



# Executive Memorandum

No. 771

September 4, 2001

## FORGING A DEAL FOR PAYMENT OF U.N. ARREARS

*BRETT D. SCHAEFER AND BAKER SPRING*

President George W. Bush would very much like to open his address to the United Nations General Assembly on September 24 with an announcement that Congress is releasing \$582 million as a second payment of U.S. arrears. If this payment is not approved by that time, the President will encounter extensive criticism that could well overwhelm his message and eliminate his ability to lay the groundwork for a new relationship between the United States and the U.N. It will also prevent the President from using this platform to lay out a vision of the United Nations in the 21st century that is distinct from that of his predecessor. Both outcomes would be unfortunate.

Currently, two pieces of legislation are before Congress that call for release of the second arrears payment now that the U.N. has implemented some important reforms required by Congress for its release. Both bills are encountering delays. Over the next few weeks, the Administration must forge a deal with Members of Congress to secure the release of the arrears payment by ensuring that politics do not undermine this effort or U.S. national interests.

**Protecting America's Interests.** Each house of Congress has passed legislation to allow the release of a second payment of arrears to the U.N. On February 7, the Senate unanimously passed S. 248, known as the "United Nations Dues Payment bill." S. 248 deals solely with authorization of the arrears payment. On May 16, the House passed H.R. 1646,

the State Department Authorization bill, which includes the payment of arrears.

The Senate has allowed H.R. 1646 to languish and appears unlikely to pass it before the President addresses the U.N. Faced with this political reality, the Administration is pressuring the House to pass S. 248. But because the Senate bill deals only with arrears, it lacks support among House members who seek additional protections for U.S. interests. The House is unlikely to pass S. 248 unless it contains measures that satisfy its concerns like the American Servicemembers' Protection Act (ASPA), which is part of H.R. 1646.

ASPA enjoys bipartisan support in the House, which voted 282–137 to attach it to H.R. 1646, with support from 76 Democrats. It provides protections for U.S. citizens, military personnel, and government officials from spurious political assaults against the United States through the International Criminal Court (ICC), which claims authority to override the judicial systems of all

---

Produced by the  
Kathryn and Shelby Cullom Davis  
Institute for International Studies

Published by  
The Heritage Foundation  
214 Massachusetts Ave., NE  
Washington, D.C.  
20002-4999  
(202) 546-4400  
<http://www.heritage.org>



---

This paper, in its entirety, can be  
found at: [www.heritage.org/library/  
execmemo/em771.html](http://www.heritage.org/library/execmemo/em771.html)

---

nations even if they are not party to the ICC. However, some of ASPA's provisions also would infringe on the Administration's ability to conduct foreign policy.

This dilemma is not insurmountable. Rather, it offers the Administration an opportunity to work with House leaders to advance two national interests at once: (1) protecting against ICC actions that would undermine national sovereignty, provided ASPA's problematic sections are eliminated and (2) securing additional support for payment of U.N. arrears.

**Solving Two Problems at Once.** The 106th Congress established a schedule for paying U.S. arrears to the United Nations in the Consolidated Appropriations Act for FY 2000 (P.L. 106-113), commonly called the Helms-Biden Act. Helms-Biden instructs the United States to pay \$926 million in arrears to the U.N. in three installments after specific reforms have been implemented. Congress released the first payment of \$100 million in 1999 after the U.N. met the first set of requirements. On December 23, 2000, the U.N. member states adopted key reforms that largely met the requirements for the release of the second payment of \$582 million: reducing America's portion of the regular U.N. budget from 25 percent to 22 percent, and reducing its part of the peacekeeping budget from 31.4 percent to 27.58 percent as of July 2001.

Though this reduction in U.S. assessed dues does not fully meet the Helms-Biden requirements for release of the second payment, it does represent a significant concession on the part of U.N. members. The Senate and the Administration were correct to seek the release of the second payment following such reform. The House signaled its agreement by passing H.R. 1646.

In addition to approving the arrears payment, H.R. 1646 includes the American Servicemembers' Protection Act, which restricts U.S. cooperation with the ICC, U.S. military participation in U.N. peacekeeping and peace enforcement operations, transfer of classified information to the ICC and its parties, and U.S. military assistance to states that ratify the ICC treaty. The reason for these strong provisions: If the ICC treaty is ratified by 60 countries, it will create an international legal bureaucracy with the authority to arrest, prosecute, and punish nationals from any country accused of "international" offenses, such as war crimes and

crimes against humanity. Americans brought before the ICC would be denied basic constitutional rights, such as trial by a jury of one's peers, protection from double jeopardy, and the right to confront one's accusers. The ICC could prosecute and punish even the citizens of countries that never sign or ratify the treaty—an astonishing break with accepted norms of international law. Thus, ASPA would provide necessary safeguards for U.S. citizens, military personnel, and officials—even those deployed on U.N. peacekeeping missions.

In pursuit of this goal, however, ASPA could impair the Administration's ability to protect U.S. interests. It would restrict U.S. military relations with most countries that are party to the ICC unless the President waives the restrictions. America's cooperative relationship with Malaysia, for example, which allows the U.S. Navy to frequent its ports, would be at risk if Malaysia ratifies the treaty, based on agreements about the legal status of visiting forces. Military assistance, such as funding for cooperative military exercises and equipment that is compatible with U.S. armed forces materiel, also would be restricted. To avoid such problems with dozens of nations, the President would be forced to justify signing numerous waivers—a process that could quickly become onerous. The Administration should be free to use all of the tools at its disposal to protect U.S. national security interests. Congress, guided by this overriding principle, should alter ASPA accordingly.

**Conclusion.** The President will be placed in an unnecessarily difficult position if Congress has not approved the release of the second payment of U.S. arrears to the U.N. before he addresses the General Assembly. The House is not likely to pass legislation to allow this payment unless the American Servicemembers' Protection Act is attached. Although some parts of ASPA need improvement to avoid infringing on the Administration's ability to conduct foreign policy, the Administration should support the inclusion of its protections to secure the votes necessary to release the next payment of arrears.

—Brett D. Schaefer is Jay Kingham Fellow in International Regulatory Affairs in the Center for International Trade and Economics, and Baker Spring is F. M. Kirby Research Fellow in National Security Policy in the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation.