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## **How Should We Fund the War Against the Islamic State? | Commentary**

*By Louis Fisher*

The decision to commit U.S. forces against the Islamic State raises a number of fundamental questions that have received inadequate attention. Several issues involve constitutional principles that need to be publicly debated and resolved. Directly at stake is the appropriation power of Congress, the degree to which U.S. taxpayers should cover the cost, and the authority of all lawmakers—not merely members of designated committees—to decide funding decisions.

When Congress passed the continuing resolution on September 19, the last section provided funds to train and equip vetted elements of the Syrian opposition. One subsection permits the Secretary of Defense to “accept and retain contributions, including assistance in-kind, from foreign governments to carry out activities as authorized by this section.” Those funds “shall not be available for obligation until a reprogramming action is submitted to the congressional defense committees.” This provision presents three important questions. How should the war be funded? Should foreign contributions go to the Defense Department or the Treasury Department, to be later appropriated by Congress? Should funding the war be decided by designated committees or the entire Congress?

On the first point, foreign governments should not only help fund this military operation but should pay most of the cost. Yet we are unaware of any government making such a pledge. The war against the Islamic State, also known as ISIS or ISIL, will cost hundreds of billions of dollars and could reach a trillion dollars if it continues year after year. That cost should not be borne alone by U.S. taxpayers. The Islamic State threatens countries in the Middle East, Europe, and England much more than the United States. Those countries, and others, should commit substantial funds to cover most of the cost.

Recall the actions of the Bush administration in 1990 when it prepared for military operations against Iraq. It solicited from other governments a financial commitment to largely fund the war. Of the estimated cost of \$61.1 billion, allies pledged almost \$54 billion, or more than 80 percent. Major donors included Saudi Arabia, Kuwait, the United Arab Emirates, Japan, Germany, and South Korea. There is no reason for the United States, with a national debt of \$18 trillion that continues to climb, to be the principal nation to pay for military action against the Islamic State.

Second, the continuing resolution of Sept. 19 states that foreign contributions will go to the Secretary of Defense. In 1990, the Bush administration adopted the same policy. Financial assistance from other nations would go directly to the Defense Department as “gifts,” to be later allocated as the administration determined. In a floor statement, then-Senator Robert C. Byrd protested that the administration’s position would have allowed the President “to circumvent the constitutional powers of the Congress to exercise its responsibilities over the purse.” He insisted that financial contributions from other countries be placed in the Treasury Department, subject to later appropriation by Congress. That basic constitutional procedure was adopted in 1990 and should be followed with funding the war against the Islamic State.

Third, the continuing resolution explains that the Defense Department may submit “a reprogramming or transfer request to the congressional defense committees.” Reprogrammings involve shifting funds within an appropriations account; transfers involve shifting funds from one appropriations account to another. It has been the practice of the executive and legislative branches to engage in reprogrammings and transfers to permit agencies to make needed adjustments in the middle of a fiscal year.

This process can be, and has been, abused by allowing agencies to make financial commitments that need action by the full Congress. Subcommittees and committees who review reprogrammings and transfers recognize that agencies will improperly attempt to shift money to programs (1) that had been previously omitted or deleted by Congress, (2) had been specifically reduced by Congress, (3) were never presented to or considered by Congress, and (4) were intended to commit the country to expensive, multi-year expenditures. Those actions need approval by the entire Congress. The decision to fund the war against the Islamic State should be made through the regular appropriations process, involving full committee hearings and floor debate, not through committee review of reprogrammings and transfers. In committing funds to fight the war against the Islamic State, the executive and legislative branches must comply with basic constitutional principles.

*Louis Fisher is scholar in residence at the Constitution Project and a visiting professor at College of William and Mary Law School. Previously he worked for four decades at the Library of Congress with Congressional Research Service and the Law Library. His books include “Presidential War Power” (3d ed. 2013) and “The Law of the Executive Branch: Presidential Power” (2014).*