A BILLION DOLLAR DONATION: SHOULD THE UNITED NATIONS LOOK A GIFT HORSE IN THE MOUTH?

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I. INTRODUCTION

In an era of shrinking government budgets and a rapidly changing global economy, the private sector is surpassing the public sector in re-shaping the world.[1] Wealthy individuals are attempting to solve global problems by funding humanitarian projects, investing in developing countries, and donating funds to international organizations. The world is moving into an age of private diplomacy, where private citizens are using their wealth to change and influence international affairs.

In September 1997, Ted Turner, the founder of the Cable News Network and Vice Chairman of Time Warner Incorporated, began to conduct his own private diplomacy when he announced plans to donate one billion dollars in Time Warner stock to various United Nations (hereinafter "U.N." or "the Organization") causes.[2] Turner's pledge came as a response to the financial crisis of the U.N. and the United States government's failure to pay its membership dues to the U.N.[3] This billion dollar gift will be funded in $100 million installments over the next ten years.[4] This grant is the largest gift the U.N. has ever received from a private source,[5] and it may serve as a precedent which the U.N. can draw upon to attract more private sector funds.

This note will first explore the logistics of Turner's donation to the U.N. It will then examine the events which spawned Turner's donation—the

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[1] *See* Bob Deans, *Dollar Diplomacy: A New Twist in Using Enormous Private Wealth to Reshape the World*, THE ATLANTA JOURNAL-CONSTITUTION, Sept. 28, 1997, at D1, D4.

[2] *See The United Nations Foundation*, (visited Feb. 2, 1999) <http://www.soros.org/un/unf.htm>.

[3] *See* Ted Turner's $ 1 Billion Offer Lauded by U.N., *Supernews* (visited Oct. 12, 1997) <http://headlines.supernews.com/art....robto-story-b/businessturner.html>.

[4] *See The United Nations Foundation*, *supra* note 2.

[5] *See* Barbara Crossette, *UN Gives Its First Big Grants From Ted Turner Gift*, THE NEW YORK TIMES, May 20, 1998 (visited Feb. 2, 1999) <http://www.globalpolicy.org/finance/docs/turner.htm>.

financial crisis of the U.N. and the United States' refusal to alleviate the situation by paying its dues. Next, this note will evaluate the legal restraints that the U.N. Charter places on private funding to the U.N. and the methods used by non-governmental organizations to fund U.N. programs within these restraints. This note will also address the violations of the U.N. Charter by member states who have failed to pay their dues. Finally, this note will suggest that if the U.N. allows private donations to fund U.N. programs, the need for these contributions should be monitored carefully.

Although the U.N. is on a path to insolvency, complete financial reliance on private sources may not be the best solution. Allowing individuals, who are accountable only to themselves, to have an influence on the only truly democratic, international organization might be dangerous. Problems may arise if the U.N. has to rely on private sources so much that it begins to answer to private individuals and not member states. Further, by encouraging individual donations and corporate charity, the U.N. may undermine the responsibility of U.N. member states to pay their dues and remain accountable to the Organization.

II. FACTUAL BACKGROUND

A. *The Logistics of Turner's Gift*

While other donors have given more over their lives, Ted Turner's billion dollar pledge to the U.N. is the largest single donation ever made to any one organization.[6] Because global thinking has always been the key to Turner's success, the U.N. was a logical choice for his generosity.[7] Turner has always had a desire for world peace, and has thought that the U.N. is the crucial vehicle for achieving it.[8]

Rather than giving the billion dollars in a single sum, Turner has set aside the billion dollar amount in Time Warner Stock in order to make ten gifts of $100 million each year over the course of ten years.[9] Turner is using the stock as collateral to finance the gift. The value of these gifts may be less than $1 billion if Time Warner Stock drops off in value.[10]

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[6] *See* Adam Cohen, *Putting His Money Where His Mouth is, Turner Pledges $1 Billion to the U.N. and Urges the Rich to Give More to Charity*, TIME, Sept. 29, 1997, at 32.

[7] *See* Howard Fineman et al., *Why Ted Gave it Away*, NEWSWEEK, Sept. 29, 1997, at 29.

[8] *See id.*

[9] *See* Cohen, *supra* note 6, at 32.

[10] *See id.*

Because Turner wants to retain his influence in Time Warner, he is placing the shares of stock into a foundation, the U.N. Foundation (hereinafter "UNF"), and borrowing against the shares for the pledge. The UNF will manage and administer the $1 billion dollar donation.[11] The UNF plans to disburse $100 million a year to assist various U.N. causes.[12]

Turner is adamant that the donated money will not go towards the U.N.'s administration budget and bureaucratic expenses. In speaking of his donation, Turner stated, "this is not going to go for administration. This is only going to go for programs, programs like refugees, cleaning up land mines, peacekeeping, UNICEF for the children, and for diseases. . . ."[13]

While addressing the distribution of the billion dollar donation, the former U.S. Ambassador to the U.N., Bill Richardson, stated that no countries will have any political say in where the money is channeled because the UNF will work with individuals in the U.N. Secretariat to identify which programs will receive monetary assistance from Turner's gift.[14] U.N. agencies and directors of U.N. programs will compete for financial assistance by drafting proposals.[15] These proposals will be forwarded to the newly created U.N. International Partnership Trust Fund Office (hereinafter "UNFIP"), which will make the initial decision on which programs will qualify for funding from the UNF.[16] In order to qualify, the program must be consistent with U.N. policies, and it must have measurable results.[17] Only qualified projects are given to the UNF for further consideration. The UNF will spend the donation on approved programs at the rate of about $25 million a quarter.[18]

The UNF will be headed by Tim Wirth, a former United States Senator from Colorado, and the former U.S. Under-Secretary of State for Global

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[11] *See The United Nations Foundation, supra* note 2.

[12] The Foundation's top priorities include climate change, children's health and water purification, and women's and population issues. *See Foundations: Wirth Set to Disburse Turner's Gift to UN* GREENWIRE, American Political Network, Jan. 26, 1998.

[13] *Ted Turner Donates $1 Billion to U.N. causes, U.S. News Story Page CNN Interactive* (visited Sept. 19, 1997) <http://www.cnn.com/US/9709/18/turner.gift/>.

[14] *See The United Nations Foundation, supra* note 2.

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See* Barbara Crossette, *Spending Ted Turner's Money: State Department Aide Gets UN Job*, N.Y. TIMES, Nov. 20, 1997, at A14.

Affairs.[19] Wirth is a long time supporter of the environment, and he has a great deal of experience in global issues.[20] Wirth will be a voice both for reform of the U.N. and an advocate for raising money for the U.N.[21] He will also be part networker, drawing on the increasing number and strength of private organizations around the world.[22] In speaking about his reasons for appointing Wirth, Turner stated that, "Tim Wirth shares my vision for the future, in which the public and private sectors work side by side to improve global quality of life and rebuild the spirit of and support for the United Nations."[23]

In one interview, Mr. Wirth explained his reasons for leaving the State Department and taking on the challenge of being the President of the UNF.[24] He described his new position as an extraordinary opportunity to work with Turner to change the public's perception about the U.N.[25] Wirth explained that the UNF has four central missions it wants to undertake: "(1) to help U.N. [Secretary-General] Kofi Annan with reform efforts; (2) to demonstrate really good U.N. programs that work: children's health, population, environment, land-mine issues; (3) raise a lot more money . . . on the private side; (4) telling the [U.N.] story to Americans. Why should we be involved in the U.N.? How are we involved?"[26]

Wirth's primary goal for the UNF is to help reinvent the U.N.[27] He asserted that the U.N. is not "an entitlement program."[28] When asked how the money would be administered, Wirth responded, "This is not going to be a billion dollars that is put out on the stump in the middle of the night, and everybody comes and takes their percentage."[29] Rather, the board of the

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[19] *See* David Usborne, *US Environmental Chief Quits for UN Post*, THE INDEPENDENT NEWS, Nov. 21, 1997, at 16.

[20] *See id.*

[21] *See* Matthew Quinn, *TURNER FOUNDATION: Philanthropy Meets Environmentalism. Global Resume Suitable for Foundation Head; Environmental Activist and Former Congressman to Lead $1 Billion Effort*, THE ATLANTA JOURNAL-CONSTITUTION, Nov. 20, 1997, at 10A.

[22] *See* Crossette, *supra* note 18, at A14.

[23] *Id.*

[24] *See Interview with Tim Wirth on How to Reform the U.N.*, NEWSWEEK, Dec. 1, 1997, at 45.

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.*

UNF will set a few targets that it wants to accomplish, and it will work closely with the U.N. Secretariat.[30]

The U.N.'s response to the creation of the UNF has been extremely positive.[31] U.N. Secretary-General Kofi Annan responded to Turner's donation by saying that "[i]t is a wonderful gesture and I hope it is a sign of things to come. It shows his belief in the Organization and international cooperation and I hope it will inspire the governments to pay what they owe."[32] Kofi Annan's spokesman, Fred Eckhard, further praised the gift by stating that "[t]he moral boost given to the Organization exceeds the financial value of Ted Turner's gift. We are now all just smiling with happiness."[33]

Furthermore, U.S. leaders have also lauded Turner's donation, and have encouraged further support from the private sector to the U.N. Secretary of State Madeline Albright praised Turner by saying, "I think this reflects not only Ted Turner's brilliant approach to solv[ing] problems," but also "how the American people feel about the value of the United Nations."[34]

U.S. President Bill Clinton, in his address to the 52nd Session of the U.N. General Assembly on September 22, 1997, responded to Turner's donation by declaring:

> [T]he U.N. no longer can and no longer need go it alone. Innovative partnerships with the private sector, [non-governmental orgánizations], and the international financial institutions can leverage its effectiveness many times over. Last week, a truly visionary American, Ted Turner, made a remarkable donation to strengthen the U.N.'s development and humanitarian programs. His gesture highlights the potential for partnership between the U.N. and the private sector in contributions of time, resources and expertise. And I hope more will follow his lead.[35]

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[30] *See* Interview with Tim Wirth, *supra* note 24.

[31] *See Ted Turner's $1 Billion Offer Lauded by U.N., Supernews, supra* note 3.

[32] *Id.*

[33] *Id.*

[34] *See* Cohen, *supra* note 6, at 32.

[35] Bill Clinton, The 21st Century Will Challenge Our Security: the U.N. Must Be Prepared, Address to the U.N. General Assembly (Sept. 22, 1992), *available in* LEXIS-NEXIS, VITAL SPEECHES OF THE DAY, Oct. 15, 1997, Vol. 64, No. 1 Pg. 2-4.

With all the positive responses from U.N. officials and U.S. leaders stemming from Turner's donation to the U.N., Turner's gift may open the door for the U.N. to court more private sector support.

B. Financial Crisis of the U.N.

Turner's billion dollar pledge to the U.N. came about as a response to the U.N.'s budgetary crisis and the United States' failure to alleviate the crisis by paying its membership dues.[36] With a $272 million regular budget deficit reached by January 1998,[37] the U.N. is an organization on shaky financial grounds.

There are several reasons for the Organization's precarious financial condition. The primary cause of the U.N.'s fiscal nightmare has been continuing high levels of unpaid dues by member states.[38] Other contributors to the U.N.'s financial woes have been administrative inefficiency, waste and outdated practices of the 52 year old body.[39]

With a $272 million regular budget deficit, the U.N. has been seeking ways to alleviate the financial crisis.[40] On October 6, 1997, Under-Secretary-General Joseph E. Connor spoke to the Fifth Committee (Administrative and Budgetary) concerning the financial situation of the U.N.[41] He blamed the late and unpaid dues of member states for the budgetary deficit.[42] At the close of September 1997, unpaid dues totaled $2417 billion for the regular budget, peacekeeping and the International Tribunals.[43] While in years prior to 1997 unpaid regular budget dues were $267 million, for 1977 they were $382 million, and as of September 30, 1997, $649 million.[44] Connor highlighted that the largest contributor, the United States, owed seventy-seven percent of those debts; two of the remaining fourteen principal contributors owed nine percent; and all other debtors owed

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[36] *See The United Nations Foundation, supra* note 2.

[37] *UN: $65 Million to be Paid Soon to States Contributing Peacekeeping Troops and Equipment* M2 PRESSWIRE, Oct. 6, 1997, *available in* LEXIS, MARKET Library, IACNWS File [hereinafter "$65 Million"].

[38] *See id.*

[39] *See generally id.*

[40] *See id.*

[41] *See id.*

[42] *See id.*

[43] *See* $65 Million, *supra* note 37.

[44] *See id.*

fourteen percent.[45]

In order to offset the $272 million regular budget deficit in 1998, the U.N. had to "dip into" the $670 million peacekeeping fund.[46] This use of the peacekeeping fund is contrary to the fund's purpose, which is to reimburse countries for their contribution to peacekeeping missions.[47] Under-Secretary-General Connor has admonished that he "will not be able to juggle the books much longer."[48] The cash shortage has been worsened by the reduction in U.N. peacekeeping operations.[49] Those operations created the current financial crisis after their costs increased in the early 1990's.[50] Because of the decline in peacekeeping initiatives, the peacekeeping budget for 1998 is expected to fall to $800 million, down from its highest point of $3 billion in 1994.[51] Moreover, the cash reserves to fund the peacekeeping missions have fallen as well. Connor stated that, "We cannot borrow peacekeeping funds when there are no peacekeeping funds to borrow."[52]

In light of these facts, Connor stated to the Fifth Committee that "continuing high levels of unpaid dues were undermining the Organization's financial stability and liquidity."[53] In response to Connor's speech, a majority of the Fifth Committee also blamed the lack of payments by member states for the U.N.'s continued financial crisis.[54]

U.N. Secretary-General Kofi Annan has warned that although the U.N. has been accused of "crying wolf in the past to claim bankruptcy, the Organization currently faces perhaps the most serious cash crisis in its history."[55] Annan stated that the financial crisis was deeper than ever as a result of the United States' failure to pay more than a billion dollars in U.N. arrears.[56]

The cash-strapped status of the U.N. is hurting humanitarian programs

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[45] *See id.* See Appendix I for the debt assessments of the top fifteen contributors to the Regular Budget and Peacekeeping missions.

[46] *See $65 Million, supra* note 37.

[47] *See id.*

[48] *See* Colum Lynch, *UN Faces Its Biggest Financial Crisis; With U.S. Debt, Other Nations Must Close Gap*, THE BOSTON GLOBE, Dec. 21, 1997, at A35.

[49] *See id.*

[50] *See id.*

[51] *Id.*

[52] *Id.*

[53] *See $65 Million, supra* note 37.

[54] *See id.*

[55] *U.N. Financial Crisis "Most Serious" Ever: Annan*, AGENCE FRANCE PRESSE, Nov. 25, 1997, *available in* LEXIS, NEWS Library, AFP File.

[56] *See id.*

affecting the safety, health, and welfare of millions of victims of disease, hunger and war around the globe.[57] The financial crunch of the U.N. has forced the Organization to cut back in areas ranging from peacekeeping to human rights investigations.[58]

U.N. corruption investigators have had to delay visits to investigate allegations of waste and fraud.[59] War crime prosecutors in The Hague and Rwanda have been forced to ask nations to provide them with dozens of lawyers and investigators for free.[60] One U.N. team, which investigates allegations of genocide in the Congo, had its budget cut by one third, thereby forcing it to do without the work of a military analyst and a data base which are necessary for its inquiry.[61]

Moreover, the U.N.'s World Health Organization in Geneva has had its budget shrink in real terms over the past two years while being asked to take on the fight to prevent the spread of a new generation of diseases such as the Ebola virus and mad cow disease.[62]

Another agency, the World Meteorological Organization, has had its budget slashed, and was in near danger of closing its doors.[63] The Meteorological Organization is a small U.N. agency that alerts governments of radioactive waste in the case of nuclear disaster in Russia or Western Europe.[64] The U.N. owed $3 million to the agency.[65] The agency, however, was rescued from financial ruin by a fund-raising campaign by American and European diplomats in Geneva.[66] Yet, even after the rescue, the Agency faces a tenuous future with its slashed budget.

Furthermore, the U.N. Security Council has not authorized a U.N. peacekeeping operation in almost two years.[67] Secretary-General Kofi Annan has only been willing to strive for minor initiatives.

In the near future, projects intended to overcome poverty and to quiet conflicts in developing countries will most likely be cut. For example, the

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[57] *See* Deans, *supra* note 1, at D4.
[58] *See* Lynch, *supra* note 48, at A35.
[59] *See id.*
[60] *See id.*
[61] *See id.*
[62] *See id.*
[63] *See* Lynch, *supra* note 48, at A35.
[64] *See id.*
[65] *See id.*
[66] *See id.*
[67] *See id.*

U.N.'s economic commission canceled a study of African national resources and energy.[68] In sum, funds flowing into U.N. programmes and agencies have strikingly fallen even though more and more needs are being identified.[69]

Strapped with a $2.5 billion debt, the U.N. has avoided a total shutdown only with the funding of member states who are paying their dues in full and on time. But now, the U.N. is almost at the brink of a shutdown. According to David Birnbaum, former U.S. ambassador to the U.N. on reform and budgetary matters, "The U.N. continues to function at the sufferance of a number of other countries, particularly the Europeans, because they pay and many of them pay on a timely basis. If they were to demand what the U.N. owes them, you would rapidly see the place go into a state of virtual paralysis."[70]

C. The United States' Shaky Relationship with the United Nations

Turner intended his billion dollar pledge to the U.N. to send a message to the United States government that it should pay off its debt to the U.N.[71] The U.N. claims that it is owed $1.5 billion in general and peacekeeping assessments from the United States.[72] The United States' nonpayment of the dues reflects the general budget constraints on American diplomacy. Between 1993 and 1996, U.S. spending on foreign aid and diplomacy dropped twenty-two percent to $13.5 billion.[73] This drop in spending accounted for the closing of thirty-two embassies and consulates and the restricting of American assistance around the globe.[74]

The United States Congress has refused to pay back the debt owed to the U.N. unless the U.N. overcomes bureaucratic and diplomatic inefficiency.[75] In 1996, the U.S. government withheld its dues to prevent the reelection of former Secretary-General Boutros-Boutros Ghali and to demand that the U.N.

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[68] *See id.*

[69] *See Year in review: 1996*, U.N. CHRONICLE, No. 4, Dec. 22, 1996, at 35, 36.

[70] Lynch, *supra* note 48, at A35.

[71] *See* Leopold, *supra* note 2.

[72] *See Keeping the U.N. Hostage*, JAKARTA POST, 1997 WORLDSOURCES ONLINE, INC., Sept. 25, 1997, *available in* 1997 WL 13540055.

[73] *See* Deans, *supra* note 1.

[74] *See id.*

[75] *See Keeping the U.N. Hostage*, *supra* note 72.

enact reforms to reduce the bureaucratic waste.[76] The withholding of dues worked. On January 1, 1997, Boutros-Boutros Ghali was replaced by Kofi Annan.[77]

Since Annan took over as Secretary-General, he has laid out reform plans to cut down on inefficiency.[78] For example, the U.N's budget has been cut by $120 million, and the $1.2 billion out of a total budget of $2.5 billion it spends on administration is expected to be clipped by a third.[79] Moreover, some $200 million will be put into U.N. development programs every two years as a result of consolidating measures, without any changes to current expenditures.[80]

In order to consolidate, Annan has grouped U.N. activities into four "clusters": peace and security, humanitarian affairs, economic and social affairs and development operations.[81] All the agencies under Mr. Annan, which exclude independent specialized agencies, will be placed in one of the clusters. One would hope that these groupings will reduce overlap.[82]

In the Secretariat, there have been significant staff and rules cuts. In 1996, the headquarters staff in New York, Geneva and Vienna was trimmed by one-tenth to 9,000.[83] Furthermore, with computerization, the U.N.'s gigantic paper machine no longer operates at full throttle. Computer interpretation and translation can now be done off-site. This saves on air-fares and hotel bills.[84]

Despite these proposed reforms by Secretary-General Annan, the United States government still has not paid its debt to the U.N. The Senate Foreign Relations Committee, under Committee Chairman Jesse Helms (D-N.C.), will not authorize payment until these reforms meet the U.S. requirements in full. On Monday, September 22, 1997, President Bill Clinton made an offer on behalf of the United States to the U.N. to pay some $900 million of the

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[76] *See id.*

[77] *See id.*

[78] *See id.*

[79] *See* Marcia Christoff Kuropp, *What Ted Gets for his Money.* THE ASIAN WALL ST. J., Oct. 2, 1997, at 8, *available in* 1997 WL-WSJA 14693903.

[80] *See id.*

[81] *See United Nations Towards Reform*, THE ECONOMIST, Feb. 15, 1997 at 38, *available in* LEXIS, NEWS Library, ECON File.

[82] *See id.*

[83] *See id.*

[84] *See id.*

arrears.[85] The U.S. offer came with many strings attached, such as sweeping U.N. reforms and reducing U.S. dues.[86] The United States wants to cap its contributions for peacekeeping expenses at twenty-five percent and its contributions for the regular budget expenses at twenty percent.[87]

In speaking of the proposed U.S. reduction in contributions, Secretary of State Madeleine Albright stated,

> This would reduce the [U.N.'s] financial dependence on the U.S. It reflects the great economic strides that have been made by many nations around the world — nations that can afford to pick up a larger share of responsibility and should do so.[88]

However, the United States Congress adjourned in November 1997 without authorizing payment of the $900 million dollars proposed by President Clinton. Thus, the United States has still refused to alleviate the financial crunch felt at the U.N.

Because of the financial crisis facing the U.N. and because the United States, which is the largest contributor to the U.N., has refused to owe up to its financial obligation, the U.N. may have to seek more monetary support from the private sector.

III. LEGAL BACKGROUND

A. The Legal Restraints of Turner's Donation under the U.N. Charter

Turner is legally restrained from directly funding United Nation programs by Article 17 paragraph 2 of the U.N. Charter (hereinafter "Charter").[89] Article 17(2) states that "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."[90]

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[85] *See id. See also* Steve Holland, *U.N. Arrears at Top of Agenda for Clinton, 1997 Reuters Limited* (visited Oct. 7, 1997) <http://www.yahoo.com/headlines/970922/politics/stories/un_4.html>.

[86] *See* Holland, *supra* note 85.

[87] Madeleine Albright, U.S. Policy and Reform Agenda on the U.N., Speech, (Aug. 18, 1997), *available in* LEXIS, NEWS Library, DSTATE File.

[88] *Id.*

[89] U.N. CHARTER art. 17, para. 2.

[90] *Id.*

Additionally, Article 3 under the Charter prevents a private individual from being a member of the Organization. Article 3 states that the "original Members of the U.N. shall be the states which, having participated in the U.N. Conference on International Organizations at San Francisco, or having previously signed the Declaration by U.N. of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110."[91]

Article 4(1) provides that "[m]embership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations."[92] Because Turner is not a member within Article 4(1), he is prohibited from bearing the expenses of the U.N.

To work within these legal restraints, Turner established the UNF to work closely with the U.N. Secretariat to determine how his donation will be disbursed and what programs the UNF will support. The UNF is legally construed under U.S law as a public charity.[93]

The UNF is based in Washington, D.C., and has a professional staff of about forty employees.[94] Turner has appointed an International Board of Directors to oversee the UNF and evaluate proposals from U.N. agencies.[95] Turner will be the chairman of the board.[96]

Because Article 17 prohibits the U.N. from directly receiving Turner's donation for its expenses and projects, the U.N. created the UNFIP to receive the donation and spread it through the Organization.[97] Therefore, the UNF will not deal directly with the United Nations.[98] Instead, it will cooperate with the UNFIP.

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[91] U.N. CHARTER art. 3.

[92] U.N. CHARTER art. 4, para. 1.

[93] A charitable foundation is an "organization dedicated to education, health, relief of the poor, etc.; organized for such purposes and not for tax purposes under § 509(a) of the Internal Revenue Code (I.R.C.). Furthermore, § 501(c)(3) of the I.R.C. governs the tax exempt status of a foundation organized for charitable purposes.

[94] *See* Betsy Pisik, *Gift Keeps on Giving Headaches; Turner's $1 Billion Tied up in Red Tape*, THE WASHINGTON TIMES, Jan. 19, 1998, at A1; *see also* Craig Turner, *World Perspective; Philanthropy; Worldly Plans to Make Most of Gift to U.N.; Media Magnate Ted Turner's UNF Will Disburse His $1 Billion Donation. Money May Help Fund Secretary-General's Bid to Remake Organization*, THE LOS ANGELES TIMES, Jan. 24, 1998, at A2.

[95] The directors include Ruth Cardoso of Brazil; Graga Machel, a former education minister from Mozambique; Emma Rothschild; Maurice Strong; Andrew Young; and Muhammad Yunus. *See* Crossette, *supra* note 5.

[96] *See id.*

[97] *See* Turner, *supra* note 94.

[98] *See* Pisik, *supra* note 94.

The UNFIP will solicit and evaluate proposals from U.N. agencies and programs.[99] The UNFIP is stationed in the Secretariat building of the U.N., but its budget is financed by the UNF and not the member states.[100] The UNFIP has an advisory committee, which will consider proposals and offer guidance. To gain approval the programs must be consistent with U.N. policies and must have measurable results.[101] Once proposals have been approved, the UNF will release the money to the UNFIP, which in turn will disburse it to the approved programs.[102]

As long as the UNF does not set U.N. priorities, the UNF will probably not violate Article 17, paragraph 2 of the Charter. Timothy Worth has asserted that the UNF does not foresee itself funding the massive "disaster-response programs" that the member states usually support.[103] Thus, whether the UNF actually follows through with its plans only to fund UNFIP approved programs remains to be seen.

B. The Member States' Legal Obligation to Pay Under the U.N. Charter

According to Article 17(2) of the Charter, it is the duty of the General Assembly to apportion its expenses among the Members of the United Nations.[104] Article 17 is the only Article of the Charter covering budgetary authority. The general purpose of the Article is "the vesting of control over the finances of the Organization, and the levying of apportioned amounts of the expenses of the Organization in order to carry out the functions as an organization as a whole."[105] Thus, the General Assembly has the power to impose an obligation on the member states to pay the expenses of the Organization.

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[99] *See id.*

[100] *See id.*

[101] See *The United Nations Foundation*, *supra* note 2; *see generally* pp. 7-8.

[102] *See The United Nations Foundation*, *supra* note 2.

[103] *See id.*

[104] Article 17(2) of the Charter states that "the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly," U.N. CHARTER art. 17, para. 2.

[105] *See* Certain Expenses of the U.N. (Article 17, Paragraph 2 of the Charter), 1962 I.C.J. 151 (July 20). This advisory opinion was handed down after the request for an advisory opinion was made by the General Assembly of the U.N. on December 20, 1961. The Court was asked to interpret the phrase "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter. The General Assembly made this request after several states refused to contribute their financial share to the Organization. *See id.* at 152.

In 1946, the General Assembly adopted the recommendation of the Preparatory Commission that this apportionment of expenses should be made " 'broadly according to capacity to pay.' "[106] Thus, the costs are apportioned among member nations by a complex formula which is supposed to reflect their capacity to pay. This principle has been reaffirmed in several resolutions, the most recent one on December 23, 1993.[107] This resolution established an Ad Hoc Working Group to review " 'all aspects of the scale methodology with a view to make it stable, simpler, and more transparent, while continuing to base it on reliable, verifiable, and comparable data . . . the principle of capacity to pay as the fundamental criterion in determining the scale of assessments.' "[108]

The Preparatory Commission observed that it was " 'difficult to measure capacity merely by statistical means, and impossible to arrive at any definite formula. Comparative estimates of National Income would appear *prima facie* to be the fairest guide.' "[109] The Commission also considered each member's income per head, temporary wartime dislocation and capacity to secure foreign currency.[110] An expert standing committee, geographically balanced, was created to review and recommend the scale of assessments annually.[111] The General Assembly, however, has at times ordered the standing committee to make recommendations which are inconsistent with "capacity to pay."[112]

To finance the regular budget, the Committee determined that the member states should pay a share rather than a rate of contributions.[113] The

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[106] *See* Simon Broadbent, *Financing the United Nations: International Taxation Based on Capacity to Pay*, 157 NATIONAL INSTITUTE ECONOMIC REVIEW 77-89 (July 1996) (quoting the Report of the Preparatory Commission of the United Nations, U.N.: New York 1946). This article by Broadbent examines what is meant by "capacity to pay," how it is applied in practice, and to what extent capacity to pay is actually used in the current system. It draws mostly on the Report of the Ad Hoc Intergovernmental Working Group on the Implementation of the Principle of Capacity to Pay (A/49/897), U.N., New York: 8 May 1995. This Intergovernmental Working Group was established by the U.N. General Assembly, of which Broadbent was a member. The opinions in Broadbent's article are his own.

[107] *See id.* at 77.

[108] *Id.* at 77 (quoting the December 23, 1993 resolution).

[109] *Id.* at 77 (quoting the 1946 Preparatory Commission recommendation that established apportionment "according to capacity to pay." (emphasis in original).

[110] *See id.* at 77.

[111] *See id.* at 77.

[112] *See id.*

[113] *See* Broadbent, *supra* note 106, at 78.

Committee reduced the share of every member of the United Nations whose per capita income was below the $1,000 per head threshold level.[114] Of the member nations, only three exceeded the per capita income threshold.[115] As a consequence, the United States, one of these three members, encountered a 49.89 percent assessment.[116] In response, the U.S. tried to obtain a ceiling of one third.[117] This cap was not put into effect until 1954—after the U.S. had been assessed at 39.89 percent for a period of years.[118] The U.S. currently experiences a twenty-five percent ceiling rate.[119]

Throughout its membership history, the U.S. has tried to bargain for a lower assessment. Recently, in the Fifth Committee debate on the scale of assessments in the 52nd session of the General Assembly, the U.S. sought to lessen its assessment from the twenty-five percent ceiling rate to twenty-two percent in 1998 and to twenty percent by 2000.[120] However, the U.S. failed to convince the Assembly, which determined that lowering the ceiling would be "unreasonable and contrary to the principle of equity," to lower its ceiling rate of twenty-five percent.[121] Under the scale of assessments passed by the Assembly for the years 1998-2000, the U.S. and nine other countries will contribute eighty percent of the budget, estimated at $2.532 billion.[122]

On the other end of the scale, a minimum contribution share by member nations—0.04 percent—was also established at the outset of the Organization.[123] This minimum share was lowered to 0.02 percent in 1974 and reduced again in 1977 to 0.01 percent of the regular budget.[124] The last reduction occurred in 1997, when the floor rate was lowered to 0.001

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[114] *See id.*

[115] *See id.*

[116] *See id.*

[117] *See id.*

[118] *See id.*

[119] *See id.*

[120] See *U.N.: Post of Deputy Secretary-General, New Scale of Assessments, 98-99 Budget, Anti-Terrorist Bombings Convention*, M2 PRESSWIRE, Dec. 29, 1997.

[121] *Id.*

[122] The nine other countries which are responsible for eighty percent of the budget are: Japan, Germany, France, Italy, United Kingdom, Russian Federation, Canada, Spain and the Netherlands. *See id.*

[123] *See* Broadbent, *supra* note 106, at 78.

[124] *See id.* .01 percent of the regular budget amounted to $120,000 in 1995. *See id.*

percent. Because of the lower rate, 30 members paid at the minimum in 1998.[125]

Peacekeeping initiatives, which cost nearly three times as much as the regular budget in 1995, are financed through a separate system.[126] In this system member countries are separated into four groups, according to their political and economic status on joining the U.N.[127] Member nations, however, can voluntarily promote themselves into a higher group.[128] The groups are assessed as follows: Group D, which is composed of the poorest countries, is assessed at ten percent of their regular budget share;[129] Group C is assessed at twenty percent and Group B is assessed at their regular budget shares;[130] Group A, which consists of the five permanent members of the Security Council, bears the expenses of the 80-90 percent relief given to Groups C and D. This relief acts as a surcharge on Group A's regular budget shares, which in 1995 came out to be approximately twenty-five percent.[131] Because peacekeeping expenditures have fallen in 1996 and 1997, this surcharge has been reduced.[132]

Other changes to the capacity to pay system have been suggested throughout the years of the Organization, usually at the recommendation of members who thought that they were bearing an unfairly high share of the financial burden of the Organization.[133] Developing countries criticized using national income because they thought it took an insufficient account of their financial position.[134] Over a period of time, there has been an increase in relief from dues for countries below the income average, but not for countries like the U.S. who fall above this average.[135]

For most of the member nations, the assessment rates are trivial.[136] For example, the tax rates for members range from 0.001 percent of historic

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[125] *See U.N.: Post of Deputy*, *supra* note 120.

[126] *See* Broadbent, *supra* note 106, at 79.

[127] *See id.*

[128] *See id.*

[129] *See id.*

[130] *See id.*

[131] The five members of the Security Council are the People's Republic of China, France, the United Kingdom, the United States, and Russia. *See id.* at 80.

[132] *See* Broadbent, *supra* note 106, at 80.

[133] *See id.*

[134] *See id.*

[135] *See id.*

[136] *See* Broadbent, *supra* note 106, at 77.

income for poorer countries, through 0.03 percent for main contributors, up to 0.3 percent for a few nations.[137] In monetary terms, the poorest countries pay as little as 0.1 cent per head in U.S. dollars to the U.N. each year, while the richest pay more than $7 per head.[138] The U.S. contributes about $5 a head.[139] Furthermore, the U.N.'s 1995 regular budget was $1.2 billion a year and peacekeeping costs were another $3.5 billion.[140] This amounted to approximately 0.025 percent of world income.[141] This amount seems insignificant when compared to national tax rates, which can run between twenty and forty percent, and to other international taxes.[142]

Because member states' contributions are a small part of each country's income, it appears that unwillingness rather than incapacity is the reason for the failure to pay dues in full and on time.[143] For the U.S. and other delinquent members, this unwillingness stems from several issues: skepticism about the U.N.'s role in international governance, bureaucratic waste and inefficiency, and a desire to put a ceiling on U.N. spending.[144]

Despite their grievances, these countries signed the U.N. Charter and agreed to abide by Article 17, and therefore any refusal to pay or payment with conditions attached is a violation of Article 17.[145] Thus, the U.S. and other debtor nations are shirking their legal obligation under the U.N. Charter to pay their dues and thereby support the U.N.

C. United States' Violation of Article 19 of the U.N. Charter

The Bill authorizing conditional payment of U.N. dues proposed by the United States Congress requires the U.N. to essentially nullify Article 19 of

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[137] *See id.*

[138] *See id.*

[139] *See id.*

[140] *See id.*

[141] *See id.*

[142] *See id.* For example, the European Union taxes its members anywhere from one to two percent. *See id.*

[143] *See* Broadbent, *supra* note 106, at 77.

[144] *See id.*

[145] The U.S.'s conditions include the General Assembly bringing down the U.S.'s assessed contributions for the U.N.'s total budget and for peacekeeping expenses, eliminating 1.000 posts from the budget, and receiving assurances that U.S. auditors can gain access to the U.N.'s financial books. *See* Jim Lobe, *U.S. - U.N.: Annan Calls Bill on U.N. Debts "Progress,"* INTER PRESS SERVICE, June 19, 1997, *available in* LEXIS, NEWS Library, CURNEWS File.

the Charter which calls for the loss of voting rights in the General Assembly for non-payment of dues.[146] Thus, the U.S. wants to maintain its voting rights in the General Assembly even though it refuses to pay its arrears.

Article 19 of the U.N. Charter provides that "A Member of the U.N. which is in arrears in the payment of its financial contributions to the Organization 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 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."[147] Because it appears that the U.S. is reaching the time limit on nonpayment of dues and because many of the member states are not sympathetic to the United States' gripe about unfair apportionment of dues, the United States is in jeopardy of losing its voting rights in the General Assembly.

The Under-Secretary for Management, Joseph E. Connor, has stated that member states are "reminded of their obligations through" several means, "including notes, telephone calls and formal written requests."[148] Several member states have been formally advised that they were approaching the level of debt that would result in penalties under Article 19 of the Charter.[149] Connor asserted that "the Secretariat should not serve as a bill collecting agency," but it does try to notify member states of their obligations before they reach the level of Article 19 sanctions.[150]

The General Assembly is not timid about imposing the penalty called for by Article 19. "[I]n 1995 twenty-two countries lost their voting rights in the General Assembly."[151] In 1996, thirty-five countries lost their voting rights in the General Assembly for failing to pay their dues.[152] And, as of October 1997, seven countries had lost their voting rights because of

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[146] U.N. CHARTER art. 19.

[147] *Id.*

[148] *See $65 Million, supra* note 37.

[149] *See id.*

[150] *See id.*

[151] Thalif Deen, *U.N.: 35 Nations Lose Their Voting Rights at U.N.*, INTER PRESS SERVICE, Mar. 4, 1996, *available in* LEXIS, NEWS Library, CURNEWS File.

[152] The countries included: Afghanistan, Bolivia, Burundi, Central African Republic, Chad, Comoros, Dominica, the Dominican Republic, Equatorial Guinea, Gambia, Georgia, Grenada, Guatemala, Guinea, Guinea-Bissau, Hati, Iraq, Lativa, Liberia, Madagascar, Mali, Mauritania, Niger, Rwanda, Sao tome and Principe, Sierra Leone, Somalia, Suriname, Syria, Tajikistan, Uzbekestan, Vanuatu, Yemen and Yugoslavia. *See id.*

nonpayment of dues.[153]

With regards to countries failing to pay their dues, many member states in the General Assembly have expressed support for the "slogan" of "making payments in full, on time and without conditions."[154] In the meeting of the Fifth Committee (Administrative and Budgetary), on October 6, 1997, many members of the Committee expressed their concerns and disdain for the failure of member states to pay their dues.[155] For example, the representative from Syria, Tammam Sulaiman, asserted that reform proposals should not be an alternative to the payment of arrears.[156] He further noted that "most of the developing countries had paid their dues and arrears. How could that be reconciled with the non-payment of dues by the superpowers?"[157]

Anuson Chinvanno of Thailand, stated that "member states' failure to pay their dues frustrated U.N. reforms and were the root cause of some of the inefficiencies in the Organization."[158] He further insisted that "[a]ll member states should pay their dues in full, on time and without strings attached."[159]

Kaxuo Watanabe of Japan asserted that "all member states must meet their obligations, including paying their financial contributions in full, on time and without conditions. The Organization's current crisis had nothing to do with the scale of assessments. It was, instead, linked to the fact that certain member states had not to date paid their contributions."[160]

The United States has and continues to try to negotiate a smaller scale of assessments for itself because this scale is not carved in stone. However, it must persuade the other member states to adjust the scale. The U.S. must convince the other States that the apportionment practices of the U.N. are unjust, and that a new scale of assessments must be adopted.

Because of the U.S. Congress' failure to pass a bill which would pay the dues owed to the U.N., American diplomats engaged in controversial

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[153] The seven countries which lost their voting rights in 1997 are: Bosnia-Herzegovina, Central African Republic, Gambia, Iraq, Sao Tome and Principe, Somalia, and Yugoslavia. *See $65 Million, supra* note 37.

[154] *See id.*

[155] *See id.*

[156] *See id.*

[157] *See id.*

[158] *Id.*

[159] *Id.*

[160] *Id.*

negotiations over the U.N.'s 1998-1999 budget had trouble persuading other countries to reduce the U.S. share of the budget.[161] This proposed reduction in assessments is the main condition set by Congress for the payment of U.S. dues.[162] The United States has failed to cut its U.N. assessment from twenty-five to twenty-two percent.[163] American diplomats blame congressional leaders who killed the bipartisan agreement to repay the U.N. over the next five years.[164] Thus, the U.S. is fighting an uphill battle in trying to convince countries like China, who pay only .74 percent of the U.N. budget despite its being the world's eighth-largest trading country, to pay more.[165]

Further, because the U.S. wants to maintain its voting rights while refusing to pay its share of the debt, the U.S. is essentially nullifying Article 19. While addressing the financial crisis of the U.N. and the United States' failure to pay its dues, U.N. Secretary-General Kofi Annan stated,

> Let me make it clear: the United States dues are the result of an open process amongst all member states to which the United States has freely agreed. The United States plays a major part in deciding how the U.N. is run. But it cannot be run without the dues of its members.[166]

Furthermore, from a broader perspective the United States is running the risk of weakening the foundations of the legal order in the U.N. by dodging its international obligations and treating its commitments with indifference. The United States' actions may facilitate more countries to withhold their payments of dues. For example, Italian Ambassador Paolo Fulci, whose country paid $60 million dollars for its 1997 dues, stated that "many countries that pay in full and on time are getting sick and tired of doing so."[167] He suggested that in 1998, countries such as Italy could delay payment to precipitate a U.N. shutdown, which he argued might bring

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[161] *See* Lynch, *supra* note 48, at A35.

[162] *See id.*

[163] *See id.*

[164] *See id.*

[165] *See id.*

[166] Kofi Annan, *Restoring the Faith, Excerpts From the Speech of U.N. Secretary-General Kofi Annan*, U.N. CHRON., No. 4, Vol. 33; Dec. 22, 1996, at 2.

[167] *U.N. Financial Crisis "most Serious" Ever: Annan*, *supra* note 55.

Washington to its senses.[168] Fulci insisted that "we must create a dramatic crisis. If we don't, we will continue like this."[169]

Because of the United States' failure to abide by its legal obligation to pay dues to the U.N. without conditions and the possibility of other nations following suit, the U.N. may have to look more to the private sector for financial support.

D. The Private Sector Working within the Legal Restraints of the U.N.

Private sector involvement in the financial affairs of the U.N. is not unprecedented. The private sector, through non-governmental organizations (hereinafter "NGOs") has played an active role in U.N. activities throughout the fifty-two year history of the Organization. The U.N. has a history of working actively with the private sector to fund humanitarian projects.

Article 71 of the U.N. Charter provides that "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence."[170] Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the U.N. concerned."[171] Non-governmental organizations include "any international organization which is not established by intergovernmental agreement."[172] Article 71 has formalized a relationship between the U.N. and NGOs,[173] and thus, given NGOs permission to pursue involvement in the U.N.[174]

Today, NGOs are heavily involved in many U.N. organizations dealing with environmental, social and human rights issues.[175] During the 1990's NGO involvement in U.N. activities has expanded. This expansion has occurred because national governments have been open to a more active

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[168] *See id.*

[169] *Id.*

[170] U.N. CHARTER art. 71.

[171] *Id.*

[172] *See* Steve Charnovitz, *Two Centuries of Participation: NGOS and International Governance*, 18 MICH. J. INT'L L. 183, 200 (1997) (citing E.S.C. Res. 1/4, Feb. 16, 1946 at para. 8).

[173] *See id.* at 258.

[174] *Id.*

[175] *See id.* at 278.

NGO role.[176] Thus, while governments are downsizing and privatizing, they are relying more heavily on NGO participation.[177] Secretary-General Kofi-Annan stated, in an address to a U.N. conference of NGOs in September of 1997, that NGOs have now "become indispensable partners of the U.N. in preventive diplomacy, in humanitarian work, in development and in human rights."[178]

In some of the world's war zones, the U.N. has worked with several national and international NGOs such as the International Committee of the Red Cross (ICRC), Doctors without Borders, Save the Children, Human Rights Watch, Amnesty International and the Red Crescent.[179] With regards to landmine-clearance in Afghanistan, the U.N. has worked close with six Afghan NGOs and one international NGO.[180] NGOs have also cooperated with the U.N. on human rights issues and on rebuilding post civil war civilizations in Cambodia, El Salvador, and Guatemala.[181] NGOs have also provided assistance to the U.N. High Commission for Refugees (UNHCR) with 400 NGOs creating 1,200 projects in more than 120 countries at a cost of $264 million in 1997.[182]

From an international legal perspective, some scholars have argued that there is a possible downside to NGO participation in U.N. affairs.[183] They have asserted that if not monitored carefully, NGOs' goals might interfere with U.N. priorities.[184] For NGOs to play a legitimate role in U.N. governance, they need to demonstrate their representativeness, democracy and accountability.[185] Ambassador Razali Ismali of Malaysia, President of the General Assembly, has warned that the "universal norms and values of the [U.N.] could be undermined by newly-mushroomed NGOs which are fictitious fronts for corporate political lobbying."[186] Although NGOs contribute a valuable amount to social, economic and humanitarian fields,

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[176] *See id.* at 284.

[177] *Id.*

[178] Thalif Deen, *U.N.: U.N. Lauds NGOs for Humanitarian Work*, INTER PRESS SERV., Sept. 14, 1997, *available in* LEXIS-NEXIS NEWS Library, CURNEWS File.

[179] *See id.*

[180] *See id.*

[181] *See id.*

[182] *See id.*

[183] *See* Deen, *supra* note 178.

[184] *See id.*

[185] *See id.*

[186] *Id.*

U.N. members are still debating on how much power and decision-making authority the U.N. should give to NGOs.

Thus, it appears from NGO participation in U.N. affairs that the U.N. is open to the possibility of private sector support when agencies and programs are unable to survive on public support alone. However, because of the dangers of unaccountability and a lack of representativeness, which may be inherent in privately funded NGOs, the U.N. has been reluctant to completely share its power with NGOs and the private sector.

IV. SHOULD THE U.N. BE FUNDED BY THE PRIVATE SECTOR?

Given the financial crisis of the U.N. and the member states' failure to uphold their legal obligations, using money from private individuals to fund the U.N. might put the U.N. back on the path to solvency and efficiency. Since the financial resources of billionaires and corporations have grown, there seems to be an interesting opportunity for private individuals to play a more significant role in the U.N. For much of the fifty-two-year history of the U.N., governments have borne the cost of U.N. activities, but since these governments are failing in their responsibilities, private benefactors now have a chance to step in to play a more pivotal role.

Although a private individual under Article 17 of the Charter is legally restrained from bearing the expenses of the organization and from participating in General Assembly financial decisions, the private sector is finding ways to financially support the U.N. NGO participation in U.N. governance and the UNF, which will funnel $1 billion to U.N. humanitarian programs, are examples of such private sector support.

Along with NGOs, Ted Turner's UNF serves as a precedent of using private funding to support U.N. programs. His actions may be drawn upon to attract more private support from wealthy individuals and corporations for the U.N. Private and corporate charity obtained through the UNF may help alleviate the immediate financial worries of many U.N. humanitarian programs.

As long as the UNF is not setting U.N. priorities, there is no legal problem with the U.N. accepting the $100 million a year donation. From the guidelines set out by the U.N. Charter, member states are the only ones who can set budgetary priorities.[187] However, voluntary contributions by

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[187] *See U.N.: UNDP Launches Fund to Attract Private Donations*, INTER PRESS SERV., Sept. 24, 1997.

individuals can be accepted by the Secretary-General if they are used for purposes consistent with program objectives set out by the General Assembly.[188] With regards to voluntary contributions by the private sector, U.N. Spokesman Fred Eckhard has stated,

> As long as that activity was approved of by the General Assembly, there is no reason why you cannot turn up the volume a little bit with additional contributions, either by individual governments or, as in this case, by private citizens. A donor can give voluntary contributions for a certain kind of activity, and we can accept in that spirit. Once we accept it, then we become the ones who decide specifically how the money is spent.[189]

Thus, from Eckhard's statement, it appears that U.N. guidelines would not permit the UNF to have any say on how the money is spent. However, the mechanics of Turner's UNF seem to suggest otherwise. The UNF, with Ted Turner at the helm, gives Turner the last say in where the money is distributed. The UNFIP, which is located in the Secretariat building, submits proposals to the UNF. The UNF then selects what programs it will support. If the UNF approves the request, it will then transfer money to the UNFIP.

It may be argued that the UNF will only be selecting from proposals approved by the General Assembly, and therefore the General Assembly is still setting priorities. However, if Turner's UNF makes it clear it will not fund certain projects, then the General Assembly probably will not submit proposals for those programs. Further, the fact that the UNF has to approve the request, indicates the UNF will have the final say on what programs and agencies receive funding. Therefore, although Turner has stated that he has no intention of trying to interfere with the policies and priorities of the U.N., the creation of the UNF may threaten the precise "outcome he wants to avoid, a group of outside individuals, accountable only to themselves, playing a major role" in U.N. affairs.[190]

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[188] *See id.*

[189] *Id.*

[190] Phyllis Bennis, *Turner's Gift Could Hurt U.N.*, NEWSDAY, Oct. 6, 1997 at A31. Phyllis Bennis is a fellow of the Institute for Policy Studies, and author of CALLING THE SHOTS: HOW WASHINGTON DOMINATES TODAY'S U.N., Interlink Publishing Group, 1996.

There may be a further danger, as in the case with NGO participation in U.N. affairs, of lack of accountability and democracy in U.N. governance. In allowing individuals such as Turner to have a say in U.N. affairs, the U.N. may be giving away its power to individuals who represent no one's interests but their own. If power leaks away from the governing body of the U.N. into the hands of unaccountable private individuals, then important decisions on peace and war might escape government control altogether.[191] Furthermore, private individuals might also undermine their own country's foreign policy and relationship with the U.N. Diplomacy might become impossible when private individuals push their own foreign agendas which may be contrary to their own governments.

There is another downside to Turner's billion dollar gift to the U.N. His donation might further undermine the responsibility of member states to support the U.N. financially. The $100 million that Ted Turner intends to contribute to the U.N. over the next ten years is more than the amount all but six out of 185 governments—U.S., Japan, France, Great Britain, Italy and Russia owe to the U.N. this year for regular dues and peacekeeping expenses.[192] If governmental obligations for funding U.N. agencies devolves to private donors able to select their favorite programs, there is a risk that governments will only be held responsible for funding the U.N. Secretariat itself.[193]

The U.N. may no longer be an organization of "one country, one vote," but it may evolve into a vehicle for channeling individual wealth and agendas. By using private money to fund the U.N., member states may continue to shirk their responsibility to remain accountable to the organization. Thus, private funding may further weaken the multilateral democracy of the U.N. because private individuals' money may count more than member states' votes.

Of course, U.N. officials are not looking this gift horse in the mouth because it will most likely keep some dying agencies alive. However, it may also let member states who have not paid their dues off the hook. If funding for Turner's chosen humanitarian programs, already among the U.N.'s most popular, were suddenly no longer in a distress, then the U.N.'s overall

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[191] *See* Walter Russell Mead, *Governments Lose Power as Activists Take Action*, THE PLAIN DEALER, Oct. 1, 1997 *available in* 1997 WL 6616237. Walter Mead is a presidential fellow at the World Policy Institute.

[192] *See U.N.'s Richardson Says No Politics in Turner's Gift*, *supra* note 11.

[193] *See* Bennis, *supra* note 190, at A31.

financial crisis would appear less urgent.[194] The refusal of countries like the U.S. to pay their overdue debts would appear less abominable.

The U.S. has already lauded private-sector donations instead of paying its dues. President Bill Clinton stated that Turner's donation "highlights the potential for partnership between the U.N. and the private sector, and I hope more will follow his lead."[195] This statement, coming from the head of the United Nation's largest deadbeat member, is a dangerous thought for the U.N.[196] If a few more donors give to the U.N., countries like the United States might be completely off the hook.

Even with a billion dollar donation, it is also questionable whether this money or any private contribution would have an impact on U.N. reform. The U.N. has been described as a "world government without authority, a think tank without a policy, and a commander-in-chief without an army."[197] Even if permitted to use private funding, there is no guarantee that the General Assembly will be able to allocate these additional resources more efficiently than membership dues.

Alternative solutions to the U.N. cash crunch have been suggested. One answer may be internal reform. Cutting down on waste and bureaucracy may provide more of an impact than does private money on the efficiency of U.N. programs. With Kofi Annan at the helm, the U.N. has already began implementing such reforms.[198] Another solution is to offer incentives and disincentives for member states to pay their dues and to strictly enforce the penalties outlined in Article 19 of the Charter. Yet another suggestion for alleviating the financial strain is, instead of calling for private charity, the U.N. could implement a designated U.N.-support tax on global financial transactions through which most of the wealth of the world is generated.[199] Even a 0.1 percent tax on cross-border capital flows would generate a substantial amount to cover the U.N. annual budget. Thus, there are alternative solutions to the financial problems of the U.N. other than channeling private charity through it.

Despite alternative solutions and the possible risks of private individuals, accountable only to themselves, exercising an influence over the U.N., there

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[194] *See id.*

[195] Clinton, *supra* note 35, at 6.1

[196] *See* Bennis, *supra* note 190, at A31.

[197] Kuropp, *supra* note 79, at 8.

[198] *See generally* Section I.C, *supra.*

[199] *See* Bennis, *supra* note 190, at A31.

are positive aspects of accepting private money to fund the Organization. For example, private donations like Turner's gift could become a significant source of funds for Secretary-General Kofi Annan's goal to remake the U.N. for the twenty-first century.[200] Annan would like to see the U.N. become an "international conscience on human rights, a problem-solving forum on cross-border issues such as global warming and drugs and arms trafficking; and a helpmate to poor countries."[201] To accomplish these goals, though, he needs money. Because Annan has pledged to adhere to a no growth budget for at least three years, and because he is not receiving the needed money from member states, Turner's UNF, which could be enlarged by contributions from other donors, could be an alternative source of money.[202]

Furthermore, the private sector could prove to be an important source of financial support for the U.N. given steady decline in voluntary contributions from the public sector to core resources.[203] This decline in government assistance has hindered the ability of the U.N. funds and programs.[204] Furthermore, many governments are channeling far more humanitarian aid to non-governmental organizations in their own countries rather than to multilateral agencies.[205] For example, the United States in 1993 distributed seventeen percent of its humanitarian assistance money to U.S.-based NGOs while withholding U.N. dues.[206] That percentage rose to thirty percent in 1995, and it has continued to rise.[207]

Thus, private money may be the logical alternative to many U.N. programs' cash-strapped status. Some organizations have already employed mechanisms to attract private sector money. For example, the U.N. Development Program (UNDP), responding to Turner's private gift, has initiated a Global Sustainable Development Fund to elicit private sector contributions.[208] UNDP Administrator Gus Speth stated that the "Global

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[200] *See* Turner, *supra* note 94, at A2.

[201] *Id.*

[202] *See id.*

[203] *See* Prachuab Chaiyasan, Foreign Minister of Thailand, *UN: U.N. Must Address Challenges of Globalization*, MR PRESSWIRE, Sept. 30, 1997, *available in* 1997 WL 14464649.

[204] *See id.*

[205] *See* Deen, *supra* note 178.

[206] *See id.*

[207] *See id.*

[208] *See U.N.: UNDP Launches Fund to Attract Private Donations*, *supra* note 187.

Fund will operate with minimal bureaucracy, and will use earmarked funds to support development projects in the neediest countries."[209] Speth disclosed that the U.N. was setting out a " 'new development revolution,' " which will attract private donations with specific projects.[210]

The U.N. High Commissioner for Refugees received $25 million in 1993 from American financier and philanthropist George Soros to help refugees in Bosnia.[211] The U.N. accepted $68,000 in 1995 and 1996 mainly from Americans who sent in checks to cover their share of the U.S. debt to the U.N.[212] UNICEF, the U.N. children's fund, received more than $300 million (one-third of its 1996 budget) in private donations.[213]

Another argument for private sector support is that it will structure the U.N. more like a business rather than an inefficient bureaucracy. One of the advantages of private money being used for U.N. causes is that Turner and other benefactors have been raised in a "culture of cutting out waste."[214] They may find it easier to slash costs and avoid bureaucracy.[215] Thus, the U.N. may be able to learn from the private sector on how to run more efficiently. Former United States Ambassador to the U.N., Bill Richardson, addressed the Fordham University School of Law on the issue of U.N. cooperation with the private and commercial sector.[216] Richardson stated, "The U.N. can run more businesslike. It can have more contact with corporations . . . [w]e should have an international integrated approach to development issues based on private sector concepts.[217]

However, some scholars have argued that the U.N. is "fundamentally not a business and probably never could be."[218] An organization like the U.N.

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[209] *Id.*

[210] *Id.*

[211] *See* Colum Lynch, *After Turner's $1 Billion, Euphoric U.N. Sees Future of Gifts*, THE BOSTON GLOBE, Sept. 20, 1997, at A3.

[212] *See id.*

[213] *See id.*

[214] Victor Keegan, *Can Turner Move the World's Wealth?* THE MILWAUKEE JOURNAL SENTINEL, Sept. 28, 1997 at 6 *available in* 1997 WL 12740030.

[215] *Id.*

[216] *See* Ambassador William B. Richardson, *Address: The U.N., The United States, and U.S. Foreign Policy*, 20 FORDHAM INT'L L.J. 1511, 1519 (June 1997). (This Address was presented at Fordham University School of Law on April 10, 1997. Bill Richardson was the U.S. Permanent Representative to the U.N.).

[217] *Id.*

[218] Tony Jackson, *Battle of the Bulge: Improving Efficiency at the United Nations is a Never-Ending Struggle*, THE FINANCIAL TIMES (LONDON), June 30, 1997, at 14.

finds it difficult to assess its results. "In a business, the planning cycle has three phases: (1) set the strategic objectives, (2) allocate resources and (3) measure the outcome."[219] The U.N. has trouble with phase 3 because "its system of performance measurement rests on the number of reports and meetings, rather than by what they accomplish."[220] Member states mostly determine how money is spent and therefore they are always the stumbling block to an efficient U.N.

If the U.N. continues to accept private sector support, it should only be used for U.N. humanitarian projects. Turner has recognized the wastefulness of the U.N. administration, and therefore he has earmarked his donation solely for humanitarian causes rather than the general budget of the administration. However, even designating the private money strictly to humanitarian projects will not guarantee that it will not be used to bear the costs of the administration, for there are no bright lines between humanitarian programs and administrative costs.

Moreover, private sector funds should be additional to and must not replace the member states' dues and official development assistance. The U.N. should be able to receive funding to support General Assembly approved programs, but the U.N. must also find ways to make member states pay on time and without conditions, and thus remain accountable to the Organization. Furthermore, the U.N. needs to monitor its dependence on private charity so that it never has to answer to private individuals instead of its members.

V. CONCLUSION

The bottom line is that the U.N. needs money. Whether the U.N. receives it in a legitimate manner from member states depends on those members following through with their legally binding obligations. The U.N. cannot survive with its members withholding their dues or attaching conditions to them. The U.N. needs the support from its members.

If member states are not going to accept these responsibilities, then the U.N. may be forced to court private sector support from individuals such as Ted Turner. Although privatizing the U.N., which is a democratic organization based on the theory of "one country, one vote", may allow the private sector to have an influence over the decisions of the Organization, what is

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[219] *Id.*
[220] *Id.*

the alternative? Let the U.N. spiral into bankruptcy?

If the need for private sector support is monitored carefully, the U.N. might be able to create an effective partnership with the private sector as it has with NGOs. However, this private sector support should be supplemental and not replace membership dues, nor should it ever undermine the responsibility of member states.

APPENDIX I

MEMBER STATES OUTSTANDING CONTRIBUTIONS: REGULAR BUDGET, PEACEKEEPING & INTERNATIONAL TRIBUNAL

Contributors Ranked By Contribution Assessment	Total Debt as of 2-15-97	% Share of Debt
United States	561,481,215	0.49
Japan	166,684,838	0.15
Germany	48,248,071	0.04
France	0	0
United Kingdom	33,195,354	0.03
Italy	0	0
Russia	45,478,867	0.04
Canada	0	0
Spain	25,348,876	0.02
Brazil	23,254,277	0.02
Netherlands	0	0
Australia	0	0
Sweden	0	0
Ukraine	43,877,467	0.04
Belgium	10,757,297	0.01
All Other Member States	181,648,023	0.16
Total	1,139,974,285	1

UN Debt assessments calculated in U.S. dollars
Data supplied by UN Information Center