measures. If retaliation against an individual is established, the ethics office will, after taking into account any recommendations made by the Office of Internal Oversight Services or other concerned offices, and after consultation with the individual who has suffered retaliation, recommend appropriate measures aimed at correcting the negative consequences suffered as a result of the retaliatory action. Such measures may include, but are not limited to, reinstatement, rescission of the retaliatory decision or transfer to another office of that individual or the person who acted in retaliation against the individual.

Advisory function, to provide confidential advice and guidance to staff on ethical issues (e.g., conflict of interest), including administering an ethics helpline

14. One of the most important functions of the ethics office will be to provide guidance to staff on ethics issues in a neutral, non-judgemental and strictly confidential environment. The office will keep a record of advice provided in its confidential database. Staff members could seek advice from the ethics office or raise workplace concerns in a variety of ways, all of which would be confidential, including in person, by regular mail, fax or e-mail or via the ethics helpline.

Developing standards, training and education on ethics issues, in coordination with the Office of Human Resources Management

Developing standards

15. While the United Nations has in place detailed standards of conduct, they have not been effectively disseminated to staff. The ethics office will work with the Office of Human Resources Management on supplementing and explaining the existing staff regulations and rules and standards of conduct in a user-friendly way.

16. The ethics office will maintain oversight of the ethics infrastructure and recommend changes to rules, standards, policies or other factors as required to improve such infrastructure, including amendments to the financial disclosure rules as necessary.

Training and education

17. It will be essential for the ethics office to raise awareness throughout the Organization as to its establishment and functions, as well as the implementation of new and expanded programmes including in respect of protection against retaliation, the financial disclosure regime, annual ethics training requirements and staff/management responsibilities in connection with these programmes.

18. The ethics office will work with the Office of Human Resources Management to provide ethics training and education that is interactive and practical to ensure that staff members understand how to use the staff regulations and standards of conduct in their daily work activities. Training could take the form of instructor-led classes, computer-based training or a combination of both, and would include discussion of real-life situations posing ethical dilemmas.

19. All staff will be required to undertake ethics training annually and will receive a certificate after completing each training programme. The ethics office will monitor compliance with the annual ethics training requirements and notify staff members of their obligations in this regard.

20. Specialized training modules will be developed for senior managers and for officials working in specialized and/or sensitive areas, including procurement, recruitment and investment.

21. In this connection, it is relevant to note that steps have already been taken to include ethics components in all of the Organization's training programmes. In addition, an Intranet-based training module on integrity and ethics called the Integrity Awareness Online Learning Programme was launched on 12 September 2005, and has already been successfully completed by 2,464 staff. The Secretary-

General intends that all levels of Secretariat staff shall be required to complete the module. A half-day ethics training programme entitled "Working together: ethics and integrity in our daily work" is currently being undertaken by all Department of Management staff and will be expanded in the months ahead to include all United Nations Secretariat staff.

C. Organizational structure and location of ethics office

22. The ethics office, like the Office of the Ombudsman, the Administrative Tribunal, the Board of Auditors and secretariat of the Advisory Committee on Administrative and Budgetary Questions, would be under the budget section on programme budget, Overall policymaking, direction and coordination. Organizationally, it would also be located outside the Executive Office of the Secretary-General in order to guarantee its independence and to ensure that the staff of the ethics office were recruited in a transparent manner through established procedures. As with the Ombudsman, it is proposed that the head of the ethics office be appointed at the level of Assistant Secretary-General for a fixed, non-renewable five-year term.

23. It is essential that the head of the ethics office be appointed at a very senior level to command the respect of all staff, Member States and external stakeholders as the face of the United Nations on issues of ethics and integrity. The head of the office will need to be an eminent senior person with recognized expertise and scholarship in the field of organizational ethics and with a track record of successfully applying ethics and integrity initiatives in international organizations. The head of the office will be accountable for providing leadership and communicating the vision throughout the global Secretariat on matters relating to ethics at the United Nations, including the promotion of ethical standards and establishing policy recommendations and guidelines to deal with new or evolving ethics issues.

24. The ethics office will be the focal point on ethics issues for the global United Nations Secretariat, including offices away from headquarters, regional commissions, special political missions and peacekeeping missions.

25. While the ethics office will be headquartered in New York, it is considered necessary that liaison offices also be established in Geneva, Vienna and Nairobi for the following reasons:

(a) The importance of maintaining the highest ethical standards would be more readily perceived as a matter affecting all staff worldwide and not as a purely Headquarters issue if ethics liaison offices were established at other duty stations. This is particularly important in the light of the significant increase in the number of disciplinary cases from peacekeeping missions, especially with regard to sexual exploitation issues, and from other United Nations offices with a large presence in the field, such as the Office of the United Nations High Commissioner for Refugees, which has seen an increase in fraud cases in recent years;

(b) The liaison offices would serve as the focal points on ethics issues for staff in the offices away from headquarters, regional commissions, special political missions and peacekeeping missions in the respective regions; at the liaison offices staff could more readily seek ethics advice, lodge complaints of retaliation, etc.,

with a person who was in the same or a similar time zone and who had some knowledge of the offices and staff involved;

(c) The liaison offices would be able to follow up on the submission of financial disclosure forms for staff at other duty stations and provide advice and guidance to staff in filling out the forms. The liaison offices would also coordinate ethics training and education for staff at those other duty stations. In addition, they would coordinate with other relevant offices in the region, including the Office of Internal Oversight Services, in order to build working relationships for making referrals;

(d) The liaison offices would be able to provide valuable insights into local situations and the way in which ethics issues are perceived by other cultures, which may not be readily apparent to staff at Headquarters;

(e) The staff in the liaison offices could travel more easily and at less expense to regional commissions, and to peacekeeping and special political missions in Africa, Europe and the Middle East, than staff in the ethics office at Headquarters.

Annex II

Terms of reference for the comprehensive review of governance arrangements, including an independent external evaluation of the auditing and oversight system within the United Nations and its funds, programmes and specialized agencies

I. Overview

1. Pursuant to paragraph 164 (b) of General Assembly resolution 60/1, the independent external evaluation will be conducted and shall consist of a review of best practice governance and oversight structures within the public and private sectors, a comparative analysis of governance and oversight structures within the United Nations and its funds, programmes and specialized agencies, the development of detailed options for model governance and oversight structures and mechanisms for the United Nations and a representative sample of its funds, programmes and specialized agencies.

2. The evaluation shall also include a review of the Office of Internal Oversight Services (OIOS), as part of the United Nations oversight machinery. It will include the development of options for the optimal level of independence, organizational structure and resource requirements that meet identified best practices.

II. Scope

3. This independent external evaluation will consist of two main elements: a governance and oversight review, to be completed within two phases; and a review of OIOS, providing audit, investigation, inspection, programme monitoring, evaluation and consulting services to the Secretary-General and the General Assembly.

4. Phase 1 of the governance and oversight study will apply to the United Nations and its funds, programmes and specialized agencies. Phase 2 of the governance and oversight study will only cover the United Nations and a representative sample of its funds, programmes and specialized agencies as determined by the High Level Committee on Management. The review of OIOS will be undertaken in parallel and in conjunction with the governance and oversight review.

5. The tasks shall be to:

(a) Identify best international practices and models in governance, oversight and audit within the public and private sectors, including but not limited to:

(i) Accountability, audit and oversight;

(ii) Management and its relationship with the members, governing bodies and other subsidiary organs, staff and wider stakeholders of the organizations;

(iii) Focusing upon purpose and outcomes;

(iv) Performing effectively in clearly defined functions and roles;

(v) Promoting values for the whole organization and demonstration of the values of good governance and oversight through behaviour;

(vi) Taking informed, transparent and effective decisions in all areas, including performance, risk and financial management;

(vii) Providing the support and capacity for governing structures to make effective decisions;

(b) Study, through desk research and interviews, the mission statements, objectives, mandates and related founding documents of the United Nations and its funds, programmes and specialized agencies, taking into account broader relations within the United Nations system and the authority of governing bodies and other existing governance mechanisms. This research, together with the best internal practices identified in subparagraph (a) above, should be brought together to determine the optimal models of governance and oversight that will:

(i) Engender and promote the highest standards of ethics and organizational values and ensure that processes are in place to protect and advance the integrity and reputation of the organizations;

(ii) Promote accountability to members, stakeholders and the general public;

(iii) Deliver value for money outputs and services;

(iv) Enable effective balance and engagement of the interests of members;

(v) Improve management effectiveness and transparency;

(c) Undertake a review of OIOS with the primary objective of providing a basis for decision-making with respect to the appropriate level of independence from management, the adequacy of resources compared to its remit, the appropriate breadth of functions to be provided by OIOS, its reporting mechanisms and the organization and structure of OIOS for optimum resource utilization and effectiveness, given the complex structure of the United Nations. This review will also include, but is not limited to, the following:

(i) To benchmark OIOS against similar audit and oversight bodies;

(ii) To undertake a review of the breadth of functions provided by best practice internal audit and oversight functions, to identify any gaps and propose options as to where these functions should best be carried out;

(iii) An evaluation of the appropriate level of independence of OIOS from management, in particular with respect to funding, budgetary control and human resources management, and to recommend options for a fair and neutral mechanism for the adjudication of budgets for OIOS, within the framework of the proposed independent audit advisory committee;

(iv) The establishment of a detailed costed plan for the implementation of the above recommendations, as well as a framework for the continuous monitoring and evaluation of the success of the implementation.

III. Required outputs

6. In drawing together the results of the study, a number of outputs will be required.

A. Governance and oversight

7. The review of governance and oversight may be satisfied within two phases:

(a) The first report shall identify suitable best international practice in governance and oversight and undertake a gap analysis between the identified best practice in governance and oversight and those applied at the United Nations and its funds, programmes and specialized agencies, informing the whole system of issues of global relevance;

(b) Building upon the first report, the second report shall review the costs and effectiveness of the current governance and oversight structures and determine changes to the existing governance and oversight structures that will strengthen the fiduciary capability, transparency, efficiency and effectiveness of the United Nations and the representative sample of its funds, programmes and specialized agencies to be studied, taking into account ongoing simplification and harmonization initiatives. This report should, inter alia:

(i) Clarify the role and responsibilities of management with respect to supporting Member States, governing bodies and other subsidiary organs, staff and other interested stakeholders;

(ii) Define, for the purposes of governance and oversight, the required committees, boards and other management and inter-agency bodies, including the provision of draft constitutional documents, reporting lines and key practices for Member States, management and oversight bodies alike;

(iii) Define, for the purposes of governance and oversight, the necessary inter-agency bodies, their membership, key practices, roles and responsibility towards providing value added services to the United Nations and its funds, programmes and specialized agencies;

(iv) Define the functions required within each committee, board and management and inter-agency body and their respective roles and responsibilities within the governance and oversight machinery;

(v) Identify value statements for the decision-making process of each board or committee underlying the governance and oversight functions of each organization, incorporating the principles of collective responsibility for decisions and the equality of status in discussions and models of conduct;

(vi) Propose measures that will increase transparency of the decision-making process at all levels within the organizations, including policies relating to the publication of statements of their purposes, strategy, plans and financial statements, as well as information about their outcomes, achievements and the satisfaction of service users during the previous period;

(vii) Propose measures to improve the communication channels, learning and knowledge management within and across the governance and oversight mechanisms;

(viii) Identify appropriate key performance indicators for the performance management of external audit services;

(ix) Establish detailed costed plans for the implementation of the above recommendations.

B. Review of the Office of Internal Oversight Services

8. To develop a fully costed implementation plan for OIOS that shall take into account all of the findings and recommendations resulting from the review of OIOS, including, as appropriate, the vision of the Under-Secretary-General for Internal Oversight Services, which clearly defines, but is not limited to:

(a) The level of operational and managerial independence from the management of the organizations and the appropriate oversight apparatus for OIOS;

(b) The services and responsibilities to be satisfied through OIOS and those that should be satisfied elsewhere;

(c) The optimal organizational structure and adequate resource requirements;

(d) The source of funding and cost-sharing mechanisms for services provided on an internal and intra-agency basis;

(e) Strategies to ensure the provision of value added services through OIOS, including programmes to maintain and update skills, keep abreast of developments within the internal audit and oversight arenas;

(f) The strategy to continuously benchmark the performance of OIOS against other such service providers.

C. Procedures

9. A Steering Committee, composed of five internationally representative independent experts in the field of governance and oversight, including as appropriate expertise in international public management, shall be established by the Secretary-General, with the responsibility to coordinate and supervise the development and implementation of the entire project. Its mission shall be performed through regular meetings.

10. The Steering Committee shall work in full consultation with OIOS, the Panel of External Auditors (including the Board of Auditors), the Joint Inspection Unit and the High Level Committee on Management, as necessary.

11. The results of each phase of the study will be compiled within reports that shall be submitted to the Steering Committee. These progress reports shall be presented to the Steering Committee, for its consideration. These reports should cover aspects such as:

(a) Progress achieved during the period in respect of the technical research and drafting of the evaluation study;

(b) Delays in the evaluation and corrective measures to recover these delays.

12. The Steering Committee shall submit the reports on governance and oversight to the Secretary-General, and to the Executive Heads of participating agencies, funds and programmes, as relevant. The Steering Committee shall submit the report

of the review of OIOS to the Under-Secretary-General for Internal Oversight Services. The Steering Committee shall submit a full and final report on governance and oversight, incorporating the review of OIOS, to the Secretary-General for transmission to the General Assembly.

13. The evaluation shall be conducted in close cooperation with the United Nations and its funds, programmes and specialized agencies so as to maximize the use of internal resources and to make sure that at the end of the project, staff have acquired an extensive knowledge of the proposed solutions.

D. Selection criteria

14. Selection of the consultants will be made on an international competitive basis based upon the following:

(a) Demonstrated experience in undertaking similar projects successfully within large public sector and/or multinational clients and international non-governmental organizations;

(b) Demonstrated capability to develop, adapt and apply best practice methodologies and principles successfully to the client organizations;

(c) Demonstrated understanding of the needs of stakeholders, as well as the financial framework and governance and oversight structures of large public sector and/or multinational clients;

(d) Demonstrated understanding of the varying issues facing locations spread globally and the ability to produce solutions that can be applied successfully to global operations.

IV. Timeline

15. The first phase report on governance and oversight is required by April 2006, and the final consolidated report on governance by 31 May 2006. The report on OIOS is also required by April 2006. Given the close interrelationship between oversight services and governance, the successful consultancy may choose to deliver the second phase of the governance report earlier, as appropriate.

APPENDIX G

United Nations A/RES/61/275

General Assembly

Distr.: General
31 August 2007

Sixty-first session
Agenda items 116, 117, 127 and 132

Resolution adopted by the General Assembly on 29 June 2007

[*on the report of the Fifth Committee (A/61/980)*]

61/275. Terms of reference for the Independent Audit Advisory Committee and strengthening the Office of Internal Oversight Services

The General Assembly,

Reaffirming its resolutions 48/218 B of 29 July 1994, 54/244 of 23 December 1999, 59/272 of 23 December 2004 and 59/287 of 13 April 2005,

Recalling its resolutions 41/213 of 19 December 1986, 45/248 B of 21 December 1990, 60/1 of 16 September 2005, 60/248 of 23 December 2005 and 61/245 and 61/246 of 22 December 2006,

Having considered the report of the Secretary-General on the updated terms of reference for the Independent Audit Advisory Committee,[1] the related report of the Advisory Committee on Administrative and Budgetary Questions,[2] the reports of the Secretary-General on strengthening of the Office of Internal Oversight Services,[3] the related report of the Advisory Committee on Administrative and Budgetary Questions[4] and the report of the Office of Internal Oversight Services on proposals for strengthening the Office,[5]

Reaffirming the separate and distinct roles of the internal and external oversight mechanisms,

1. *Takes note* of the reports of the Secretary-General on the updated terms of reference for the Independent Audit Advisory Committee[1] and on strengthening of the Office of Internal Oversight Services;[3]

2. *Reaffirms* its oversight role, as well as the role of the Fifth Committee in administrative and budgetary matters;

3. *Endorses* the conclusions and recommendations contained in the reports of the Advisory Committee on Administrative and Budgetary Questions on the

[1] A/61/812.
[2] A/61/825.
[3] A/61/610 and A/61/810.
[4] A/61/880.
[5] A/60/901.

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updated terms of reference for the Independent Audit Advisory Committee[2] and on strengthening the Office of Internal Oversight Services[4] subject to the provisions of the present resolution;

4. *Emphasizes* the importance of establishing real, effective and efficient mechanisms for responsibility and accountability in the United Nations;

5. *Recalls* its resolution 48/218 B, in particular paragraph 5 (*c*) of that resolution, as well as paragraph 15 of its resolution 59/272, and in that regard emphasizes the role of the Independent Audit Advisory Committee in ensuring the operational independence of the Office of Internal Oversight Services;

6. *Emphasizes* that the approval, change and discontinuation of legislative mandates are the exclusive prerogative of intergovernmental legislative bodies;

7. *Stresses* that the Office of Internal Oversight Services shall not propose to the General Assembly any change in the legislative decisions and mandates approved by intergovernmental legislative bodies;

8. *Emphasizes* that the recruitment and promotion of staff of the Office of Internal Oversight Services shall be carried out in accordance with the provisions of the Charter of the United Nations, the relevant resolutions and decisions of the General Assembly and the Staff Regulations and Rules of the Organization, taking into account Article 101, paragraph 3, of the Charter;

I

Establishment of the Independent Audit Advisory Committee

1. *Approves* the terms of reference for the Independent Audit Advisory Committee, as well as the criteria for its membership, as contained in the annex to the present resolution;

2. *Decides* to review the terms of reference for the Independent Audit Advisory Committee at its sixty-fifth session;

3. *Also decides* to appropriate 282,800 United States dollars under section 1, Overall policymaking, direction and coordination, 45,000 dollars under section 28D, Office of Central Support Services, and 6,700 dollars under section 35, Staff assessment, to be offset by a corresponding amount under income section 1, Income from staff assessment, of the programme budget for the biennium 2006-2007;

II

Revised estimates relating to the programme budget for the biennium 2006–2007 for the Office of Internal Oversight Services

1. *Endorses* the recommendation of the Advisory Committee on Administrative and Budgetary Questions contained in paragraph 17 of its report[4] to convert to established posts nine posts for the Audit Division of the Office of Internal Oversight Services and sixteen posts for the Investigations Division, and requests the Secretary-General to report to the General Assembly in the context of the programme budget for the biennium 2008-2009 on the functions, structure and work processes of the Investigations Division with a view to strengthening the investigation function;

2. *Approves* the transfer of management consulting posts, and notes that the incumbents carrying out the functions should not be disadvantaged by virtue of the transfer;

3. *Decides* to appropriate 601,400 dollars under section 28A, Office of the Under-Secretary-General for Management, to be offset by a corresponding reduction under section 29, Internal oversight, of the programme budget for the biennium 2006–2007;

III

Funding arrangements for the Office of Internal Oversight Services

1. *Notes* that the level of resources needed to strengthen the Office of Internal Oversight Services is related to the strength of the internal controls of the Organization;

2. *Requests* the Secretary-General to establish a robust and effective internal control framework, including a mechanism of enterprise risk management, and to include in his report on enterprise risk management and the internal control framework proposals to strengthen the Office of Internal Oversight Services, in close cooperation with the Office;

3. *Also requests* the Secretary-General, therefore, to submit to the General Assembly at its sixty-second session revised funding arrangements for the Office of Internal Oversight Services, bearing in mind the recommendation of the Advisory Committee on Administrative and Budgetary Questions in paragraphs 31 to 40 of its report;[4]

4. *Urges* the governing bodies of the United Nations funds and programmes receiving services from the Office of Internal Oversight Services to address the issue of the funding arrangements of the Office in the light of the views of the Office and the funds and programmes.

104th plenary meeting
29 June 2007

Annex

Terms of reference for and criteria for membership in the Independent Audit Advisory Committee

I. Terms of reference

Role

1. The Independent Audit Advisory Committee, as a subsidiary body of the General Assembly, serves in an expert advisory capacity and assists the Assembly in fulfilling its oversight responsibilities.

Responsibilities

2. The responsibilities of the Committee are:

General

(*a*) To advise the General Assembly on the scope, results and effectiveness of audit as well as other oversight functions;

(*b*) To advise the Assembly on measures to ensure the compliance of management with audit and other oversight recommendations;

Internal oversight

(*c*) To examine the workplan of the Office of Internal Oversight Services, taking into account the workplans of the other oversight bodies, with the Under-Secretary-General for Internal Oversight Services and to advise the Assembly thereon;

(*d*) To review the budget proposal of the Office of Internal Oversight Services, taking into account its workplan, and to make recommendations to the Assembly through the Advisory Committee on Administrative and Budgetary Questions; the formal report of the Independent Audit Advisory Committee should be made available to the Assembly and to the Advisory Committee on Administrative and Budgetary Questions prior to their consideration of the budget;

(*e*) To advise the Assembly on the effectiveness, efficiency and impact of the audit activities and other oversight functions of the Office of Internal Oversight Services;

Management of risk and internal controls

(*f*) To advise the Assembly on the quality and overall effectiveness of risk management procedures;

(*g*) To advise the Assembly on deficiencies in the internal control framework of the United Nations;

Financial reporting

(*h*) To advise the Assembly on the operational implications for the United Nations of the issues and trends apparent in the financial statements of the Organization and the reports of the Board of Auditors;

(*i*) To advise the Assembly on the appropriateness of accounting policies and disclosure practices and to assess changes and risks in those policies;

Other

(*j*) To advise the Assembly on steps to increase and facilitate cooperation among United Nations oversight bodies.

Membership

3. The Committee shall comprise five members, no two of whom shall be nationals of the same State, appointed by the General Assembly on the basis of equitable geographical representation, personal qualifications and experience.

Meetings and reporting

4. The Committee may adopt its own rules of procedure, which shall be communicated to the General Assembly. The Committee shall meet up to four times a year, in coordination with the relevant activities of the United Nations and the

Assembly and in accordance with Assembly resolutions on the pattern of conferences. The Committee shall work on the basis of consensus. Any three members of the Committee shall constitute a quorum.

5. The Committee shall submit an annual report to the General Assembly containing its advice. The Committee shall also report key findings and matters of importance to the Assembly at any time. The Chairperson of the Committee shall attend hearings to respond to questions on the activities and findings of the Committee.

Conditions of service

6. The members of the Committee shall receive a per diem and shall be reimbursed for travel expenses incurred to attend the sessions of the Committee.

7. The members of the Committee shall be appointed and shall serve for three years, and can be reappointed for a second and final term of three years, with the exception of two of the initial five members of the Committee, who shall be appointed by drawing of lots to serve for four years.

Review of the terms of reference

8. The terms of reference and mandate of the Committee shall be subject to review by the General Assembly.

Secretariat support

9. The Committee shall be supported by a dedicated secretariat that will operate with autonomy similar to that of the secretariats of the Advisory Committee on Administrative and Budgetary Questions and the International Civil Service Commission.

II. Criteria for membership

Experience, qualifications and independence

10. All members of the Committee shall reflect the highest level of integrity and shall serve in their personal capacity, and in performing their duties they shall not seek or receive instructions from any Government. They shall be independent of the Board of Auditors, the Joint Inspection Unit and the Secretariat and shall not hold any position or engage in any activity that could impair their independence from the Secretariat or from companies that maintain a business relationship with the United Nations, in fact or perception.

11. All members of the Committee must have recent and relevant senior-level financial, audit and/or other oversight-related experience. Such experience should reflect, to the extent possible:

(*a*) Experience in preparing, auditing, analysing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues faced by the United Nations, including an understanding of relevant accepted accounting principles;

(*b*) An understanding of and, if possible, relevant experience in the inspection, monitoring and evaluation and investigative processes;

(*c*) An understanding of internal control, risk management and procedures for financial reporting;

(*d*) A general understanding of the organization, structure and functioning of the United Nations.

12. Former senior United Nations Secretariat officials shall not be eligible for appointment to the Committee for five years following their separation from service. The members of the Committee shall not be eligible for appointment in the Secretariat for five years following the expiry of their terms.

Identification and selection

13. Members of the Committee shall be nominated by Member States and shall be appointed by the General Assembly, preferably from a compendium of at least ten suitably qualified candidates, with due regard being paid to equitable geographic representation. Before nominating candidates, Member States are recommended to evaluate their candidates and attest to their qualifications on the basis of paragraph 11 above on the criteria for membership in the Committee through consultation with an international organization with relevant expertise in the functions performed by audit and oversight organizations, such as the International Organization of Supreme Audit Institutions, and to make this information available to Member States.

APPENDIX H

LIST PRIMARY DATA

DOCUMENTS COLLECTED AT THE UNITED NATIONS

ACABQ - UN Advisory Committee on Administrative and Budgetary Questions, website - http://www.un.org/ga/acabq.

BOA - Board of Auditors website- www.unsystem.org/auditors.

CPC - Committee for Programme and Coordination of the United Nations, http://www.un.org/en/ga/cpc.

Fifth Committee, Administrative and Budgetary Committee website - http://www.un.org/en/ga/fifth.

General Assembly website - http://www.un.org/en/ga/about/ropga/abq.shtml.

ICSC - International Civil Service Commission- website - http://icsc.un.org/rootindex.asp.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme – website - http://www.iic-offp.org.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2004), Status Report, 9 August.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2004), *Briefing Paper*, 21 October

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2004), *Briefing Paper*, October 21.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2004), Investigations Guidelines.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2005), *Briefing Paper*, 9 January.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme, 1st Interim Report (2005), 3 February.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme, (2005), *Comparison of Estimates of Illicit Iraqi Income During UN Sanctions*, 3 February.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2005), *Second Interim Report*, 29 March.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2005),*Third Interim Report*, 8 August.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2005), *Report on the Management of the Oil-for-Food Programme*, 7 September.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2005), *Impact of the Oil-for-Food Programme on the Iraqi People*, 7 September.

IIC - Independent Inquiry Committee into the United Nations Oil-for-Food Programme (2005), referred to as IIC Final Report, *Manipulation of the Oil- for- Food Programme by the Iraqi Regime*, October 27.

IIC - Independent Inquiry Committee into the United Nations Oil-For-Food Programme (2005), *Procedures for Law Enforcement Requests for Access to IIC Documents and Information*, November.

IIA – Institute of Internal Auditors website - http://www.theiia.org/guidance/standards-and-guidance/ippf/standards/full-standards

INTOSAI - International Organization of Supreme Audit Institutions website - http://www.intosai.org.

JIU - UN Joint Inspection Unit (1985), Some reflections on reform of the United Nations, JIU/REP/85/9, Joint Inspection Unit Geneva: United Nations.

JIU - UN Joint Inspection Unit (1988), Reporting on the performance and results of United Nations programmes: monitoring, evaluation, and management review components, UN document A/43/124.

JIU - UN Joint Inspection Unit (1990), Extra-budgetary resources of the United Nations: towards transparency of presentation, management, and reporting, UN document A/45/797.

JIU - UN Joint Inspection Unit (1993), Accountability and oversight in the United Nations Secretariat, JIU/REP/93/5, United Nations Joint Inspection Unit September

JIU - UN Joint Inspection Unit (1995), Accountability, management improvement, and oversight in the United Nations, JIU/REP/95/2 – Part I and Part II, Joint Inspection Unit Geneva: United Nations.

JIU - UN Joint Inspection Unit (1998), More coherence for enhanced oversight in the United Nations system, JIU/REP/98/2, Joint Inspection Unit Geneva: United Nations.

JIU - UN Joint Inspection Unit (2001), Enhancing governance oversight role, JIU/REP/2001/4, Joint Inspection Unit Geneva: United Nations.

JIU - UN Joint Inspection Unit (2006), Oversight lacunae in the United Nations system, JIU/REP/2006/2, Joint Inspection Unit Geneva: United Nations.

JIU - UN Joint Inspection Unit (2010), Ethics in the United Nations system, JIU/REP/2010/3, Joint Inspection Unit Geneva: United Nations.

JIU - UN Joint Inspection Unit (2011), The investigation functions in the United Nations system, JIU/REP/2011/7, Joint Inspection Unit Geneva: United Nations.

Ogata, S. and P. Volcker (1993), *Financing an Effective United Nations: A Report of the Independent Advisory Group on U.N. Financing*, New York, NY: Ford Foundation.

Panel of External Auditors website - http://www.un.org/en/auditors/panel.

Thornburgh, D. (1993a), *Report to the Secretary-General of the United Nations*. United Nations, Under-Secretary-General for Administration and Management, 1 March.

UNA- USA, United Nations Association of the United States of America (2003), *60 Years of Educating Americans About the United Nations: UNA- USA Annual Report 2003-2004*, www.unausa.org/pdf/publications/2003_annual_report.pdf.

UNAT - United Nations Administrative Tribunal, website - http://untreaty.un.org/unat.

United Nations (1946), Convention on the Privileges and Immunities of the United Nations, General Assembly.

UN document ST/SGB/Organization/Section P(v)/Rev.1 (1981), A description of the functions of the Internal audit Division, Secretary-General's Bulletin, 18 December, United Nations.

UN document ST/SGB/Financial Rules/l/Rev.3 (1985), Secretary-General's Bulletin, series 100, United Nations.

UN document A/41/49 (1986), Report of the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations, Recommendation 39.

United Nations Group of High Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations. (1986), Report of the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations.

UN document A/45/226 (1990), Analytical report of the Secretary-General on the implementation of General Assembly resolution 41/213, 17 April**,** paras. 165-168.

UN document A/47/315 (1992), Financial Reports and Audited Financial Statements, and Reports of the Board of Auditors, 20 August.

UN document A/RES/47/211 (1992), Financial Reports and Audited Financial Statements and Reports of the Board of Auditors, General Assembly, 24 March.

UN document ST/SGB/262 (1993), Establishment of the Office for Inspections and Investigations, 24 August.

UN document A/48/452 (1993), Accountability and responsibility of programme managers in the United Nations: Report of the Secretary-General, General Assembly, 5 October, paras. 57-60.

UN document A/RES/48/218 A (1993), Review of the efficiency of the administrative and financial functioning of the United Nations, General Assembly, 23 December.

UN document A/RES/48/218 B (1994), Review of the efficiency of the administrative and financial functioning of the United Nations, General Assembly, 12 August.

UN document ST/SGB/273 (1994), Establishment of the Office of Internal Oversight Services, Secretary-General's Bulletin, 7 September.

UN document A/49/449 (1994), Report of the Office Inspections and Investigations, General Assembly, 28 September.

UN document statement by Karl Th. Paschke to the Fifth Committee (1994), 5 December 1994, pp. 4-5, 7-8.

UN document A/50/459 (1995), Report of the Secretary-General on the Activities of the Office of Internal Oversight Services, General Assembly, 2 October.

UN document ST/SGB/Organization/Section OIOS (1995), Functions and Organization of the Office of Internal oversight Services, Secretary-General's Bulletin, 19 December.

UN document A/51/432 (1996), Report of the Secretary-General on the activities of the OIOS, 25 September, para. 8.

UN document Press briefing by Under-Secretary-General for Internal Oversight Services (1996), United Nations, New York, 31 October.

UN document A/RES/51/225 (1997), Financial reports and audited financial statements, and reports of the Board of Auditors, General Assembly of 16 May, paras. A.11 and A.12.

UN document A/53/428 (1998), Report of the Secretary-General on the activities of the OIOS, 23 September, Preface and para. 84.

UN Document A/54/393 (1999), Report of the Secretary-General on the activities of the OIOS, 23 September, Preface.

UN document A/RES/54/244 (2000), Review of the implementation of General Assembly resolution 48/218 B, General Assembly, 31 January.

UN document A/55/436 (2000), Report of the on the activities OIOS, 2 October 2000, para. 156.

UN document A/56/381 (2001), Report of the Secretary-General on the activities of the OIOS, 19 September.

UN document Press release ORG/1139 (2001), UN's internal oversight office launches refocused annual report at Headquarters, 24 October.

UN document A/57/451 (2002), Report of the Secretary-General on the activities of the OIOS, of 4 October, 2002, Preface, pp. 7-9 and 10.

UN document Press release ORG/1381 (2003), United Nations launches Initiative to Strengthen Staff Integrity as part of ongoing Reform Efforts, 1 May.

UN document ST/SGB/2003/7, (2003), Financial Regulations and Rules of the United Nations, Secretary-General's Bulletin, United Nations, 9 May.

UN document A/58/364 (2003), Report of the Secretary-General on the activities of the OIOS, 11 September.

UN document Press release ORG/1398 (2003), United Nations internal office reports potential savings of $37 million identified in work of organization, 16 October, p. 6.

UN document Security Council Resolution 1538 (2004), Adopted by the Security Council at its 4946th meeting, on 21 April.

UN document ST/SGB/2004/9 (2004), Independent inquiry into the oil-for-food programme, Secretary-General's bulletin, United Nations, 1 June.

UN document Secretary-General's letter (2004), Kofi A. Annan, 4 June 2004, p. 3.

UN document A/59/5 (2004), Financial reports and audited financial statements for the biennium ended 31 December 2003 and Report of the Board of Auditors, Vol. I, of 22 July 2004, p. 12, item (u), paras. 15(f) and 344-349.

UN document A/59/318 (2004), First report on the implementation of the recommendations of the Board of Auditors for the financial period ended 31 December 2003: Report of the Secretary General, of 1 September 2004, paras. 124-126.

UN document A/59/359 (2004), Report of the Office of Internal Oversight Services Note by the Secretary-General, 13 September, Preface.

UN document A/59/1 (2004), Report of the Secretary-General on the work of the Organization, 2004, paras. 253-254.

UN document A/59/359 (2004), Report of the Secretary-General on the activities of the OIOS, 27 October.

UN document Press Release GA/AB/3641 (2004), UN staff committee representatives tell budget committee concerns ignored in management reform report, Fifth Committee, 29 October, pp. 2-3.

UN News Service (2004), Thorough probe finds no evidence of wrongdoing by UN official, 16 November.

UN News Service (2004), UN management prepared to hold dialogue with Staff Union over concerns, 19 November.

UN document A/59/649 (2004), Review of the implementation of General Assembly resolutions 48/218B and 54/244: Report of the Fifth Committee, 22 December.

UN document General Assembly resolution A/RES/59/270 (2004), Reports of the Secretary-General on the activities of the Office of Internal Oversight Services, 23 December.

UN document General Assembly resolution A/RES/59/271 (2004), Report of the Secretary-General on the activities of the Office of Internal Oversight Services, 23 December.

UN document Organizational Integrity Survey Final Report (2004), Report prepared by Deloitte Consulting LLP to the United Nations Office of Internal Oversight Services, United Nations.

UN News Service (2005), UN undertaking management review in response to early findings I Oil-for-Food probe, 10 January.

UN document A/RES/59/272 (2005), Review of the implementation of General Assembly resolutions 48/218B and 54/244, 2 February.

UN document A/59/2005 (2005), In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, General Assembly, 21 March.

UN document Press release SG/SM/9793 (2005), UN says charge letter issued against Dileep Nair based on findings of Volcker report, 31 March.

UN document A/60/346 (2005), Report of the Office of Internal Oversight Services Note by the Secretary-General, 9 September.

UN document A/RES/60/1 (2005), 2005 World Summit Outcome, Resolution adopted by the General Assembly, 24 October.

UN document A/RES/60/248 (2005), Special subjects relating to the proposed programme budget for the biennium 2006–2007, General Assembly, Resolution adopted by the General Assembly on 23 December 2005, 1 February.

UN document A/60/568 (2005), Implementation of decisions from the 2005 World Summit, Outcome for action by the Secretary-General, Ethics office; comprehensive review of governance arrangements, including an independent external evaluation of the auditing and oversight system; and the independent audit advisory committee Report of the Secretary-General, 28 November.

UN document A/RES/60/248 (2006), Resolution adopted by the General Assembly on 23 December 2005, [*on the report of the Fifth Committee (A/60/608 and Corr.1)*] 60/248. Special subjects relating to the proposed programme, budget for the biennium 2006–2007, General Assembly, 1 February.

UN document A/60/692 (2006), Investing in the United Nations: for a stronger Organization worldwide, Report of the Secretary-General, General Assembly, 7 March.

UN document A/RES/60/260 (2006) Investing in the United Nations: for a stronger Organization worldwide, General Assembly,16 May.

UN document A/60/860 (2006), Oversight lacunae in the United Nations system, Note by the Secretary-General, 23 May.

UN document A/60/860/Add.1 (2006), Oversight lacunae in the United Nations system, Note by the Secretary-General, 25 May.

UN document A/RES/60/254 (2006), Review of the efficiency of the administrative and financial functioning of the United Nations, General Assembly, 8 June.

UN document A/60/846/Add.6 (2006), Investing in the United Nations for a stronger Organization worldwide: detailed Report of the Secretary-General, Addendum, Accountability, 19 June.

UN document A/60/846/Add.7 (2006), Investing in the United Nations for a stronger Organization worldwide: detailed Report of the Secretary-General, Addendum, Updated terms of reference for the Independent Audit Advisory Committee, 20 June.

UN document A/60/903 (2006), Investing in the United Nations for a stronger Organization worldwide: updated terms of reference for the Independent Audit Advisory Committee, Interim report of the Advisory Committee on Administrative and Budgetary Questions, 23 June.

UN document A/60/909 (2006), Investing in the United Nations for a stronger Organization worldwide: detailed report Accountability Report of the Advisory Committee on Administrative and Budgetary Questions, 27 June.

UN document A/60/883 (2006), Implementation of decisions contained in the 2005 World Summit Outcome for action by the Secretary-General Comprehensive review of governance and oversight within the United Nations and its funds, programmes and specialized agencies Report of the Secretary-General, 10 July.

UN document A/60/901 (2006), Report of the Office of Internal Oversight Services on proposals for strengthening the Office of Internal Oversight Services, 14 July.

UN document A/60/1004 (2006), Comments of the Joint Inspection Unit on the report of the Steering Committee on the Comprehensive Review of Governance and Oversight within the United Nations and its Funds, Programmes and Specialized Agencies, 11 August.

UN document A/61/264 (Part I) (2006), Report of the Office of Internal Oversight Services Note by the Secretary-General, 15 August.

UN document A/60/883/Add.1 (2006), Implementation of decisions contained in the 2005 World Summit Outcome for action by the Secretary-General Comprehensive review of governance and oversight within the United Nations and its funds, programmes and specialized agencies Report of the Secretary-General Addendum Report of the independent Steering Committee, Volume I Executive summary and project scope, background and context, Volume II Governance[KH2] and oversight principles and practices, Volume III Governance: current United Nations practices, gap analysis and recommendations, 28 August.

UN document A/60/883/Add.2 (2006), Implementation of decisions contained in the 2005 World Summit Outcome for action by the Secretary-General Comprehensive review of

governance and oversight within the United Nations and its funds, programmes and specialized agencies Report of the Secretary-General Addendum Report of the independent Steering Committee, Volume IV Oversight: current United Nations practices, gap analysis and recommendations, Volume V Review of the Office of Internal Oversight Services, 28 August.

UN document A/61/546 (2006), Accountability measures, Report of the Secretary-General, 27 October.

UN document A/61/605 (2006), Comprehensive review of governance and oversight within the United Nations and its funds, programmes and specialized agencies Report of the Advisory Committee on Administrative and Budgetary Questions, 1 December.

UN document A/RES/61/245 (2007), Resolution adopted by the General Assembly on 22 December 2006, General Assembly, Comprehensive review of governance and oversight within the United Nations and its funds, programmes and specialized agencies, 7 March.

UN document A/RES/61/275 (2007), Resolution adopted by the General Assembly on 29 June 2007, [*on the report of the Fifth Committee (A/61/980)*] 61/275. Terms of reference for the Independent Audit Advisory Committee and strengthening the Office of Internal Oversight Services General Assembly.

UN document A/62/281 (Part I) (2007), Report of the Office of Internal Oversight Services Note by the Secretary-General, 17 August.

UN document A/RES/61/275 (2007), Terms of reference for the Independent Audit Advisory Committee and strengthening the Office of Internal Oversight Services, Resolution adopted by the General Assembly on 29 June 2007, General Assembly, 31 August.

UN document A/C.5/61/SR.30 (2007), Summary record of the 30th meeting, Fifth Committee, 27 October.

UN document A/63/302 (Part I) (2008), Report of the Office of Internal Oversight Services Note by the Secretary-General, 18 August.

UN document A/64/326 (Part I) (2009), Report of the Office of Internal Oversight Services Note by the Secretary-General, 24 August.

UN document A/65/271 (Part I) (2010), Report of the Office of Internal Oversight Services Note by the Secretary-General, 9 August.

UN document A/RES/67/238 (2013), Assessment of Member States' contributions to the United Nations regular budget for 2013, General Assembly, 11 February.

United Nations Internal Justice System website - http://www.un.org/en/oaj/unjs.

United Nations OIOS website - http://www.un.org/Depts/oios.

United Nations Office of the Iraq Programme Oil-for-Food website - http://www.un.org/Depts/oip/background/index.html.

United Nations Peacekeeping Operations website - http://www.un.org/en/peacekeeping.

APPENDIX I

LIST SECONDARY DATA

DOCUMENTS COLLECTED OUTSIDE THE UNITED NATIONS

Ahlenius, IB. (2010), *End-of assignment-report*, http://www.foreignpolicy.com/files, retrieved on 14 July, 2010.

Associated Press (2005), Firm in UN scandal draws harsh criticism: investigator disputes Annan comments, *International Herald Tribune*, March 31.

BBC News website- http://www.bbc.co.uk/search/news/?page=2&q=oil-for-food&dir, accessed on 15 may 2013.

BBC News (2004), Lubbers cleared of UN sex claim, July 15, 2004.

BBC News (2004), Kofi Annan 'vetoed UN sex claim, October 28, 2004.

Boutros-Ghali, B. (1996), Strengthening internal oversight at the United Nations, *International Journal of Government Auditing*, 23(2), 1-2.

Boutros-Ghali, B. (2008), Boutros-Ghali, Boutros, in Pubantz, J. and J. Allphin Moore, (Ed.), *Encyclopedia of the United Nations*, Second Edition. New York: Facts On File, Inc., *American History Online*, Facts On File, Inc, http://www.fofweb.com.

Branigan, W. (1992a), The UN empire: polished image, tarnished reality, *The Washington Post*, September 20.

Branigan, W. (1992b), As UN expands, so do its problems, *The Washington Post* September 21.

Burke, J. and E. Vulliamy (2000), UN rocked by flood of fraud cases: officials were addicted to luxury, *The Observer International*, September 3.

Carnegie, M. (2004), UN staff lose faith in Kofi Annan, *iafrica.com/news*, 19 November.

CBSNEWS.com (2004), Kofi Anna n no confidence vote?, November 19, 2004.

Childers, E. and B. Urquhart (1994). *Renewing the United Nations System*, Uppsala, Sweden: Dag Hammarskjâld Foundation.

Coleman, N. (2004), Kofi Annan must go, *Wall Street Journal*, December 1.

Congressional Research Service - USA (2005), CRS Report for Congress, Iraq: Oil-For-Food Program, Illicit Trade, and Investigations, prepared for Members and Committees of Congress, *The Library of Congress*, RL30472 of 14 June.

Congressional Research Service-USA (2007), CRS Report for Congress, United Nations Reform: US Policy and International Perspectives, prepared for Members and Committees of Congress, *The Library of Congress*, RL30472 of 22 January.

Diplomatic World Bulletin (1996), Diplomatic Pouch, July29-August 6, p. 10.

Farley, M. (2005), UN Oil-for-Food Inquiry Findings Surprised Volcker, *Los Angeles Times*, October 28, http://www.latimes.com/news/nationworld/world/la-fg-volcker28oct28,1,2978183.story?headlines-world.

Fleck, F. (2004), Harassment complaint lodged against UN official, *International Herald Tribune*, May 19, 2004.

Fox News.com (2005), Danforth: Volcker Doesn't Have Right Tools, January 8, 2005, www.foxnews.com/story, January 8.

FoxNews.com (2005), Oil-for-Food, March 30.

Fox News.com (2006), Report slams U.N. investigators, June 2.

Funk, S. M. and J. Laurenti (1994), Watch-dog for the U.N., *Washington Post*, August 8.

GAO-USA Government Accountability Office (2004), *United Nations: Reforms progressing, but comprehensive assessments needed to measure impact*, GAO 04-339, February.

GAO-USA Government Accountability Office (2004), *Observations on the Oil for Food Program and Areas for Further Investigation*, GAO-04-953T, 8 July.

GAO-USA Government Accountability Office (2006), *United Nations: Lessons Learned from Oil for Food Program Indicate the Need to Strengthen UN Internal Controls and Oversight Activities*, GAO-06-330, 25 April.

Gardiner, N. (2005), The Volcker investigation into the U.N. Oil-for-Food scandal: why it lacks credibility, http://www.heritage.org/research/reports.

Heritage Foundation website - http://www.heritage.org/research/testimony/an-assessment-of-the-volcker-interim-report-and-the-independent-inquiry-committee-into-the-united-nations-oil-for-food-program.

Hoge W. (2004a), Annan asks for inquiry on oil-for-food program, *International Herald Tribune*, March 22.

Hoge, W. (2004b), Russia backs inquiry into UN oil program: reversal clears way for role by Volcker, *International Herald Tribune*, April 21.

Hoge, W. (2004c), UN critics ignore good being done, Annan says, *International Herald Tribune*, April 23.

Hoge W. (2004d), Report criticizes the way UN fights corruption, *International Herald Tribune*, June 16.

Hoge, W. (2004e), Annan is teetering on his perch, *The New York Times*, December 3.

Hosenball, M. (2002), Iraq's black gold: how Saddam skimmed oil profits while the United Nations looked the other way, *Newsweek International*, November 11, 37-40.

Hunt, J. (2004), Watching the UN's watchdog, *Fox News*, June 16.

IIA - Institute of Internal Auditors (2002), *Recommendations for Improving Corporate Governance: Presented to the New York Stock Exchange,* Altamonte Springs, FL: The Institute of Internal Auditors.

IIA - Institute of Internal Auditors (2013), *International Internal Audit Standards*, http://www.theiia.org/guidance/standards-and-guidance/ippf/standards.

International Debates (2005), The Iraq Oil-for-Food Programme, allegations of abuse, *Congressional Digest Debates Online*, http://www.congressionaldigestdebates.com.

International Herald Tribune (1993), House pushes for UN watchdog unit, 30 September.

IO Watch website - http://www.iowatch.org.

INTOSAI International Organization of Supreme Audit Institutions] website - http://www.intosai.org.

Lederer E.M. (2004), Son's payments on deal disappoint Annan, *Associated Press*, November 30.

Lynch, Colum (2010), U.N. head Ban Ki-Moon refusing orders from internal personnel court, *Washington Post*, May 13.

Miller, J. (2004a), 3 nations blocked UN oil-for-food probe, report says, *International Herald Tribune,* October 4, 2004.

Miller, J. (2004b), Senators accuse U.N. leader of blocking their fraud inquiry, *The New York Times*, November 10.

Miller J. (2005c), Oil-for-food auditors failed, *International Herald Tribune*, January 11, 2005.

NewYork Times (1993), U.S. peacekeeping arrears at U.N. near a billion**,** Oct. 22.

Peschmann, M. (2005), The hell no I-won't-go Secretary-General, the accused UN auditor and Louise, *Canada Free Press*, April 4.

Pisik, B, (2000), Annan picks Singaporean for U. N. Inspector-General's job, *The Washington Times*, February 22.

Preston, J. (1995), UN corruption cop: new man on a very political beat, *International Herald Tribune,* 29 March.

Rosett, C. (2003a), Open the books on oil-for-food: When UN sanctions invite corruption, *International Herald Tribune,* April 21.

Rosett, C. (2003b), Bush is right to snub the 'axis of avarice': contracts in Iraq, *International Herald Tribune*, December 17.

Rosett, C. (2004), The problem with the Secretariat, *The Wall Street Journal*, June 16, 2004.

Rosett, C. (2010), Keep an eye on the U.N., *Forbes*, January 28, 2010.

Sachs, S. (2004), Saddam team skimmed billions in aid project. Cash in suitcases: UN sanctions violated, *International Herald Tribune*, March 1.

South Africa Government (2006), Commission *of Inquiry into the* OFFP, www.justice.gov.za/commissions/comm_donen/17jun2006p1-111.pdf.

The Economist (2005), Kofi, Kojo and a lot or shredded documents: There are still too many unanswered questions at the United Nations, April 2nd.

The Economist (2008), The UN's oil-for-food scandal, March 13th

The Heritage Foundation (l987), The United Nations continues to duck needed reforms, Backgrounder, Washington, D.C., July 9, 593,1-8.

Thornburgh, D. (1993b), How to clean up the United Nations, *International Herald Tribune*, March 26.

Thornburgh, D. (1993c), Today's United Nations in a changing world, *American University International Law and Policy*, 9(1), 215-223.

Turner, M. (2005), Fury at UN plan to pay legal fee from Iraq revenue, *Financial Times*, March 24.

UNA- USA - United Nations Association of the United States of America, (2001) *Annual Report 2001-2002*, www.unausa.org.

UNA- USA, United Nations Association of the United States of America (2003), *60 Years of Educating Americans About the United Nations: UNA- USA Annual Report 2003-2004*, www.unausa.org/pdf/publications/2003_annual_report.pdf.