

# BACKGROUND

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## The U.N. Should Not Be Allowed to Keep Credits Owed to the Member States

*Brett D. Schaefer*

### Abstract

*For years, the United Nations has retained surplus appropriations for closed peacekeeping operations and credits owed to the U.S. from the Tax Equalization Fund. U.N. financial rules and regulations state that the U.N. should “surrender” these funds (reimburse or credit them toward related assessments) after a specified period. Instead, the U.N. has retained them either to cover budget shortfalls or because governments failed to instruct the organization on how to disburse them. Recently, the Obama Administration allowed the U.N. to use \$100 million of TEF credits owed to the U.S. to make security upgrades. The U.S. should insist that credits be returned or applied to its regular or peacekeeping assessments and Congress should prohibit the Administration from allowing the U.N. to use these credits for other purposes without congressional approval.*

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**The Heritage Foundation**  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

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In recent years, the United Nations has retained surplus appropriations for U.N. peacekeeping operations that have been closed by the U.N. Security Council and credits owed to the U.S. from the Tax Equalization Fund (TEF). Under the organization’s financial rules and regulations, these funds should be reimbursed or otherwise credited to the contributors, but the U.N. has retained these funds purposefully or due to lack of instruction by the member states to which the credits are owed, including the U.S.

The U.S. Mission to the U.N. should request that the U.N. either return the credits to the U.S. Treasury or apply them to its regular and peacekeeping assessments in accordance with U.N. financial rules and regulations. It should also seek clarification on U.N. financial rules and regulations requiring the U.N. to automatically return all credits to the member states no longer than 12 months after the end of the fiscal period for which they were appropriated unless otherwise instructed. Congress should explicitly prohibit use of these credits for any purpose other than the original purpose for which they were appropriated and require any returned funds to go to the U.S. Treasury.

### KEY POINTS

- The U.N. owes the United States well over \$100 million in credits from closed peacekeeping operations and the Tax Equalization Fund (TEF).
- Under U.N. financial rules and regulations, credits owed to the member states should be returned or applied to their assessments. Instead, the U.N. Secretariat has retained these funds.
- The U.S. should take steps to ensure that the U.N. promptly returns the credits to the U.S. Treasury or applies them to America’s peacekeeping or regular budget assessments.
- Congress should explicitly prohibit the Administration from using surplus funds appropriated for the U.N. peacekeeping or regular budget for other purposes without express congressional approval.
- Using the TEF credits to pay for America’s share of the U.N. renovation cost overruns would violate congressional intent as expressed in legislation prohibiting the Administration from using current appropriations to pay for the cost overruns.

## U.N. Financial Rules and Regulations

Each year the United Nations allocates its expenses among the member states according to the current scale of assessments. U.N. rules and financial regulations on the use of assessments restrict the use of appropriated funds to the purposes authorized by the U.N. General Assembly and require the U.N. to surrender any unused funds to the member states 12 months after the end of the financial period for which they were appropriated.<sup>1</sup> Specifically, Regulations 5.3 and 5.4 in the Financial Regulations and Rules of the United Nations state:

Regulation 5.3. Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to discharge obligations in respect of goods supplied and services rendered in the financial period and to liquidate any other outstanding legal obligation of the financial period. The balance of the appropriations shall be surrendered.

Regulation 5.4. At the end of the twelve-month period provided in regulation 5.3 above, the then remaining balance of any appropriations retained will be surrendered. Any unliquidated obligations of the financial

period in question shall at that time be cancelled or, where the obligation remains a valid charge, transferred as an obligation against current appropriations.

The only exception is that the U.N. may retain peacekeeping funds for an additional four years if there are unresolved expenses related to the purpose of the appropriation. Regulation 5.5 provides for this qualified exception:

Regulation 5.5. Appropriations required in respect of obligations to Governments for troops, formed police units, logistical support and other goods supplied and services rendered to peacekeeping operations shall be retained beyond the twelve-month period provided for in regulation 5.3 if the requisite claims are not received or processed during the financial period to which they pertain. Those obligations shall remain valid for an additional period of four years following the end of the twelve-month period provided in regulation 5.3. At the end of the additional four-year period any unliquidated obligations shall be cancelled and the remaining balance of any appropriations retained will be surrendered.

Under Regulation 5.6, all transfers between appropriation purposes

(e.g., between the regular budget, individual peacekeeping missions, or the Capital Master Plan) must be approved by the General Assembly.

## Closed Peacekeeping Missions

Since 2003, the U.N. has made a practice of retaining surplus appropriations for U.N. peacekeeping operations that have been closed by the U.N. Security Council and of borrowing from this pool of money to finance other peacekeeping operations, international tribunals, and activities funded through the regular budget.<sup>2</sup> The Secretary-General argued that financial constraints necessitated using these credits as a cash reserve.

Because the U.N. has faced a reduced need for borrowing from closed peacekeeping missions in recent years, the Secretary-General proposed returning \$180.7 million of the \$230.7 million in credits owed to the member states. The Secretary-General also proposed retaining \$27.6 million “to manage cash shortfalls in active peacekeeping operations.”<sup>3</sup> In June 2011, the General Assembly approved this recommendation and implemented it in Resolution A/RES/65/293. On the assumption that these credits would be returned, the Secretary-General reported in January 2012 that the United Nations still owed the member states \$27.6 million in credits from closed peacekeeping operations

1. United Nations, “Financial Regulations and Rules of the United Nations,” *Secretary-General’s Bulletin*, May 9, 2003, at [http://www.un.org/ga/search/view\\_doc.asp?symbol=ST/SGB/2003/7&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=ST/SGB/2003/7&Lang=E) (accessed July 31, 2012).
2. For detailed analysis, see Brett D. Schaefer, “The U.N. Should Stop Ignoring Its Financial Regulations and Pay Its Debts to the Member States,” Heritage Foundation *Background* No. 2484, November 1, 2010, at <http://www.heritage.org/research/reports/2010/10/the-un-should-stop-ignoring-its-financial-regulations-and-pay-its-debts-to-the-member-states> (accessed July 31, 2012).
3. U.N. General Assembly, “Updated Financial Position of Closed Peacekeeping Missions as at 30 June 2010: Report of the Secretary-General,” A/65/556, December 14, 2010, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/65/556](http://www.un.org/ga/search/view_doc.asp?symbol=A/65/556) (accessed July 31, 2012).
4. U.N. General Assembly, “Updated Financial Position of Closed Peacekeeping Missions as at 30 June 2011: Report of the Secretary-General,” A/66/665, January 20, 2012, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/66/665](http://www.un.org/ga/search/view_doc.asp?symbol=A/66/665) (accessed July 31, 2012).

as of June 30, 2011.<sup>4</sup> Despite this report, a large part of the credits from closed peacekeeping missions, including credits owed to the U.S., has yet to be returned.<sup>5</sup>

This issue goes beyond the schedule of returning the credits to the principle that the U.N. should not retain any credits owed to the member states beyond the period necessary to settle outstanding accounts. Although the General Assembly previously has supported the Secretary-General's proposals to retain the credits from closed peacekeeping missions, most recently an amount totaling \$27.6 million, convenience is not sufficient justification for repeatedly overriding U.N. financial rules and regulations.

Additionally, in the discussions surrounding the decision to return the peacekeeping credits, the Secretary-General informed the Advisory Committee on Administrative and Budgetary Questions that "without a specific decision of the General Assembly requiring the return of surplus cash in closed peacekeeping missions, under the Financial Regulations and Rules the Secretary-General has neither a requirement nor a basis for making such a return."<sup>6</sup> Thus, the Secretariat regards inaction by the General Assembly or the member states as tacit instruction to retain credits.

Retaining surplus funds on an ad hoc basis is not a long-term solution to liquidity shortfalls for peacekeeping or other activities. If deemed

necessary, the General Assembly should address the peacekeeping cash crunch directly. The General Assembly has previously addressed the financial gap between needs and delays in member state contributions by establishing a Peacekeeping Reserve Fund of \$150 million. If this mechanism is insufficient or deficient, it should be reformed to address the situation.

Moreover, the General Assembly should take steps to prevent inaction or inattention from blocking the return of credits to the member states. Specifically, the General Assembly should clarify the financial rules and regulations to instruct the Secretariat that all credits should be returned automatically to the member states no longer than 12 months after of the end of the fiscal period for which they were appropriated unless instructed otherwise by the General Assembly or the member state to which the credits are owed.

### **The Tax Equalization Fund**

The 1946 Convention on Privileges and Immunities of the United Nations states that officials and other workers employed by the U.N. shall "be exempt from taxation on the salaries and emoluments paid to them by the United Nations."<sup>7</sup> Most U.N. member states abide by this provision and exempt their citizens from paying taxes on U.N. compensation. When ratifying the convention, however, the U.S. reserved the right to tax the earnings

of its nationals paid by the U.N. and the other international organizations in the U.N. system.

To address this issue, the U.S. and the U.N. devised a complex scheme intended to equalize the net pay of U.N. employees despite disparate national tax obligations. Specifically, the U.N. deducts a "staff assessment" from the "gross" remuneration of each U.N. employee, which is applied on a progressive scale. For U.S. tax-paying employees, the U.N. makes quarterly payments on estimated tax obligations to the relevant state and federal tax authorities on the employee's behalf. Discrepancies (overpayment or rebate) are resolved at the annual tax filing. The end result is that every U.N. employee has the same take-home pay or "net" remuneration regardless of his government's tax policies.

The staff assessment deductions go into the Tax Equalization Fund, the account created to handle these charges and credits in the U.N. These salaries are financed by member state contributions. Based on how much member states are charged for U.N. budgets, the TEF is apportioned and credited to all U.N. member states. For member states that do not charge taxes on the earnings of U.N. employees, the credit is applied directly against their U.N. budgetary assessments, lowering their required annual payment. For member states that tax U.N. earnings, such as the U.S., the amount of tax receipts from U.N. earnings is debited against their

5. Influencing this situation is the fact that U.S. law prohibits paying arrears on certain closed peacekeeping operations or, in some instances, to the regular budget due to specific withholding instructions under U.S. law. In applying the credits, the U.N. would first use them to offset outstanding obligations regardless of U.S. law. In other words, by settling these accounts in the U.N. books and applying these credits to the assessments, the U.S. would, in effect, be paying arrears that U.S. law prohibits. This situation could be resolved by instituting a practice of requiring the return of all credits to the U.S. Treasury before settling outstanding obligations or by allowing the credits to be applied to the arrears owed. The second option would require congressional action.

6. U.N. General Assembly, "Updated Financial Position of Closed Peacekeeping Missions as at 30 June 2011: Report of the Advisory Committee on Administrative and Budgetary Questions," A/66/713, February 12, 2012, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/66/713](http://www.un.org/ga/search/view_doc.asp?symbol=A/66/713) (accessed July 31, 2012).

7. Convention on the Privileges and Immunities of the United Nations, § 18(b).

base TEF credit. This process is explained in Regulation 4.11:

Tax Equalization Fund revenue shall be used to refund staff members for income taxes levied by Member States in respect of their United Nations remuneration. Obligations shall be established against the Tax Equalization Fund to cover the estimated liabilities in respect of the refunds made to staff members of those income taxes. If a Member State's credit in the Tax Equalization Fund is insufficient for this purpose, the shortfall shall be added to and recovered from assessed contributions due from that Member State in the subsequent financial period. Where income tax is levied on staff financed from sources of funds that do not contribute to the Tax Equalization Fund, the additional costs for tax reimbursement shall be borne by those sources of funds.

Any surplus is supposed to be applied to their U.N. assessments. Specifically, Regulation 4.12 states that "any balance on a Member State's tax equalization account after the obligations referred to in regulation 4.11 have been satisfied shall be credited against the

assessed contributions due from that Member State the following year."<sup>8</sup> However, for a number of years, the U.S. credit under the TEF was not applied to America's assessment, and the amount owed to the U.S. by the U.N. rose to over \$179 million by the end of 2009.<sup>9</sup> The U.N. stated that the TEF credit had not been applied because the U.S. had failed to instruct the U.N. on how it wished to utilize those funds. On February 9, 2011, Congress voted on legislation instructing the Administration to secure the return of that money from the U.N. In its effort to defeat the legislation, the Administration revealed that it had already allowed the U.N. to use \$100 million of the \$179 million for U.N. security upgrades, which would be paid for entirely by the U.S.<sup>10</sup> This left an unused balance of \$79 million in TEF credits owed to the U.S. in January 2011.

In direct reaction to this controversial decision, Congress enacted legislation instructing the Administration to report to the "Committees on Appropriations not later than May 1, 2012, on any credits available to the United States from the United Nations Tax Equalization Fund" and that "any such credits shall only be available for United States assessed contributions to the United Nations."<sup>11</sup>

The U.N. adjusted down the staff assessment and the gross

remuneration for 2012 to reduce the discrepancy with U.S. taxes. Thus, the size of the TEF credit owed to the U.S. in future years should be reduced. However, significant credits continued to accrue in 2011. The amount owed to the U.S. under the TEF was \$134 million as of the end of 2011. Earlier this year, the Administration instructed the U.N. to use \$13.1 million in TEF credits toward the regular budget, leaving a balance of \$120.9 million in TEF credits owed to the U.S.<sup>12</sup> It is unclear why the U.S. did not apply the remaining balance to current U.S. assessments.

In a newly released report, the U.S. Government Accountability Office suggested that the U.S. use the TEF credits to pay for its share (22 percent) of the \$430 million in projected cost for the renovation of U.N. headquarters if the General Assembly decides to pay for those cost overruns through an assessment.<sup>13</sup>

This action likely would run afoul of congressional intent. Public Law 112-74 clearly directs the Administration to apply the TEF credits to U.S. "assessed contributions," which are generally understood to be the U.N. regular, peace-keeping, and international tribunal budgets rather than extraordinary expenses. For example, the U.N. building renovation has a separate budget under the Capital Master

8. United Nations, "Financial Regulations and Rules of the United Nations."

9. Brett D. Schaefer, "The U.N. Should Pay What It Owes the U.S. from Its Tax Equalization Fund," Heritage Foundation *WebMemo* No. 3052, November 8, 2010, <http://www.heritage.org/research/reports/2010/11/the-un-should-pay-what-it-owes-the-us-from-its-tax-equalization-fund>.

10. Brett D. Schaefer, "Congress Should Investigate Administration's \$100 Million Gift to U.N. from Tax Equalization Fund," Heritage Foundation *WebMemo* No. 3155, February 15, 2011, [http://www.heritage.org/research/reports/2011/02/congress-should-investigate-administrations-\\$100-million-gift-to-un-from-tax-equalization-fund](http://www.heritage.org/research/reports/2011/02/congress-should-investigate-administrations-$100-million-gift-to-un-from-tax-equalization-fund).

11. 22 U.S. Code § 268a note (2012) (Contributions to International Organizations). For the text of the Public Law, see Public Law 112-74, note (Contributions to International Organizations), <http://www.gpo.gov/fdsys/pkg/PLAW-112publ74/pdf/PLAW-112publ74.pdf> (accessed July 31, 2012).

12. U.S. Government Accountability Office, *United Nations Renovations: Best Practices Could Enhance Future Cost Estimates*, GAO-12-795, July 2012, p. 19, at <http://www.gao.gov/assets/600/592921.pdf> (accessed July 31, 2012).

13. *Ibid.*



Plan, even though those expenses are assessed among the member states in the same manner as the regular budget.

This interpretation is bolstered by the underlying motivation of inserting the TEF language into Public Law 112-74, i.e., in response to the Administration's controversial decision to use the TEF to pay 100 percent of the costs of the security upgrades relating to the U.N. renovation. Moreover, the law explicitly states, "None of the funds made available in this Act for the United Nations Capital Master Plan may be used for the design, renovation, or construction of the United Nations Headquarters in New York in excess of the United States payment for the assessment agreed upon pursuant to paragraph 10 of United Nations General Assembly Resolution 61/251."<sup>14</sup> In other words, the law forbids using current appropriations to pay for cost overruns for the renovation. It is reasonable to assume Congress would similarly oppose using the TEF credits to pay for the renovation cost overruns.

### What the U.S. Should Do

The U.S. is the largest contributor to the U.N., paying 22 percent of the regular budget and over 27 percent of the peacekeeping budget. These assessments total more than \$2.5 billion annually. Considering this expense, the U.S. would be foolish to allow the U.N. to retain credits owed to the U.S. that could be used to offset current assessments. To address this situation:

- In accordance with U.N. financial rules and regulations, the U.S. should request that the U.N. return *all* credits owed from closed peacekeeping operations and the TEF to the U.S. Treasury or apply the credits to current assessments for the regular or peacekeeping budgets. Any complicating issues, such as prohibitions on payment of arrears, should be resolved promptly through congressional consultation and under no circumstance should the credits be used for alternative purposes without congressional approval.
- The U.S. Mission should also propose a formal change in the U.N. financial rules and regulations to instruct the U.N. Secretariat to return in full all cash surpluses available for credit to member states no later than 12 months after the end of the fiscal period for which they were appropriated unless specifically instructed to the contrary by a General Assembly resolution or the express written instruction from the member state to which the credits are owed.
- Congress should clarify that any credits returned to the U.S. by any international organizations should be returned to the U.S. Treasury. If the State Department wishes to use those funds for some purpose, it should seek them through the regular budgetary process.
- To prevent an accumulation of credits, Congress should adopt standard language that automatically reduces any appropriation for assessed contributions by the amount of outstanding credits owed to the U.S.
- Congress should clarify current law to specifically prohibit the State Department from permitting the use of credits from the TEF or closed peacekeeping operations for anything other than the originally appropriated purpose, e.g., the regular budget or the specific peacekeeping operation. It should specifically prohibit using the credits for cost overruns for U.N. headquarters renovation or other activities not originally included in the original proposal or to construct, plan, or otherwise support a new U.N. building, including but not limited to the purchase of the property.<sup>15</sup>
- The U.S. should also reexamine the reasoning behind and justification for maintaining the complex process created by the TEF to equalize U.N. wages. The State Department previously criticized the TEF as an overly complex arrangement subject to potential "fraud and abuse" that "produces no net gain for the United States."<sup>16</sup> Congress should request a GAO study on the benefits and costs of the staff assessment and the TEF along with recommendations of how to improve it and the implications of eliminating it.

14. Consolidated Appropriations Act, 2012, Public Law 112-74, § 7049(e).

15. Brett D. Schaefer, "Prohibit Federal Support for a New U.N. Building Until the U.N. Provides Detailed Information," Heritage Foundation *Backgrounder* No. 2606, September 12, 2011, <http://www.heritage.org/research/reports/2011/09/prohibit-federal-support-for-a-new-un-building-until-the-un-provides-detailed-information>.

16. U.S. Department of State and U.S. Information Agency, "DOS09: Change UN Administrative and Assessment Procedures," <http://govinfo.library.unt.edu/npr/library/reports/STATE9.html> (accessed August 2, 2012).

## Conclusion

Under U.N. financial rules and regulations, credits owed to the member states should be returned or applied to the assessments of the member states. Instead, the U.N. Secretariat has been allowed to retain these resources to fill financial shortfalls in the U.N. peacekeeping and regular U.N. budgets. Moreover, the Administration has demonstrated a willingness to use these credits to fund other programs, such as the \$100 million security upgrades to the U.N. building, without express congressional approval. This is inappropriate and undermines transparency and accountability in

the U.N. budgetary process both in New York and in Washington. The Administration and Congress should take steps to ensure that the U.N. promptly returns or applies credits owed to the member states to their assessments.

—*Brett D. Schaefer is Jay Kingham Fellow in International Regulatory Affairs in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation and editor of ConUNdrum: The Limits of the United Nations and the Search for Alternatives (Rowman & Littlefield Publishers, 2009).*