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Congress Should Investigate Administration's \$100 Million Gift to U.N. from Tax Equalization Fund

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Last year, the United Nations reported that it was holding \$179 million owed to the United States from the U.N.'s Tax Equalization Fund (TEF) because the U.S. had failed to instruct the U.N. on how it wished to dispose of those funds. On February 9, 2011, Congress held a vote 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 that would be paid for entirely by the U.S.

Congress should press the Administration for details about this decision, examine whether the Administration had the authority to approve this transfer, and consider the implications of this decision for current and future efforts by Congress.

Beyond Negligence. The \$179 million owed to the U.S. from the TEF¹ had accumulated for years despite the fact that, under U.N. financial rules and regulations, the money should be reimbursed at the end of each fiscal year.² In fact, the U.N. had previously observed this rule and reported that a TEF credit had been applied to the U.S. regular budget assessment in 1997.³ The failure of the U.N. to dispose of the millions owed to the U.S. in subsequent years in the same manner was due only to the fact that the U.S. had failed to instruct the U.N. on how it wished to dispose of those funds.⁴

The State Department has yet to explain why U.S. officials did not seek reimbursement for the TEF credit owed to the U.S. as had been done pre-

viously. At best, this failure represents negligence on the part of the State Department with regard to its fiduciary responsibilities.

Since late 2010, congressional offices have been seeking additional information from the State Department about the TEF and the Administration's intentions for the funds owed the U.S. The issue gained publicity when House Majority Leader Eric Cantor's (R-VA) "YouCut" Web site included "Obtain Refund of Funds Owed to the U.S. by the U.N. Tax Equalization Fund" as one of three options to cut government spending.⁵ It won the "YouCut" vote, and as a result, Representative Ileana Ros-Lehtinen (R-FL) introduced the United Nations Tax Equalization Refund Act of 2011 to seek the return of the TEF funds. Because the legislation was scheduled to be voted on under suspension of the rules, passage required two-thirds of all votes. Despite receiving support from 259 Members, it did not pass.

However, the introduction of the legislation led Esther Brimmer, Assistant Secretary of State for International Organization Affairs, to admit in an interview that the State Department had already given the U.N. permission to use \$100 million of

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the TEF funds for security upgrades. The State Department confirmed this in a February 9 letter to Ros-Lehtinen, stating that the \$100 million had been transferred to the U.N. and that the TEF surplus owed to the U.S. was “now approximately \$80 million.”⁶

Questions Congress Should Ask. State Department officials have acted unethically—and perhaps illegally—in giving the \$100 million in TEF funds to the U.N. To determine the facts, Congress should ask:

- *Who gave the U.N. permission to use the \$100 million from the TEF, and when did they give it?* Under Secretary of State for Management Patrick Kennedy stated, “In this case the United Nations notified the State Department that it intended to use [TEF funds] for security enhancement. Since the money was already in their hands, the U.S. had no objection to the use in the upgrade.”⁷ However, the U.N. did not use this money for years because it lacked U.S. authorization to do so. This past practice by the U.N. strongly implies that the State Department gave specific authorization for it to use the funds. Who gave the autho-

rization? When was it given? Why was Congress not immediately informed of the decision?

- *Under what legal authority did the State Department justify its decision?* The TEF money was originally authorized and appropriated by Congress as part of America’s assessment for the U.N. regular budget. However, the Administration and the U.N. have argued that the security upgrades that the TEF funds are supposed to pay for are solely a host country responsibility. If this is the case, then the TEF-financed security upgrades cannot be part of the U.N. regular budget—at best, they are a voluntary contribution to the U.N. The State Department has yet to identify the legal authority and justification for its decision to authorize the U.N. to use the TEF funds for a purpose different from the purpose for which Congress originally authorized and appropriated the funds.
- *What is being paid for with the \$100 million?* Discussions about further security upgrades at the U.N. have been ongoing for many months, perhaps years. There were major disagreements about what upgrades were necessary, how to

1. The 1946 Convention on Privileges and Immunities of the United Nations states that officials and those employed by the U.N. shall “be exempt from taxation on the salaries and emoluments paid to them by the United Nations.” Most U.N. member states abide by this provision and exempt their citizens from paying taxes on U.N. compensation. The U.S., however, when ratifying the convention, reserved the right to tax the earnings of its nationals. To avoid having U.S. nationals “penalized” by receiving salaries that were *de facto* lower than the salaries received by other U.N. employees that were not taxed by their governments, the U.S. and the U.N. created the TEF in 1955. For details, see 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, at <http://www.heritage.org/research/reports/2010/11/the-un-should-pay-what-its-owes-the-us-from-its-tax-equalization-fund>.
2. The Financial Regulations and Rules of the United Nations state that “any balance on a Member State’s tax equalization account [TEF] 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.”
3. George Russell, “U.S. Footing \$100M Bill for U.N. Security Upgrade,” FoxNews.com, February 9, 2011, at <http://www.foxnews.com/world/2011/02/09/footing-m-security-upgrade> (February 15, 2011).
4. A 2010 financial statement reported that the U.N. retained a “cumulative surplus for the United States of America [from the TEF] at the end of biennium 2008–2009 amounting to \$179,010,326” that was “payable to the United States of America pending instructions as to its disposition.” See United Nations, “Financial Report and Audited Financial Statements for the Biennium Ended 31 December 2009 and Report of the Board of Auditors, Volume I,” A/65/5/Vol.1, at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/468/08/PDF/N1046808.pdf?OpenElement> (February 15, 2011).
5. See Representative Eric Cantor, “YouCut,” at <http://www.majorityleader.gov/YouCut> (February 15, 2011).
6. Press release, “Ros-Lehtinen Says Administration Ignores Will of American People by Giving ‘100 Million Dollar Gift Card’ to United Nations,” Committee on Foreign Affairs, U.S. House of Representatives, February 9, 2011, at http://foreignaffairs.house.gov/press_display.asp?id=1713 (February 15, 2011).
7. Russell, “U.S. Footing \$100M Bill for U.N. Security Upgrade.”

implement them most practically, and how to pay for them. Estimates from last fall indicated that the upgrades would cost \$50 million.⁸ Four months later, the figure has doubled to \$100 million with no explanation or justification.

- **Who approved the \$100 million project, and where are the project development records?** The U.N. General Assembly has not approved the TEF-financed security upgrades, and the State Department has yet to provide a detailed project plan to Congress to justify its decision. Under what authority is the U.N. using the TEF money? Who is overseeing the project? Has the plan been subject to independent scrutiny? Has there been a competitive bid process?
- **Why is the U.S. paying 100 percent of the cost of the upgrades?** The U.S. pays 22 percent of the costs of the \$1.8 billion Capital Master Plan (CMP), which includes significant security upgrades. Why are the new upgrades not being included in the CMP? In other words, why did the State Department acquiesce to paying \$78 million more than it would have paid if these upgrades had been included as part of the CMP? If the new security upgrades are indeed a host country responsibility, there should be evidence that this principle has been applied elsewhere (for example, Kenya paying 100 percent of the costs for security around U.N. facilities in Nairobi or Ethiopia paying for security around U.N. facilities in Addis Ababa). Moreover, since the host country responsibilities would be limited to areas surrounding the U.N., the State Department should be required to prove that none of the \$100 million will go toward security upgrades inside the U.N. building or on the grounds.
- **How much oversight will the U.S. have over these funds and how they are spent?** The State Department is arguing that, unlike with the CMP, the U.S. should pay 100 percent of the cost of these security upgrades. If these upgrades are a host country responsibility and the U.S. is footing the bill, the U.N. should not be allowed to prevent

the U.S. from overseeing the plans and books on project.

More That Congress Can Do. In the aftermath of the State Department's \$100 million gift to the U.N., the State Department is acting as if nothing improper occurred. In response, Congress should:

- Demand full access to or, if necessary, subpoena all relevant documents and communications between State and the U.N. relating to the decision to "repurpose" the TEF money.
- Request a formal legal opinion from the Congressional Research Service on whether the State Department has the authority to let international organizations use funds appropriated by Congress for purposes unrelated to those authorized by Congress or in defiance of congressional instruction.
- Hold hearings on the State Department's decision to "repurpose" the TEF funds and on the proposed U.N. security upgrades.
- Instruct the Government Accountability Office (GAO) to conduct a formal investigation of the proposed security upgrades to be funded by the \$100 million to assess whether they comply with accepted U.S. procedures and past practice of host country governments in paying for security around U.N. facilities.
- Request a GAO report on the how the TEF functions, including an audit of the TEF accounts. GAO should be asked to determine the formula used for the TEF and why the U.S. has been substantially overcharged in recent years, identify deposits made to the TEF and debits drawn from it, examine how TEF rebates to the U.N. member states are determined and how they are applied, determine whether they comprise a subsidy to the regular budget assessments of the member states, and provide recommendations for reforming the TEF, including its possible elimination.

Congress's Crucial Role. Congress has a role to play in U.S. policy toward international organizations. The Administration's decision to "repurpose" the TEF funds implies that the State Department

8. George Russell, "U.N. Ignores Risk of Terror Attack, New York City Says," FoxNews.com, September 17, 2010, at <http://www.foxnews.com/world/2010/09/16/exclusive-ignores-risks-terror-attack-new-york-city-says> (February 15, 2011).

believes that, once congressionally authorized and appropriated funds go to international organizations, it no longer has to abide by congressional authorization, instruction, or intent. This has profound implications. If the State Department can “repurpose” funds once they go to an international organization, that authority can be used to circumvent or ignore current or future prohibitions imposed by Congress.

If Congress wishes to retain the power of the purse and its ability to direct how U.S. taxpayer dol-

lars are used, it should not take the Administration’s actions in “repurposing” the \$100 million in funds owed to the U.S. from the U.N. Tax Equalization Fund lightly.

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