

MOVING THE AMERICAN EMBASSY IN ISRAEL TO JERUSALEM: CHALLENGES AND OPPORTUNITIES

HEARING

BEFORE THE
SUBCOMMITTEE ON NATIONAL SECURITY
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
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CONTENTS

Hearing held on November 8, 2017	Page 1
WITNESSES	
The Hon. John Bolton, Senior Fellow, American Enterprise Institute	
Oral Statement	5
Written Statement	7
The Hon. Dore Gold, President, Jerusalem Center for Public Affairs	
Oral Statement	14
Written Statement	16
Mr. Morton Klein, President, Zionist Organization of America	
Oral Statement	24
Written Statement	26
Dr. Michael Koplow, Policy Director, Israel Policy Forum	
Oral Statement	49
Written Statement	51
Mr. Eugene Kontorovich, Professor of Law, Northwestern University	
Oral Statement	55
Written Statement	57
APPENDIX	
Statement for the record of Ambassador Daniel Kurtzer, submitted by Ranking Member Lynch	88

MOVING THE AMERICAN EMBASSY IN ISRAEL TO JERUSALEM: CHALLENGES AND OPPOR- TUNITIES

Wednesday, November 8, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 2154, Rayburn House Office Building, Hon. Ron DeSantis [chairman of the subcommittee] presiding.

Present: Representatives DeSantis, Duncan, Amash, Foxx, Hice, Comer, Lynch, Welch, and DeSaulnier.

Also Present: Representatives Jordan, Zeldin, Ross, Mast, Grothman, Meadows, and Issa.

Mr. DESANTIS. The Subcommittee on National Security will come to order.

Without objection, the chair is authorized to declare a recess at any time.

In 1995, Congress passed the Jerusalem Embassy Relocation Act, which states that Jerusalem is the capital of Israel, that it should remain an undivided city, and that the American Embassy should be relocated from Tel Aviv to Jerusalem. Yet, for more than 20 years, U.S. Presidents have signed waivers for stalling the Embassy move.

To this day, 50 years after the liberation and reunification of Jerusalem, the State of Israel, one of America's strongest allies, is the only nation in the world in which the American Government refuses to locate its Embassy in the host nation's chosen capital.

Now, as a candidate for President, Donald Trump promised to move the Embassy to Jerusalem, and he has reaffirmed that commitment since taking office. And there are good reasons why the President will follow through with his commitment.

For one thing, U.S. policy should recognize Jerusalem as Israel's capital because Jerusalem has been the capital of the Jewish people for thousands of years and is the beating heart of modern Israel. Why should we reject the chosen capital city of a close ally?

Second, Israel's stewardship of Jerusalem's holy sites has been tremendous, especially regarding religious freedom. During the Arab occupation of the Old City of Jerusalem, between 1949 and 1967, Jews were systematically discriminated against and Christians were treated as second class citizens. Most of the Old City's synagogues were destroyed or desecrated. Under Israeli sov-

ereignty, religious freedom is the rule, and the holy sites, Christian, Jewish, and Muslim, are treated with care and respect. The disrepair that plagued Jerusalem under Arab occupation has given way to a flourishing city that is one of the world's crown jewels.

Third, following through with the commitment to move the Embassy will demonstrate American leadership. Leaders in the Middle East respect the strong horse, and acting with decisiveness to defend American interests and to stand by a close ally is far more preferable to defaulting on a key promise like past leaders have done.

Fourth, the Embassy can be relocated to one of the sites in Jerusalem that the U.S. already controls. This can be as simple as changing the sign on one of the existing consulates. For example, the consulate annex in Arnona combined eventually with the adjacent Diplomat Hotel can be a sizeable complex that provides adequate security. That the annex in Arnona straddles the 1949 armistice line also counsels in its favor as a potential site.

The Trump administration has delayed moving the Embassy in light of its efforts to pursue a peace deal between Israel and the Palestinian Arabs, but there are incremental steps that the Trump administration could take in the meantime.

The State Department should allow Americans born in Jerusalem to list Jerusalem/Israel on their passports. The U.S. Ambassador should make a point to conduct at least part of his workweek from Jerusalem, and the American consulates in Jerusalem should report to the American Embassy in Israel, not directly to the State Department.

Now some say the U.S. can't move its Embassy to Jerusalem because that enrage elements of the so-called Arab street and provide a pretext for acts of terrorism. And who knows? That may be true, but does it make sense to shirk from doing what is right for fear of what our enemies might do?

With the advent of the Trump administration, the U.S.-Israel relationship is probably stronger than it has ever been. Our countries have shared security interests, common cultural ties, and mutually beneficial economic relationships. Relocating the Embassy to Jerusalem, especially if done in 2017, the 50th year anniversary of Jerusalem Day, will make the relationship that much stronger.

I want to welcome our distinguished panel of witnesses here today. We look forward to hearing your testimony.

And I'm happy to recognize my friend, the ranking member, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you very much, Mr. Chairman, and thank you for holding this hearing.

It is my understanding that today's hearing will include the examination of the national security challenges related to the immediate relocation of the U.S. Embassy in Israel from Tel Aviv to Jerusalem. And to this end, I would like to thank all of our witnesses for appearing before the committee today to help us with our work.

Thank you, gentlemen.

Our strong and enduring bilateral relationship with the State of Israel is founded on genuine bonds of friendship and indeed kinship that are unshakable. These profound and long-standing ties with our closest regional ally are reflected in our unwavering com-

mitment to Israel's security, as well as robust U.S.-Israel cooperation on a range of critical issues, economic, intelligence, and defense matters.

We also afford maximum respect to the historic and religious significance of Jerusalem and its holy sites to Israel. And I do join the chairman in my own experience and with many of our committee colleagues, having been to Jerusalem on many occasions, appreciate the religious freedom that is available now in Jerusalem. And we've taken full advantage of those opportunities to spend time with our friends in Jerusalem and enjoy the wonderful, wonderful benefits of that city.

The proposal to unilaterally and immediately relocate the U.S. Embassy in Israel to Jerusalem instead presents a specific question of whether such action would truly protect and preserve U.S., Israeli, and regional security interests. I am strongly concerned that we must proceed with caution, that a decision unilaterally by the current administration to simply disregard the positions of other regional partners on this matter that had been expressed by the governments of Jordan and Egypt and other regional Arab nation partners, will prove ultimately detrimental to U.S., Israeli, and regional security interests in the near term.

In February of this year, King Abdullah of Jordan reported to members of the House Foreign Affairs Committee that moving the U.S. Embassy to Jerusalem now, unilaterally, will threaten the two-state solution and could lead to a, "violent escalation," in the Israeli-Palestinian conflict.

The Government of Jordan has also publicly warned that such action would have catastrophic ramifications on regional stability and would mark a red line for Jordan.

I would note that we recall that Jordan is a key U.S. and coalition partner, including with Israel, in countering the Islamic State, whose cooperation has included aircraft missions in support of Operation Inherent Resolve in Syria and Iraq, as well as the employment of Jordanian ground forces and special operators targeting Islamic State fighters along the Syrian, Jordanian, and Iraqi-Jordanian borders. We also are working with the Jordanian Government as it is accepting and continues to provide careful influx of over 660,000 Syrian refugees to date.

In a cautionary note, Foreign Minister Sameh Shoukry of Egypt, another regional security ally protecting the interests of Israel and the United States and democratic interests in the region, has called the proposed immediate Embassy relocation, "a very inflammable issue at this moment," and asserted that this is one of the final status issues that has to be addressed between the two sides, resolved through negotiations with respect to the Palestinians.

Egypt is an official member of the global coalition to defeat the Islamic State. Moreover, about 700 troops, I had a chance to visit them in the Sinai fairly recently, are currently stationed in Egypt's Sinai Peninsula as part of an international peacekeeping force that partners with the Egyptian military to stabilize the region against insurgents from the Islamic State affiliate in the Sinai Province group and other militant organizations, including Islamic Jihad.

In a statement submitted to our committee for this hearing, Ambassador Daniel Kurtzer, Ambassador to Israel under President

George Bush and Ambassador to Egypt under President Clinton, notes that the immediate relocation of the U.S. Embassy to Jerusalem would not only cross a red line for the Palestinians but also, “for many Arab and Muslim states, including those with whom we share friendship and regional security interests.”

Ambassador Kurtzer additionally explains that if the United States were to engage in unilateral action on this central disputed issue, we would substantially undermine our ability to persuade the parties themselves or other third parties to avoid from doing so.

I ask for unanimous consent that the statement of Ambassador Daniel Kurtzer be entered into the official record.

Mr. DESANTIS. Without objection.

Mr. LYNCH. So, in essence, I’m just advising caution that we consider the regional, including the Israeli security interest on this issue, and that we give respect to our allies in the region, again, moving forward but proceeding with caution.

With that, I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair notes the presence of a number of our colleagues. We have the gentleman from Ohio, Mr. Jordan; the gentleman from Florida, Mr. Ross; the gentleman from New York, Mr. Zeldin; the gentleman from Florida, Mr. Mast; and the gentleman from Wisconsin, Mr. Grothman.

I ask unanimous consent that these members be allowed to fully participate in today’s hearing.

Without objection, it is so ordered.

I’m pleased to be able to introduce a really stellar panel of witnesses here today. We have Ambassador John Bolton, senior fellow at the American Enterprise Institute, and chairman of the Foundation for American Security and Freedom; Ambassador Dore Gold, president of the Jerusalem Center for Public Affairs; Mr. Morton Klein, president of the Zionist Organization of America; Dr. Michael Koplow, policy director at the Israel Policy Forum; and Mr. Eugene Kontorovich, professor of law at Northwestern University.

I want to welcome you all.

Pursuant to committee rules, all witnesses will be sworn in before they testify. So if you could please rise. Please raise your right hand.

Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth so help you God?

The witnesses, all witnesses answer in the affirmative.

And Ambassador Gold has affirmed that he will tell the truth as well. So you can be seated.

Mr. GOLD. We don’t swear.

Mr. DESANTIS. I know, I know.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire written statement will be made a part of the record. And as a reminder, the clock in front of you shows your remaining time. The light will turn yellow when you have 30 seconds left and red when your time is up. Please, also remember to press the button to turn your microphone on before speaking.

And, with that, I'd like to recognize Ambassador Bolton for 5 minutes for his opening statement.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE JOHN BOLTON

Mr. BOLTON. Thank you very much, Mr. Chairman, Ranking Member Lynch, members of the subcommittee. I appreciate the opportunity to appear before you today to discuss the important subject of moving the American Embassy in Israel to Jerusalem.

I believe that recognizing Jerusalem is Israel's capital city and relocating our Embassy there on incontestably Israel sovereign territory would be sensible, prudent, and efficient for the United States Government.

Indeed, fully regularizing the American diplomatic presence in Israel will benefit both countries, which is why, worldwide, the U.S. Embassy in virtually every other country we recognize is the host country's capital city.

Relocating the Embassy would not adversely affect negotiations over Jerusalem's final status or the broader Middle East peace process, nor would it impair our diplomatic relations among predominantly Arab or Muslim nations.

In fact, by its honest recognition of reality, shifting the Embassy would have an overall positive impact for U.S. diplomatic efforts.

Over the years, as with so many other aspects of Middle Eastern geopolitics, a near theological and totally arid to scholasticism has developed here and abroad about the impact of moving the Embassy. Now is, in fact, the ideal time to sweep this detritus aside and initiate the long overdue transfer.

It stands to reason that America's diplomats posted abroad should be located near the seat of government to which they are accredited. Proximity to host government political leaders, major government institutions, and representatives of domestic political, economic, and social interests all argue for the commonsense decision that U.S. representatives to a foreign state should be at that state's center of government.

There may be logistical reasons for temporary deviations from this principle, but there is no compelling diplomatic business reason to wait nearly 70 years, as has been the case in Israel.

Given Israel's geography, certain key national security institutions, such as the Ministry of Defense, are located in Tel Aviv, which means that legitimate considerations will dictate that a U.S. Embassy annex should remain there. But cost, efficiency, and effectiveness considerations also compel the conclusion that the bulk of our Embassy's personnel should follow the example of their colleagues and virtually the entire rest of the world and be moved to Israel's capital.

Modern transportation and telecommunications capabilities notwithstanding, distance still imposes cost, both in time and resources, not to mention aggravation on our diplomats in Israel.

Moreover, there is still no substitute to personal contact, face-to-face communication, and easy accessibility, especially in times of crisis, with key host government officials and political leaders.

Moreover, security concerns, especially in the volatile Middle East, are always major factors and decisions to move existing diplomatic facilities to new locations within existing capitals where physical conditions are better suited to address contemporary risks assessments.

So, while I think the overwhelming diplomatic and managerial advantages to the United States argue for relocation, there are obviously a number of political arguments to the contrary. I think there are three, basically.

And I think it's important to take these arguments seriously, because many are made in good faith, but let's be honest, many are argued for precisely the opposite reason, to continue to deny to Israel the acknowledgment that it is a legitimate state with a legitimate capital.

The three arguments basically are that moving the Embassy, even to West Jerusalem, would somehow affect final status negotiations about that city. I think this stems from U.N. General Assembly Resolution 181, which contemplated an international status for Jerusalem. That resolution was rejected by the Arab State shortly after it was passed. And let's face it, 181 is a complete dead letter today. Jerusalem will never be an international city, and we need to move on from it, as indeed the Russian Federation acknowledged earlier this year.

The second argument is that it will break the broader Middle East peace process. And I have to say, if the peace process is such a delicate snowflake that moving our Embassy would destroy it, you have to ask what its viability is to begin with. And it's also to mistake pretext for cause. If somebody wants to demonstrate against the United States or Israel, can pick a lot of other pretexts as well, not just moving the Embassy.

And, finally, to conclude, Mr. Chairman, we hear over and over again that we want to move the Embassy but the time is just not right. As they say in the Near East Bureau of the State Department, they only have to press one key on their computers to spit out the phrase "at this particularly delicate point in the Middle East peace process."

In diplomatic circles, Mr. Chairman, "not now" too often means "not ever." We should reject that counsel and move the American Embassy to Israel's capital city. Thank you.

[Prepared statement of Mr. Bolton follows:]

Testimony of

John R. Bolton

On

**The Implications for Moving the U.S. Embassy in Israel to
Jerusalem**

Before the

**House Committee on Oversight and Government Reform
Subcommittee on National Security**

10:00 A.M Wednesday, November 8, 2017
2247 Rayburn House Office Building,
Washington, D.C.

Chairman DeSantis, Ranking Member Lynch, and members of the Subcommittee on National Security, I appreciate the opportunity to appear before you this morning to discuss whether to move the U.S. Embassy in Israel from Tel Aviv to Jerusalem. This is an important and timely topic, well worth the Subcommittee's continuing consideration.

I. Executive Summary

I believe that recognizing Jerusalem as Israel's capital city and relocating our Embassy there on incontestably Israeli sovereign territory would be sensible, prudent and efficient for the United States government. Indeed, fully regularizing the American diplomatic presence in Israel will benefit both countries, which is why, worldwide, the U.S. Embassy in virtually every other country we recognize is in the host country's capital city.

Relocating the Embassy would not adversely affect negotiations over Jerusalem's final status or the broader Middle East peace process, nor would it impair our diplomatic relations among predominantly Arab or Muslim nations. In fact, by its honest recognition of reality, shifting the Embassy would have an overall positive impact for U.S. diplomatic efforts. Over the years, as with so many other aspects of Middle Eastern geopolitics, a near-theological and totally arid scholasticism has developed here and abroad about the impact of moving the Embassy. Now is in fact the ideal time to sweep this detritus aside, and initiate the long-overdue transfer.

II. Diplomatic Effectiveness and Efficiency

It stands to reason that America's diplomats posted abroad should be located near the seat of government to which they are accredited. Proximity to host-government political leaders; major government institutions; and representatives of domestic political, economic and social interests all argue for the common-sense decision that U.S. representatives to a foreign state should be at that state's center of government. There may be logistical reasons for temporary deviations from this principal (such as where a government relocates its capital city, and time is necessary before an embassy relocation can be effected), but there is no compelling diplomatic-business reason to wait nearly seventy years, as has been the case in Israel.

Given Israel's geography, certain key national-security institutions, such as the Ministry of Defense, are located in Tel Aviv, which means that legitimate considerations will dictate that a U.S. Embassy annex should remain there. But cost, efficiency and effectiveness considerations also compel the conclusion that the bulk of our Embassy's personnel should follow the example of their colleagues in virtually the entire rest of the world, and be moved to Israel's capital. Modern transportation and telecommunications capabilities notwithstanding, distance still impose costs, both in time and resources, not to mention aggravation, on our diplomats in Israel. Moreover, there is still no substitute to personal contact, face-to-face communications and easy accessibility, especially in times of crisis, with key host-government officials and political leaders. Moreover, security concerns, especially in the volatile Middle East, are always major factors in decisions to move existing diplomatic facilities to new locations within existing capitals where physical conditions are better suited to address contemporary risk assessments.

Budgetary issues concerning both existing operations and the costs of a new Embassy are perfectly legitimate for Congress to raise. Here, the verdict is already clear. Over twenty years ago, Congress staked out its position by enacting the Jerusalem Embassy Act of 1995, 109 Stat. 398, Public Law 104-45), with overwhelming majorities in both Houses. President Clinton opposed the legislation, but allowed it to become law without his signature rather than veto it in the face of a near-certain Congressional override. The Act provided that the Embassy must be relocated to Jerusalem by May 31, 1999, or the Department of State's overseas building funds would be cut by half. President Clinton and his successors have uniformly used Section 7(a) of the Act to waive its relocation requirement by invoking "the national security interests of the United States." Legislation designed to augment the Act has been introduced frequently, including earlier this year. President Trump signed the most recent waiver this past June 1.

I believe the Act's waiver procedures, and particularly, the waiver's serial invocation by successive Presidents, are entirely Constitutional. Indeed, efforts to more completely restrict Executive authority in this area would almost surely violate the President's Article II foreign-affairs powers and responsibilities. The Supreme Court's recent decision in *Zivotofsky v. Kerry*, 576 U.S. ---, 135 S. Ct. 2076 (2015), regarding Jerusalem's status in passport matters certainly points in that direction. If Congress wishes to challenge the Executive Branch's near-plenary power in this field, it must assert one of its own express Constitutional authorities, namely through the appropriations process. The Jerusalem Embassy Act threatened such a response, but the legislation's waiver authority vitiated its impact. Whether Congress chooses to go further is obviously up to Congress, but the more prudent and regular order would be for an unambiguous Executive Branch decision to make the necessary political decisions.

Locating and building a new Embassy in indisputably Israeli sovereign territory would be neither difficult nor notably more contentious than any other property transaction in Israel. The government of Israel has designated a site in Jerusalem's Talpote neighborhood, held in Israeli

hands since its independence, for a new U.S. embassy.¹ While construction is underway, the U.S. Consulate General on 18 Agron Street, which now serves both as the residence for the Consul General and the location of several of its important offices, could be redesignated as an Embassy annex.

III. The Effects Beyond Israel's Boundaries

Despite the overwhelming diplomatic and managerial advantages to the United States of relocating its Embassy, numerous political contentions have been advanced for keeping the Embassy in Tel Aviv. I will address these in turn. Some of these arguments are offered in good faith, including by those who wish Israel no harm. But let's be honest: many are argued for precisely the opposite reason: to continue to deny to Israel the acknowledgment that it is a legitimate state with a legitimate capital. Among all of these arguments, there is a sense that perhaps repetition over time can make them more persuasive than their underlying merits. Falling prey to such false concreteness is a fatal mistake in diplomacy, where confusing the world of rhetoric for the real world leads to missed opportunities with sometimes tragic consequences.

The United States can and should treat with respect the legitimate opinions of those affected by foreign-policy decisions such as the Embassy move. But it should not -- indeed, must not -- be held hostage to the misconceptions of those who wish neither us nor the Israelis well. We should not underestimate or ignore our ability to explain and justify our actions, even in the face of propagandists who might attempt to falsify and distort our intentions and our integrity. Succumbing to threats and verbal abuse for decades shows precisely the opposite about the character of our nation. It shows us susceptible to intimidation on one issue -- the location of the Embassy -- and, therefore, potentially susceptible to intimidation on others as well. By so behaving, we are compromising our own interests, and the larger interests of a peaceful and secure Middle East. Where the U.S. locates its Embassy in Israel is a matter for America and Israel to decide.

The first argument against moving the U.S. Embassy is that so doing would prejudice the final status negotiations over Jerusalem. This argument is, at best, disingenuous, since no serious proposal has ever suggested building Embassy facilities anywhere east of the Green Line. This

¹ "Jerusalem of Trump: Where the president-elect might put the US embassy," *Times of Israel*, December 13, 2016, <https://www.timesofisrael.com/jerusalem-of-trump-where-the-president-elect-might-put-the-us-embassy/>

is territory that Israel will hold unless its most ardent opponents get their wish, and the State of Israel is eliminated entirely. Ironically, despite being the first country to recognize the new State of Israel in 1948, no American President has formally recognized Israeli sovereignty over any part of Jerusalem. Unfortunately, ambiguity over the U.S. position whether West Jerusalem is sovereign Israeli territory, whether Jerusalem is even Israel's capital, let alone whether our Embassy should be there, is helping to keep alive a dangerous misconception of the true facts on the ground.

Indeed, U.S. unwillingness to acknowledge that the Israeli state has an actual physical capital city undercuts the idea that Israel is truly a state. Under any recognizable definition of "statehood" under customary international law, an entity has a capital city and carries out the normal functions of government, all of which Israel manifestly does. Acting as though we are uncertain what Israel's capital is, or that somehow we can't find it, or that we are too timid to accept the palpable reality of Jerusalem as that capital, is demeaning to both the United States and Israel.

The origin of the opposition to establishing foreign embassies in Jerusalem stems from UN General Assembly Resolution 181, adopted on November 29, 1947, creating three entities out of what remained of the United Kingdom's Palestinian Trusteeship: an Arab State, a Jewish State and "the Special International Regime for the City of Jerusalem." Under Resolution 181 (and as further elaborated shortly thereafter in General Assembly Resolution 194), Jerusalem was designated as a *corpus separatum*, to be under the authority of the UN Trusteeship Council, the body established by the UN Charter to administer, among other things, former Mandatory Territories under the League of Nations.

Today, just a few weeks before Resolution 181's seventieth anniversary, it and its successor Resolutions are dead letters. Whatever else Jerusalem's final status may be, there is no serious advocacy that Jerusalem be internationalized, and no real-world possibility that it will happen. Nonetheless, the lingering effects of the internationalization idea persist in the contention that uncertainty exists over whether any part of Jerusalem will ultimately become Israel's capital city.

Earlier this year, on April 6, the Russian Federation's Foreign Ministry announced that: "We reaffirm our commitment to the UN-approved principles for a Palestinian-Israeli settlement, which include the status of east Jerusalem as the capital of the future Palestinian state. At the same time, we must state that in this context we view west Jerusalem as the capital of Israel."² To be sure, Russia's broad position on Israeli-Palestinian issues, as the Ministry's statement

² "Foreign Ministry statement regarding Palestinian-Israeli settlement," April 5, 2017 at 10:40 A.M., accessed at http://www.mid.ru/en/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2717182

indicates, is not the same as Israel's or the United States. Nonetheless, Moscow's frank acknowledgement of Jerusalem's status as Israel's capital, and the near-total absence of reaction around the world, especially in the Middle East, should tell us something about the reality into which a U.S. decision to relocate its Embassy would fall. If Russia can explain its position on Jerusalem as Israel's capital without massive blowback, then surely the United States can do so as well.

The second argument against relocating the U.S. Embassy, expanding on the narrower issue of Jerusalem's status, is the assertion that the broader Middle East peace process would be adversely impacted. For example, Palestinian negotiator Saab Erekat said in December, 2016, during the Presidential Transition, that moving the Embassy would cause the "destruction of the peace process as a whole."³ Surely, quite apart from being the kind of threat the United States should treat with disdain, this argument proves too much. Given the amount of bilateral economic and military assistance that the United States government has supplied to Israel over the years, not to mention the huge amounts of private donations and humanitarian assistance that U.S. citizens have provided, one might think that American sentiments on the permanence of the modern Israeli state would hardly be surprising.

Moreover, looking at the enormous, world-historical events affecting the Middle East that have occurred since the modern State of Israel's independence in 1948, the issue of acknowledging Israel's capital and moving the U.S. Embassy pales into insignificance. If the Middle East peace process is such a delicate snowflake that the location of the U.S. Embassy in Israel could melt it, one has to doubt how viable it is to begin with. This question calls for realism, not the overheated rhetoric that we have heard too often. Washington's role as an honest broker in the peace process will not be enhanced or reduced in the slightest by moving its Embassy to Jerusalem. To say otherwise is to mistake pretext for actual cause. Moving the Embassy may produce new talking points for those who have never reconciled themselves to Israel's existence in the first place, but it will not "cause" any change in the existing geopolitical state of play.

Finally, we hear constantly the variation that concedes an eventual decision to relocate the Embassy, but pleads that "right now" is not the correct time. This approach argues for a supposedly temporary deferral of the move, but curiously, "temporary" deferral has now lasted for nearly seventy years. We hear it still today. When I served in the Department of State, there was a standing joke that on the word processors in the Near East Bureau, one needed to strike only a single key to produce the phrase "at this particularly delicate point in the Middle East peace process" on the computer screen, so often did it appear in NEA memos and cables.

³ David Smith, "Republican senators introduce bill to move US embassy in Israel to Jerusalem," *The Guardian*, January 3, 2017. <https://www.theguardian.com/world/2017/jan/03/us-embassy-israel-jerusalem-republican-bill>

The Trump Administration has been exploring whether potentially profound changes in the Middle East now provide an auspicious moment to make progress in the peace process. These diplomatic efforts, like all previous ones since 1948, have their ups and downs. But with respect to a possible decision to move the Embassy, saying at an optimistic point that “we don’t want to risk the progress we’re making,” or saying at a pessimistic point, “this could completely doom our efforts,” means there is never a good time. This is why in diplomatic circles, “not now” often means “not ever.” I applaud the Administration’s efforts, but I see them as only coincidentally connected to the Embassy issue.

The effective management of America’s bilateral relations with Israel; consistency with international geopolitical realities; and plain common sense all argue that the United States should acknowledge Jerusalem as Israel’s capital and relocate our embassy to indisputably Israeli sovereign territory in West Jerusalem. The political arguments against following U.S. diplomatic interests to their natural conclusions are overblown, misguided, and outdated. We should treat the Israel Embassy issue as we have treated it in essentially every other country in the world with which we have diplomatic relations.

Mr. Chairman, let me once again express my appreciation for the opportunity to appear before the Subcommittee, and I would be pleased to try to answer the Subcommittee’s questions.

Mr. DESANTIS. Thank you, Ambassador Bolton.
Ambassador Dore Gold, you're up.

STATEMENT OF THE HONORABLE DORE GOLD

Mr. GOLD. Chairman DeSantis, Ranking Member Lynch, and members of the subcommittee, I commend you for holding this hearing. It is my view that President Donald Trump has made a commitment regarding the transfer of the U.S. Embassy to Jerusalem, and I believe he will stand by what he has said. Indeed, on June 1st, the White House released a statement stressing that, with regard to moving the Embassy, "the question is not if that move happens, but only when."

The U.S., of course, will have to consider many factors in making that decision. What is often overlooked in the debate about the location of the U.S. Embassy is why it matters. The Embassy question is a subset of a much more important issue: the need for Western recognition of Jerusalem as Israel's capital. That recognition is vital for several reasons. What I'd like to discuss is the international interest. That interest concerns the protection of holy sites and assuring complete freedom of access to them. Religious freedom and pluralism are core values which both our countries share.

Protecting Jerusalem's holy sites is the responsibility the State of Israel assumed in law back in 1967 when Jerusalem was reunited after the Six-Day War, for etched into the collective consciousness of all of us is what happened to Jerusalem when we were absent and when we were barred from that city, and what has happened to the holy sites since 1967, since Israel unified Jerusalem and protected access for all peoples and faiths. What is clear from a brief survey is that only a free and democratic Israel will protect the holy sites of all the great faiths in Jerusalem.

Let me stress, to the extent the U.S. reinforces Israel's standing in Jerusalem, it is reinforcing core American and Western values of pluralism, peace, and mutual respect, and it is reinforcing the position of the only international actor that will protect these sites.

Even today, it is surprisingly argued in certain diplomatic circles that the point of reference for any political solution on Jerusalem should be, or could be, U.N. General Assembly Resolution 181 from 1947, also known as the Partition Plan. This resolution called for establishing an international entity around Jerusalem, which it called the corpus separatum.

I think Ambassador Bolton made the point well. This resolution is a dead letter because after, for example, in 1949, after the U.N. failed to protect the Old City of Jerusalem from invading armies, our Prime Minister in December of that year stood in front of the Knesset and talked about the corpus separatum. David Ben-Gurion reminded his listeners that the U.N. did not lift a finger during 1948. And he said that Jewish Jerusalem could have been wiped off the face of the Earth had it not been for the newly created Israel Defense Forces, Tzahal, and the prestate of—military formations.

Ben-Gurion then addressed internationalization. And I'm quoting him from 1949: "We cannot today regard the decision of 29 November 1947 as being possessed of any further moral force since the United Nations did not succeed in implementing its own decisions.

In our view, the decision of 29 November about Jerusalem is null and void." Internationalization was not an option.

Fast forward several years after the signing of the Oslo agreements. In July of 2000, Yasser Arafat and the PLO launched what became known as the Second Intifada. Religious sites were specifically targeted. In December 2000, in Bethlehem, Fatah operatives and Palestinian Security Services assaulted Rachel's Tomb. Two years later, 13 armed Palestinians from Hamas, Islamic Jihad, and Fatah Tanzim forcibly entered the Church of the Nativity in Bethlehem, the birthplace of Jesus and one of the holiest sites in Christianity. Violent attacks on Joseph's Tomb in Nablus were common in the same period.

In Jerusalem, the key organization that represented radical Islam was called the Northern Branch of the Islamic Movement under Sheikh Raed Salah. It was an offshoot of the Muslim Brotherhood. Its leader falsely accused Israel of endangering the Al-Aqsa Mosque in Jerusalem, and it convened rallies under the banner "Al-Aqsa is in Danger," inciting violence and hatred with this lie.

Let me conclude with the following remark. Jerusalem must not be left to the vagaries of the Middle East. What we see is that religious sites are under attack across the entire region, from the famous attack of the Taliban on the—on the Buddhas, 2000 year-old Buddhas in the Bamiyan Valley in Afghanistan to Coptic Orthodox churches in Egypt to the religious sites of Iraqi Christians and Yazidis in Iraq.

There is a regional assault going on against holy sites. It is under way across the whole area. Israel deserves your support as it defends Jerusalem from these kinds of assaults. As I said earlier, only a free and democratic Israel will protect Jerusalem for all the great faiths.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Gold follows:]

המרכז הירושלמי לענייני ציבור ומדינה עמותה רשומה
 Jerusalem Center for Public Affairs Registered Amuta



**Congress of the United States
 House of Representatives
 Committee on Oversight and Government Reform**

**“Moving the American Embassy to Jerusalem:
 Challenges and Opportunities”**

Wednesday, November 8, 2017, 10:00 a.m.

Ambassador Dore Gold

*President, Jerusalem Center for Public Affairs; Former Director-General of Israel's
 Ministry of Foreign Affairs and Ambassador of Israel to the United Nations*

Witness Testimony

Today, I am not going to address the question of moving the U.S. Embassy from Tel Aviv to Jerusalem directly. It is my view that President Donald Trump has made a commitment in that regard and I believe he will stand by what he has said. The United States will evaluate the timing and circumstances for executing that decision in accordance with its interests.

The US will of course have to consider many factors in making that decision. But what is often overlooked in the contentious debate about the location of the US Embassy in Israel is why it matters. The embassy question is a subset of a much more important issue: the need for western recognition of Jerusalem as Israel's capital. That recognition is vital for several reasons.

On a political level, the denial of recognition helps fuel the dangerous fantasy, popular in the Middle East, that Israel is impermanent and illegitimate. On a religious and cultural level, the denial of recognition helps fuel the dangerous fantasy that Jews have no connection to Jerusalem and Israel – that their presence is an imposition because the land is not their homeland.

Those could be characterized as Israeli interests alone. But what I'd like to discuss today is what could be called the international interest, or the interest in Jerusalem of concerned states. That interest often concerns the protection of the Holy Sites and assuring complete freedom of access to them. Religious freedom and pluralism is a core value which both our countries share.

Protecting Jerusalem's holy sites is a responsibility that the State of Israel assumed in law back in 1967, when Jerusalem was re-united after the Six Day War. It is also a responsibility that the people of Israel, I believe, are prepared to assume in the future as well.

For etched into the collective consciousness of all of us is what happened to Jerusalem when we were absent and when we were barred from the city, and what has happened to the holy sites since 1967 – since Israel unified Jerusalem and protected access for all peoples and faiths. What is clear from a brief survey is that *only a free and democratic Israel will protect the holy sites of all the great faiths in Jerusalem*. Let me stress, *to the extent that the US reinforces Israel's standing in Jerusalem*, it is reinforcing core American and western values of pluralism, peace, and mutual respect – and *it is reinforcing the position of the only international actor that will protect Jerusalem's holy sites*.

The Internationalization of Holy Sites

The very fact that Jerusalem is viewed as a holy city by all three of the great monotheistic faiths – Judaism, Christianity, and Islam – has frequently led to ill-conceived proposals to internationalize Jerusalem or sections of it in any resolution of the Arab-Israel conflict.

It is not widely remembered, but this idea was actually tried – and failed miserably. Nonetheless, it is sometimes surprisingly argued in certain diplomatic circles that the point of reference for any political solution on Jerusalem should be UN General Assembly Resolution 181 of November 29, 1947, which is also known as the Partition Plan. It should be recalled that Resolution 181 called for establishing an international entity around Jerusalem, which it called a *Corpus Separatum*. It would be governed by the United Nations itself.

On May 15, 1948, when Israel declared its independence, invading Arab armies placed Jerusalem under siege. Its Jewish population was cut off from food and water. In addition to all this, Jerusalem faced intense artillery bombardment. The Egyptians took up positions on the outskirts of Bethlehem. An Iraqi Expeditionary Force reached the Jerusalem neighborhood of Talpote. The Old City was invaded by the Arab Legion of Transjordan. Israel's Foreign Minister, Moshe Sharett, reported to the UN that "ancient Jewish synagogues are being destroyed one after the other as a result of Arab artillery fire." Those artillery shells hit churches and even the Dome of the Rock on the Temple Mount. The mounting attacks led to a mass exodus of the Jewish population of the Old

City – what today would be called "ethnic cleansing." The only question that arose was what the UN was going to do with this unfolding situation.

Frankly, it did nothing. Its internationalization proposal was failing. Standing in the Knesset, Israel's parliament, on December 5, 1949, after the end of the first Arab-Israeli War, Israel's first prime minister, David Ben Gurion, spoke about the *Corpus Separatum* and the UN's role. The UN, he reminded his listeners, "did not lift a finger" to protect Jerusalem. Only the newly created Israel Defense Forces, along with pre-state formations, protected "Jewish Jerusalem from being wiped off the face of the earth." The recently formed Har'el Brigade of the Palmach, which had been placed under the command of Yitzhak Rabin, that was given the mission to break the siege, thereby permitting relief columns to enter the city.

Ben Gurion then went on in his Knesset speech to address the internationalization proposal contained in Resolution 181: "We cannot today regard the decision of 29 November 1947 as being possessed of any further moral force, since the United Nations did not succeed in implementing its own decisions. In our view, the decision of 29 November about Jerusalem is **null and void**" (emphasis added). In other words, Israel still adhered to the rest of the resolution, but it could not give up parts of Jerusalem to international control. Ben Gurion reminded the UN that "the people which faithfully honored for 2,500 years the oath sworn by the Rivers of Babylon not to forget Jerusalem – this people will never reconcile itself with separation from Jerusalem." Eight days later, Ben Gurion declared that he was moving the Knesset from Tel Aviv to Jerusalem: "For the State of Israel there has always been, and always will be, one capital only – Jerusalem the Eternal."



Left: Jewish residents fleeing their homes in the Old City through the Zion Gate. The Jews of the Old City were either killed, expelled or imprisoned following Jordan's invasion of Jerusalem in 1948 – what today would be known as ethnic cleansing. *Right:* The Porat Yosef Yeshiva is blown up by the Jordanians after the fall of the Jewish Quarter in 1948 and the expulsion of its residents. The Jordanians blew up and damaged dozens of synagogues and desecrated the ancient Mount of Olives cemetery (Photos: John Phillips, *LIFE Magazine*, Getty Images, 1948).

Again, this is not just a history lesson. In March 1999, when I served as Israel's ambassador to the UN, there was an initiative underway to revive Resolution 181 with respect to Jerusalem. This effort was supported by members of the European Union, several Arab states, and by the PLO. I doubted that the Palestinians really wanted internationalization, but it served as a convenient instrument for prying Jerusalem away from Israel.

During a visit by PLO Chairman Yasser Arafat to UN Secretary-General Kofi Annan, the internationalization idea contained in 181 re-surfaced and came up in a formal letter to the Secretary-General that was distributed to all member states. I asked for instructions from my prime minister, and I was told to go back to Ben Gurion's formulations in this regard from 1949 and use them, which I did. While internationalization and division of the city has no credibility today given the experience of the past, the idea nonetheless still creeps up in prestigious research institutes and academic bodies that influence the policy-making community.

Holy Sites in the Interim Period

In 1993, with the signing of the Oslo Accords between Israel and the PLO, a second scenario for holy sites arose. Those agreements, which created interim arrangements, were implemented with respect to the West Bank and the Gaza Strip. Jerusalem was designated as an issue for final status negotiations in the future. The Interim Agreement from 1995, which was the most important of the implementation instruments created under Oslo, made reference to religious sites in the West Bank and the Gaza Strip that were transferred to Palestinian jurisdiction (Annex III, Appendix 1, Article 32). While these agreements were signed by Prime Minister Yitzhak Rabin, or by his foreign minister, Shimon Peres, in his presence, it became clear that he never planned to relinquish Jerusalem. One month before his assassination in November 1995, Rabin stood in the Knesset and stated plainly that the borders of Israel during the "permanent solution" will include "first and foremost united Jerusalem...as the capital of Israel."

In the meantime, during the interim period, guarantees were given to protect the holy sites, to assure free access to them, and to provide freedom of worship and practice. The Interim Agreement was signed by the parties here in Washington, in the White House, and witnessed by the US, Russia, Egypt, Jordan, Norway, and the EU, which added their signatures. How did this arrangement turn out? If the Interim Agreement was intended to provide a test run for the management of holy sites by the Palestinian leadership in a future final status agreement, it fell far short of what even the strongest advocates of the Oslo Accords had expected.

In the aftermath of the failure of Camp David summit in July 2000, the PLO launched what became known as the Second Intifada. Religious sites were specifically targeted. In Bethlehem, Fatah operatives and Palestinian security services assaulted Rachel's Tomb in December 2000. Less than two years later, in April 2002, 13 armed Palestinians, from Hamas, Islamic Jihad, and Fatah Tanzim, forcibly entered the Church of the Nativity in Bethlehem – the birthplace of Jesus and one of the holiest sites for Christianity.

The gunmen seized the Christian clergy as hostages, looted church valuables, and desecrated Bibles. Another repeated target for attack was Joseph's Tomb in Nablus, the protection of which was undertaken by the Palestinian side in the Oslo II Agreement. Gunmen from Fatah and Hamas took part in the ransacking of the site in October 2000. The site came under attack again, as Palestinians torched Joseph's Tomb in October 2015 and set it on fire.



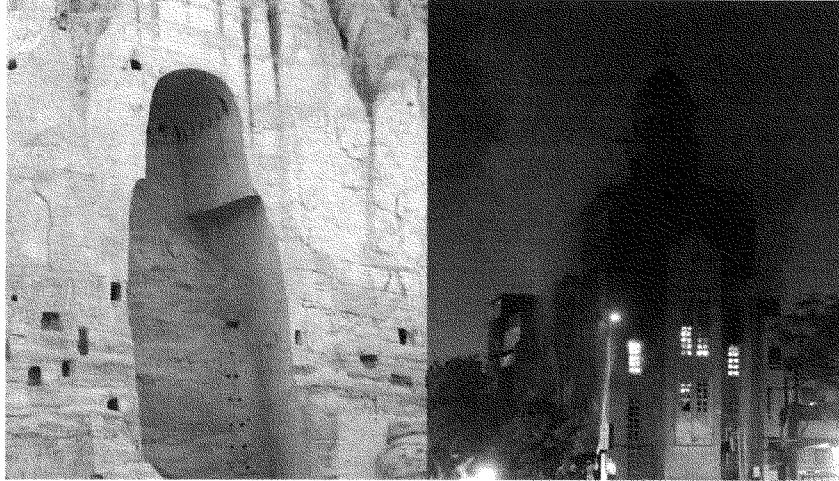
Left: Palestinians stand on the roof of Joseph's Tomb in Nablus on October 7, 2000, after Palestinian fighters and civilians stormed the Israeli enclave, destroyed holy books and set the sacred site ablaze in a victory "celebration" held shortly after the IDF evacuated the site. (AP photo/Lefteris Pitarkis). *Right:* A Greek Orthodox priest, held hostage in Church of the Nativity in Bethlehem by Palestinians who entered forcibly, seized the Christian clergy as hostages, looted church valuables and desecrated Bibles, holding a sign saying "PLEASE HELP," April 2002. (Government Press Office).

The Growing Assault by Jihadi Groups on Holy Sites across the Middle East

The escalating aggression against holy sites in the West Bank cannot be examined in isolation. It was becoming a hallmark of many jihadi groups across the Middle East. There was the famous 2001 attack by the Taliban in the Bamiyan Valley of Afghanistan against the 2,000 year old Buddhist statues there which were reduced to rubble. Ten years later in 2011, a suicide bomb exploded at the Coptic Orthodox Church in Alexandria, Egypt killing 23 and wounding nearly 100. The Egyptian Interior Ministry placed responsibility for the attack on Jaish al-Islam, a Gaza-based organization that had conducted joint operations with Hamas in the past.

These threats to Christian sites continued. In December 2016, a suicide bomber struck a chapel next to St. Mark's Cathedral in Cairo. ISIS, which in the meantime had established itself in eastern Libya and in northern Sinai, took responsibility for the attack. But Egyptian security personnel also looked for a connection to the Muslim Brotherhood. And in 2017 on Palm Sunday, twin bombing attacks were perpetrated

against churches in the Egyptian cities of Tanta and Alexandria killing 41. ISIS declared its responsibility for the attacks, as well.



Left: in 2001, Taliban fighters decided to destroy two-thousand year-old Buddhist statues in the Bamiyan valley of Afghanistan with explosives, reducing them to rubble (AP). *Right:* A Coptic church set aflame by Muslim Salafists in a Cairo neighborhood, amid violent clashes (EPA).

The fact that ISIS participated in the assault should not have been surprising, since it came to Egypt after its involvement in a sectarian war in the Levant. In northern Syria, armed opposition groups had been targeting religious sites, including Christian churches not long after the Syrian civil war began. A Shia institution, found in a number of villages known as a *husseiniya*, was a repeated object of attack. In Iraq, ISIS broke off the cross from one of Mosul's main Syrian Orthodox churches and announced its conversion into a mosque. It was the second conversion of this sort to be conducted in Mosul.

What is clear is that many of the organizations perpetrating attacks on holy sites were interconnected. Jaish al-Islam issued a communique in 2015 announcing its allegiance to ISIS. Sheikh Yusuf -al Qaradawi, who is viewed as the spiritual head of the Muslim Brotherhood and who resides in Qatar, issued his opinion on the 2001 Taliban attack on the Bamiyan Buddhas. His only reservation was based on his concern that such a move would elicit Buddhist retaliation against Muslims. Thus the attack itself was not prohibited, but he was only concerned with its possible repercussions. Qaradawi's religious opinions appear on the websites of Hamas, thus they can have an impact on other theaters of conflict.

In Jerusalem, the key organization that represented radical Islam was the Northern Branch of the Islamic Movement in Israel – an offshoot of the Muslim Brotherhood. On the one hand, its leader Sheikh Raed Salah falsely charged Israel with threatening to undermine the foundations of the al-Aqsa Mosque in Jerusalem. He convened rallies under the banner of "al-Aqsa is in Danger," and incited much of the Middle East with this lie. Yet while this movement claimed Israel was threatening the al-Aqsa Mosque, it had been instrumental in digging out the underground halls under the compound of the al-Aqsa Mosque, which ironically posed the greatest potential threat to its stability. At its own initiative, Israel worked with regional partners to protect the area from any instability.

In 1947, Jerusalem was being showered with artillery fire and synagogues were being blown up. During the 1950's and 1960's, Jerusalem was divided by barbed wire, walls, and machine gun emplacements. Today, the unified city under Israeli control welcomes over three million tourists a year who visit its holy sites in peace and security.

The State of Israel has acted responsibly in protecting this legacy of humanity. The question of the location of the US Embassy is really a question of whether the United States recognizes Jerusalem as Israel's permanent capital – sending a signal to the world that efforts to delegitimize Israel, to rewrite the history of other religions, and to pit western countries against each other will fail. By recognizing Jerusalem and moving its embassy, the United States would help promote peace and security in the region.

I wish to remind this committee that in the past there were states that fully respected Jerusalem as Israel's capital. Indeed, 13 states had their embassies to Israel in Jerusalem until 1980. That year, however, the Soviet and Muslim blocs in the United Nations pushed through a resolution demanding that the 13 remove their embassies. They all did. The U.S. Secretary of State Edmund Muskie called the Resolution "fundamentally flawed," and that the U.S. considered the instruction that states remove their diplomatic missions from Jerusalem "not binding" and "without force," stating, "We reject it as a disruptive attempt to dictate to other nations."

Whatever is finally decided on the embassy issue, states have a clear choice. They can support the State of Israel, which has acted responsibly in protecting this legacy of humanity. Or they can undercut Israel, by preferring arrangements for the Holy City that plainly have not worked in the past and will undoubtedly fail in the future. There is a regional assault on holy sites underway across our region. Israel deserves your support as it defends Jerusalem. For only a free and democratic Israel will protect Jerusalem for all the great faiths.

Mr. DESANTIS. Thank you, Ambassador Gold.
Mort Klein, you're up.

STATEMENT OF MORTON KLEIN

Mr. KLEIN. Thank you, Chairman and members. First of all, I have to say I have Tourette syndrome. I may make sounds I can't control. It's a neurochemical disorder. My father had it. He gave it to me. I've always thanked him for it.

The U.S. should move the Embassy to Jerusalem, not only because it's the just and moral thing to do, but because it's a law, passed with bipartisan, almost unanimous support, almost 22 years ago. Delaying implementation sends the message that Islamist threats and terrorism work, but moving the Embassy will strengthen American security and enhance worldwide respect for America by demonstrating the U.S. can be counted on to keep her commitments to her allies and will not, dare not, be intimidated by appeasing radical Islamic threats.

If we allow U.S. policy to be determined by terror threats, we have only encouraged more such threats, more such terror, and undermined the U.S. campaign to eradicate radical Islamic terror. And Israeli control of Jerusalem is critical to security in all of Jerusalem and its surroundings.

And moving the Embassy will not cause further Mideastern instability. Israel's relationship with Egypt and Jordan and Saudi Arabia are strong today because of strong mutual concerns and interests and threats from Iran. Moving the Embassy will not change this.

The Jerusalem Embassy Acts waiver provision has been inappropriately used for 22 years. The act's drafters made it clear that the waiver was not intended to be invoked repeatedly or for policy disagreements, but only for a serious security emergency. Senate Majority Leader Bob Doyle said then: The President cannot lawfully invoke this waiver because he thinks it's better to move it at a later date. The President dare not infinitely push off the establishment of the American Embassy in Jerusalem.

"If a waiver were to be repeatedly and routinely exercised by a President, I would expect," said Dole, "that Congress should remove the waiver authority."

And by the way, Dole and Kyl, who I spoke to at the time, told me the President should never use it, once or twice at the most.

We haven't moved the Embassy for 22 years, yet we're further from peace today than we were 22 years ago. Not moving the Embassy did not help. Peace is impossible solely because of the Palestinian Arabs' refusal to accept Israel within any border, their refusals to even negotiate and outlaw terrorist groups, and refusal to end the promotion of hatred and murder and violence in their speeches, schools, and media. They are continuing to pay Arabs to murder Jewish people. It's an outrage. This is the regime we're talking about. In addition, they have now reconciled with the terrorist group, Hamas. This tells you their real intentions. This is the emblem that Abbas commissioned of the Fatah party of the Palestinian Authority. You see all of Israel there with a Kofia over it, a Kalashnikov rifle, and the arch-terrorist Arafat. These are the types of posters they put up in schools, universities, and high

schools showing, honoring killers, murderers of innocent people when they commit their heinous crimes.

We have to tell them the jig is up, that the only way for peace is if we hold them accountable and say there will be no more money, no more support to the Palestinian Authority, no more American money, unless they change. Remember, the greatest outbreak of Palestinian Arab violence occurred not after Israeli actions that the Palestinians disliked but occurred when Israel offered unprecedented concessions and a Palestinian state in 2000. The PA has used any excuse to promote violence against Israel. And the only place in the Middle East where the Christian population has grown is in Israel. And under Jordanian control, 70 percent of the Christians left because of oppression, and under Palestinian control, 80 percent of the Christians left Bethlehem. Mahmoud Abbas, the President of the PA, made it clear that he would cut off access to religious sites by regularly making the astonishing racist statement, and I quote: In a final solution, we will never see a single Israeli civilian or soldier in our land. Jews and Christians have suffered greatly. Now their sites are under PA control. Jerusalem has been the capital only of Israel throughout history, never any other regime, country, or entity.

I now turn to a rarely mentioned fact. Jerusalem is not very holy to Muslims. They have not treated Jerusalem as holy to them when they controlled it. During Arab Muslim control of Eastern Jerusalem, they allowed it to become a slum. There was virtually no water, electricity, or plumbing. Jordan built its royal residence and universities in Amman, not Jerusalem. They broadcast their Friday prayers from a mosque in Amman, not the Al-Aqsa in Jerusalem. In the Holy Koran, Jerusalem is never mentioned. In the Jerusalem Holy Books, it's mentioned 700 times.

But Abbas and others claim that Muhammad flew from a winged horse from Jerusalem to Heaven, and I don't have time to get into that. Let me just say, Jews face Jerusalem when they pray; Muslims face Mecca. When Jerusalem was under Arab control, not a single Arab leader, other than King Hussein and his father, visited. If it's so holy, why didn't others visit it? It belies their claim of holy status.

Chuck Schumer, the Democratic minority leader, has recently stated: Move the Embassy to Jerusalem now, an undivided Jerusalem.

Senator Joe Biden, at the time future Vice President, said, quote: "Moving the U.S. Embassy to Jerusalem will send the right signal, not a destructive signal. To do less would be to play into the hands of those who will try the hardest to deny Israel full attributes of statehood."

"The only way," Biden said, "there will be peace in the Mideast is for the Arabs to know there is no division between the U.S. and Israel." None, zero, none. Thank you very much.

[Prepared statement of Mr. Klein follows:]



ZIONIST ORGANIZATION OF AMERICA

**Written Testimony of
Zionist Organization of America (ZOA) National President Morton A. Klein**

**Hearing on Moving the American Embassy in Israel to Jerusalem:
Challenges and Opportunities
Before the
House of Representatives Committee on Oversight and Government Reform
Subcommittee on National Security
November 8, 2017, 10:00 a.m.
Rayburn House Office Building, Room 2167**

Introduction:

Chairman DeSantis, Vice Chairman Russell, Ranking Member Lynch, and Members of the Committee: Thank you for holding this hearing to examine relocating the United States Embassy in Israel to Jerusalem,¹ thereby finally implementing the bi-partisan Jerusalem Embassy Act of 1995, which Congress passed virtually unanimously² twenty-two years ago.

It is a special privilege to come before you during this year of momentous anniversaries: the 100th anniversary of both the Balfour Declaration and President Woodrow Wilson's essential prior U.S. consent to the Balfour Declaration³; and the 50th anniversary of the miraculous reunification of Jerusalem in the 1967 Six-Day War, when Israel defended herself from Jordan's attack.

I'd like to quote from then-Senator and subsequent Vice President Joe Biden's statement in 1995, urging Congress to pass the Jerusalem Embassy Act. Senator/VP Biden eloquently described the central importance of Jerusalem to the Jewish people, and the justice of recognizing and moving the American embassy to Israel's unified sovereign capital Jerusalem, as follows:

"Those familiar . . . with the Jewish people know the central meaning that the ancient city of Jerusalem has for Jews everywhere. Time and again, empires have tried to sever

¹ Jerusalem Embassy Act of 1995 (S. 1322 (104th)), Pub. L. 104-45, Nov. 8, 1995, 109 Stat. 398, at <https://www.gpo.gov/fdsys/pkg/STATUTE-109/pdf/STATUTE-109-Pg398.pdf>

² S. 1322 passed by 93 to 5 in the Senate, and by over 90% of the vote in the House (374-37). <https://www.govtrack.us/congress/bills/104/s1322/details>

³ Britain required prior consent from its allies France and the United States before issuing the Balfour Declaration. "The Forgotten Truth about the Balfour Declaration," by Prof. Martin Kramer, Mosaic Mag., June 5, 2017, at <https://mosaicmagazine.com/essay/2017/06/the-forgotten-truth-about-the-balfour-declaration/>

the umbilical cord that unites Jews with their capital. They have destroyed the temple. They have banished the Jews from living in Jerusalem. They have limited the number of Jews allowed to immigrate to that city. And, finally, in this century, they tried simply to eliminate Jews. They may have succeeded . . . in destroying physical structures and lives. But they have never succeeded in wholly eliminating Jewish presence in Jerusalem, or in cutting the spiritual bond between Jews and their cherished capital. After the horrific events of the Holocaust, the Jewish people returned to claim what many rulers have tried to deny them for centuries: The right to peaceful existence in their own country in their own capital. How many of us can forget that poignant photograph of an unnamed Israeli soldier breaking down in tears and prayer as he reached the Western Wall after his army liberated the eastern half of the city in the Six Day War? Those tears told a story. A story of a people long denied their rightful place among nations. A people denied access to their most hallowed religious sites. A people who had finally, after long tribulation, come home.”⁴

The Jews were indeed the largest religious group in Jerusalem from at least the time of the first census in 1844, through the present day.⁵ In approximately 1880, Jews became the majority in Jerusalem. In 1906, out of a total Jerusalem population of 60,000: 40,000 were Jews; 13,000 were Christians and only 7,000 were Muslims.⁶

Senator/VP Biden also commented that maintaining embassies in Tel Aviv for the previous forty-seven years (1948-1995) was a “*continued sham*” and “*a denial of fundamental reality.*”⁷ That sham and denial of fundamental reality has now continued for 69 years.

As I will discuss, moving the U.S. Embassy to Israel’s capital will achieve tremendous benefits for the United States and our allies throughout the world.

1. Moving the U.S. Embassy to Jerusalem Fulfills U.S. and International Law and Policy:

The move to Jerusalem will effectuate U.S. law and policy, as well as binding international law, to which the United States is a party, designating Israel, including Jerusalem, as the Jewish homeland.

(a) The Jerusalem Embassy Act of 1995 Establishes Moving the Embassy as U.S. Policy

⁴ Statement of Senator Joe Biden, Cong. Record Vol. 141, No. 165, Oct. 24, 1995 (Senate), p. S-15533, at <https://www.gpo.gov/fdsys/pkg/CREC-1995-10-24/html/CREC-1995-10-24-pt1-PgS15522.htm> (Emphasis is supplied, unless otherwise specified.)

⁵ “*Population of Jerusalem: 1844 to Present*,” Jewish Virtual Library, at <http://www.jewishvirtuallibrary.org/population-of-jerusalem-1844-2009>

⁶ Baedekers’ Guide to Jerusalem, 1906.

⁷ Statement of Senator Joe Biden, Oct. 24, 1995, *supra*, p. S-15533.

The bi-partisan Jerusalem Embassy Act of 1995, passed virtually unanimously, states that it is U.S. policy that Jerusalem “*should remain an undivided city . . . recognized as the capital of the State of Israel*” and that “*the United States Embassy in Israel should be established in Jerusalem no later than May 31, 1999.*”⁸

The Jerusalem Embassy Act lists seventeen historical, religious, factual and legal findings warranting the embassy move. Legal-related findings include: “(1) *Each sovereign nation, under international law and custom, may designate its own capital*”; “(2) *Since 1950, the city of Jerusalem has been the capital of the State of Israel*”; and “(16) *The United States conducts official meetings and other business in the city of Jerusalem in de facto recognition of its status as the capital of Israel.*” The Jerusalem Embassy Act also invokes the prior passage of unanimous Congressional resolutions (1990 and 1992); and respective 1995 Senate and 1993 House letters to the Secretary of State encouraging “*planning to begin now*” for relocation of the embassy to Jerusalem, and that the relocation “*should take place no later than . . . 1999.*”⁹

(b) The Jerusalem Embassy Act’s Waiver Provision Is Required to be Narrowly Construed, and is *Not* Intended to be Invoked Repeatedly or for Policy Disagreements

For the past two decades, successive U.S. administrations have repeatedly invoked the Jerusalem Embassy Act’s waiver provision every six months, even though the waiver provision was *not* intended to permit such repeated delays. The Jerusalem Embassy Act states that the President may invoke additional six-month waivers

*“if the President determines and reports to Congress in advance of the additional suspension that the additional suspension is necessary to protect the national security interests of the United States.”*¹⁰

In Congressional hearings in 1995, then-Senator and Majority Leader Robert (“Bob”) Dole, who introduced the Jerusalem Embassy Act along with Senators Moynihan, Kyl, Inouye, and 61 other colleagues,

Senator Dole also explained, during the following revealing exchange with then-Senator Kyl, that the waiver provision is required to be narrowly construed, may *not* be lawfully invoked simply because an administration disagrees as to when or if the embassy should be moved, and is *not* intended to allow indefinite delays. The Jerusalem Embassy Act’s intent was for the American embassy to be established in Jerusalem by May 1999:

⁸ Jerusalem Embassy Act of 1995, *supra*, § (3)(a)(1)-(3), Statement of Policy of the United States.

⁹ *Id.*, § 2, Congressional findings (1), (2), (9), (10), (13), (14) and (16).

¹⁰ Jerusalem Embassy Act of 1995, *supra*, Presidential Waiver, §§ 7(a)(1) and (2).

Mr. KYL: *The waiver provision in S. 1322 will be examined by many people. I would like to join with the distinguished majority leader in clarifying on the Record the meaning and purpose of the waiver language.*

Mr. DOLE: . . . *It is important that no one think that this [waiver] provision would allow the President to ignore the requirements of S. 1322 simply because he disagrees with the policy this legislation is promulgating. **The President cannot lawfully invoke this waiver simply because he thinks it would be better not to move our Embassy to Jerusalem or simply because he thinks it would be better to move it at a later time. The waiver is designed to be read and interpreted narrowly.** It was included to give the President limited flexibility -- flexibility to ensure that this legislation will not harm U.S. national security interests in the event of an emergency or unforeseen change in circumstances.*

Mr. KYL: *What is the significance of the phrase "national security interests" as opposed to "national interest"?*

Mr. DOLE: *This is the way we are ensuring that **the waiver will not permit the President to negate the legislation simply on the grounds that he disagrees with the policy.** "National security interests" in [sic] **much narrower** than the term "national interest"-- and it is a higher standard than national interest. The key word is security. **No President should or could make a decision to exercise this waiver lightly.***

Mr. KYL: *Is it fair to say that the intention of the waiver is to address constitutional concerns that have been raised about S. 1322?*

Mr. DOLE: *It is fair to say **the waiver is intended to address unusual or unforeseen circumstances.** We believe S. 1322 is constitutional even without the waiver, but the constitutional questions that have been raised about it deal [[Page S 15532]] with issues so important that we think it is best to offer the President the limited flexibility of the waiver. It is within the constitutional appropriations power of Congress to withhold funds from the executive branch if it does not act in accordance with congressional mandates.*

Mr. KYL: *Although in drafting the legislation Senators did not limit the number of times the President could invoke the waiver authority, is it correct to say that the intent of the drafters is not to grant the President the right to invoke the waiver in perpetuity?*

Mr. DOLE: ***The waiver authority should not be interpreted to mean that the President may infinitely push off the establishment of the American Embassy in Jerusalem. Our intent is that the Embassy be established in Jerusalem by May 1999. If a waiver were to be repeatedly and routinely exercised by a President, I would expect Congress to act by removing the waiver authority.***¹¹

¹¹ Statement of Senator Bob Dole, Oct. 24, 1995, *supra*, p. S-15528.

Senator Dole also explained that the presidential waiver was added to the bill “*despite having the votes to prevail*” without the waiver. This was simply done in the spirit of addressing any administration concerns.¹²

My (Morton Klein’s) personal discussions about the Jerusalem Embassy Act with its authors and many other members of Congress in 1995 and since then, likewise indicated that the Jerusalem Embassy Act’s waiver provision was *not* intended to be used to repeatedly delay the move for two decades past the stated deadline of 1999. I also observed, based on these conversations, that there were more than sufficient votes for the Jerusalem Embassy Act to pass without the last-minute insertion of the waiver provision.

(c) Additional U.S. Legal Commitments to Move the American Embassy to Jerusalem

Congress has reiterated its commitment to moving the embassy to Jerusalem. Section 214 of the Foreign Relations Authorization Act, FY 2003, provided:

*“UNITED STATES POLICY WITH RESPECT TO JERUSALEM AS THE CAPITAL OF ISRAEL.
(a) CONGRESSIONAL STATEMENT OF POLICY- The Congress maintains its commitment to relocating the United States Embassy in Israel to Jerusalem and urges the President, pursuant to the Jerusalem Embassy Act of 1995 (Public Law 104-45; 109 Stat. 398), to immediately begin the process of relocating the United States Embassy in Israel to Jerusalem.”*¹³

The U.S. obligation to move the embassy is further buttressed by pre-existing U.S. commitments to the Jewish homeland in the area encompassing Jerusalem, contained in additional U.S. law and binding international agreements to which the United States is a party.

The Lodge-Fish Resolution (1922) signed into law by then-President Warren Harding, approved the establishment of the Jewish homeland in Palestine.¹⁴ Palestine was a geographical area encompassing Jerusalem. (Palestine was never a country.)

The 1924 Anglo-American Convention (Treaty) confirmed the League of Nations Mandate, designating the area that is now Israel including Jerusalem and Judea/Samaria (and the area of present-day Jordan) as a “*sacred trust*” for reconstituting the Jewish homeland. The

¹² Statement of Senator Bob Dole, Oct. 24, 1995, *supra*, p. S-15531-15532.

¹³ Foreign Relations Authorization Act, FY 2003, H.R. 1646, 107th Cong. (2001) (Sept. 30, 2002), § 214, at <https://www.govtrack.us/congress/bills/107/hr1646/text>.

¹⁴ “Joint Resolution Favoring the Establishment in Palestine of a National Home for the Jewish People” (Lodge-Fish Resolution), H. J. Res. 73, 67th Cong., Pub. Res. 67–73, Sept. 21, 1922, 42 Stat. 1012 (enacted), at <http://legisworks.org/congress/67/pubres-73.pdf>.

Convention was ratified by the U.S. President and Senate in 1925, making it a binding U.S. treaty obligation.¹⁵

UN Charter Article 80¹⁶ (the “Jewish people’s clause”), adopted in 1945, to which the United States is a party, preserved intact all rights granted to Jews under the League of Nations’ Mandate for Palestine, even after the Mandate’s expiration in 1948. As legal scholar Howard Grief has explained, Article 80 prevents the UN from transferring rights over any part of Palestine to any non-Jewish entity, such as the Palestinian Authority or a “Palestinian state.”¹⁷

(d) There is No Lawful Impairment to the Embassy Move

Further, there is no U.S. law or binding international law that impairs Israel’s right to Jerusalem, or that impairs her right to maintain her capital in Jerusalem. The 1947 UN “Partition Resolution” was a mere *non-binding recommendation* (and subject to a vote by Jerusalem’s residents as to Jerusalem’s status after ten years).¹⁸ The recommendation was rejected by the Arabs, and thus did not become an internationally binding agreement or treaty.

The 1949 ceasefire lines (also known as the “1949 Armistice Demarcation Lines” or the “Green Line” or “pre-1967 lines”) were non-binding. The lines merely marked approximately where the fighting stopped in 1949 after six Arab nations invaded Israel, and Jordan illegally seized the eastern portion of Jerusalem – containing the Old City, Jewish Quarter, Judaism’s holiest sites, and Jewish cultural and academic institutions. The eastern portion of Jerusalem is the Jerusalem of the Bible and history. Israel and her neighbors specifically agreed that these lines were “*without prejudice to an ultimate political settlement between the parties*.”¹⁹

¹⁵ “Convention Between the United States and Great Britain in Respect to Rights in Palestine,” (Anglo-American Convention of 1924), Signed Dec. 3, 1924, Ratified advised by U.S. Senate Feb. 20, 1925, ratified by U.S. President, Mar. 2, 1925, ratified by Great Britain, Mar. 18, 1925, ratifications exchanged at London, Dec. 3, 1925; proclaimed Dec. 5, 1925, at <http://www.alliedpowersholocaust.org/wp-content/uploads/2015/03/1924-Anglo-American-Convention.pdf>.

¹⁶ Charter of the United Nations, Chapter XII: International Trusteeship System, Article 80, at <http://www.un.org/en/sections/un-charter/chapter-xii/index.html>

¹⁷ “Article 80 and the UN Recognition of a ‘Palestinian State’,” by Howard Grief, *Algemeiner*, Sept. 22, 2011, at <https://www.algemeiner.com/2011/09/22/article-80-and-the-un-recognition-of-a-“palestinian-state”/>

¹⁸ UN General Assembly Res. 181, Nov. 29, 1947, at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/un%20general%20assembly%20resolution%20181.aspx>

¹⁹ Israel-Jordan Armistice Agreement, Apr. 3, 1949, Articles II.2, VI.8 and VI.9, at <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/israel-jordan%20armistice%20agreement.aspx>

The western portions of Israel continued to be under Israeli control throughout Jordan's illegal occupation of eastern Jerusalem (1949-1967). Jerusalem served as Israel's capital from 1950 onwards.

After Israel recaptured the eastern portion of Jerusalem during the defensive Six-Day War in 1967,²⁰ Israeli sovereignty was restored to a unified Jerusalem. The Levy Commission (appointed by Israeli Prime Minister Netanyahu and headed by esteemed former Israel Supreme Court Justice Edmund Levy) concluded that when Israel recaptured eastern Jerusalem and Judea/Samaria:

*"the original legal status of the territory was restored, namely, a territory designated as a national home for the Jewish people, who had a "right of possession" to it during Jordanian rule while they were absent from the territory for several years due to a war imposed on them, and have now returned to it."*²¹

UN Security Council Resolution 242, adopted after the 1967 Six Day War, called for Israel to have "recognized and secure" borders, and did not call for Israel to surrender "all" lands captured in 1967.²² The secure borders that Israel is entitled to necessarily include Jerusalem. Then-U.S. President Lyndon Johnson stated shortly after the adoption of Resolution 242:

*"We are not the ones to say where other nations should draw lines between them that will assure each the greatest security. It is clear, however, that a return to the situation of June 4, 1967, will not bring peace."*²³

Israel has arguably more than complied with Res. 242 by returning the Sinai to Egypt pursuant to the Israel-Egypt Peace Treaty.

²⁰ Jordan attacked Israel in June 1967, even though Israel implored Jordan not to attack, saying: "we shall not engage ourselves in any action against Jordan, unless Jordan attacks us. Should Jordan attack Israel, we shall go against her with all our might." "Message from Prime Minister Eshkol to King Hussein," 5 June 1967, at <http://www.mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook1/Pages/16%20Message%20from%20Prime%20Minister%20Eshkol%20to%20King%20Huss.aspx>.

²¹ "The Levy Commission Report on the Legal Status of Building in Judea and Samaria," Jerusalem, June 21, 2012, Tammuz 1, 5772, translated into English by Regavim, 2014, at <http://www.regavim.org/wp-content/uploads/2014/11/The-Levy-Commission-Report-on-the-Legal-Status-of-Building-in-Judea-and-Samaria2.pdf>

²² UN Security Council Resolution 242, Nov. 22, 1967, at <http://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/UN%20Security%20Council%20Resolution%20242.aspx>

²³ "Lyndon Johnson Administration: Speech on 'A Just and Dignified Peace'," Sept. 10, 1968, Jewish Virtual Library, at <http://www.jewishvirtuallibrary.org/president-johnson-speech-on-a-just-and-dignified-peace-September-1968>

Further, the 1994 Israel-Jordan Peace Treaty recognized the Jordan River (not the “green line”) as the international boundary between Jordan and Israel.²⁴ Thus, Jerusalem is on the Israeli side of the agreed-to border. The Israel-Jordan Peace Treaty merely respects Jordan’s “*special role . . . in Muslim Holy shrines in Jerusalem*.”²⁵

The Oslo Accords (1993-1995), signed by the PLO and Israel, do not grant any rights to Jerusalem to the PLO - and *never* spoke of a Palestinian Arab state. In Prime Minister Rabin’s last speech to the Knesset, he explained that the contemplated “permanent solution” with the PLO would involve establishing a Palestinian Arab entity that was “*less than a State*” that governed the lives of Palestinian Arabs, and no giveaway of any part of united Jerusalem. “*First and foremost,*” Jerusalem would remain united under Israeli sovereignty.²⁶

Further, the United Nations does not have the power to make or interpret international law, or to render Israel’s sovereignty over unified Jerusalem “illegal,” via UN Security Resolution 2334

²⁴ *Treaty of Peace Between The State Of Israel And The Hashemite Kingdom Of Jordan*, 26 Oct 1994, Article 3 and Annex I, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israel-jordan%20peace%20treaty.aspx> (Article 3) and <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Israel-Jordan%20Peace%20Treaty%20Annex%20I.aspx> (Annex I)

²⁵ *Id.*, Article 9.2

²⁶ Prime Minister Yitzhak Rabin: Ratification of the Israel-Palestinian Interim Agreement, The Knesset, October 5, 1995, Israel Ministry of Public Affairs Archive, at <http://mfa.gov.il/MFA/MFA-Archive/1995/Pages/PM%20Rabin%20in%20Knesset-%20Ratification%20of%20Interim%20Agree.aspx> Rabin’s statement contemplated that the ultimate result of “Oslo process” negotiations, saying: “*We view the permanent solution in the framework of State of Israel which will include most of the area of the Land of Israel as it was under the rule of the British Mandate, and alongside it a Palestinian entity which will be a home to most of the Palestinian residents living in the Gaza Strip and the West Bank. We would like this to be an entity which is less than a state, and which will independently run the lives of the Palestinians under its authority. The borders of the State of Israel, during the permanent solution, will be beyond the lines which existed before the Six Day War. We will not return to the 4 June 1967 lines. . . . [W]e envision and want in the permanent solution: A. First and foremost, united Jerusalem, which will include both Ma’ale Adumim and Givat Ze’ev -- as the capital of Israel, under Israeli sovereignty, while preserving the rights of the members of the other faiths, Christianity and Islam, to freedom of access and freedom of worship in their holy places, according to the customs of their faiths. . . .*”

(2016)²⁷ or other UN resolutions which sought to delegitimize Israel's reunification of Jerusalem.²⁸

(e) Moving the U.S. Embassy to Jerusalem comports with the commitments and policies of the major U.S. political parties, top elected officials and the American public's views

The major U.S. political party platforms and statements are committed to moving the U.S. embassy to Jerusalem, or at the very least, having Jerusalem remain as a united city and the capital of Israel. No major U.S. party platform calls for the division of Jerusalem, or for Jerusalem to be recognized as the capital of any state other than Israel.

The 2016 Republican Party platform clearly called for the U.S. Embassy to be moved to Jerusalem, stating:

*"We recognize Jerusalem as the eternal and indivisible capital of the Jewish state and call for the American embassy to be moved there in fulfillment of U.S. law."*²⁹

Likewise, then candidate Trump declared in March 2016:

*"We will move the American embassy to the eternal capital of the Jewish people, Jerusalem."*³⁰

²⁷ See "Leading Int'l Legal Scholar Kontorovich Emphasizes at ZOA Event: US Embassy Should Move to Jerusalem," ZOA News Release, Jan. 23, 2017, at <https://zoa.org/2017/01/10350197-leading-intl-legal-scholar-kontorovich-emphasizes-at-zoa-event-us-embassy-should-move-to-jerusalem/>. Professor Kontorovich will be testifying on the same panel today.

²⁸ These include UN General Assembly ("GA") Res. 2253 (1967); UNGA Res. 2254 (1967); UN Security Council ("SC") Res. 252 (1968); UNSC Res. 267 (1969); and UNSC Res. 478 (1980). Professor Malvina Halberstam explains that: "Notwithstanding these and other resolutions by the General Assembly and Security Council, moving the US Embassy to Jerusalem would not violate international law. The UN Charter does not give the General Assembly the authority to adopt binding resolutions. Its resolutions are recommendations which States are free to accept or reject. The Security Council does have the authority to adopt resolutions that are legally binding. However, only resolutions adopted under Chapter VII of the Charter are binding. None of these resolutions were adopted under Chapter VII, and are, therefore, not binding." "Moving the US Embassy from Tel Aviv to Jerusalem: An Analysis and Discussion of U.S., Israeli and International Law," by Prof. Malvina Halberstam, Esq., Israel Nat'l News, reprinted on ZOA website, May 23, 2017, at <https://zoa.org/2017/05/10363858-jewish-prayer-on-har-habayit-whats-the-status-quo-and-should-it-be-changed/>

²⁹ 2016 Republican Party Platform, p. 47, at [https://prod-cdn-static.gop.com/media/documents/DRAFT_12_FINAL\[1\]-ben_1468872234.pdf](https://prod-cdn-static.gop.com/media/documents/DRAFT_12_FINAL[1]-ben_1468872234.pdf)

³⁰ "Donald Trump's Speech to AIPAC" transcript, Time Mag., Mar. 21, 2016, at <http://time.com/4267058/donald-trump-aipac-speech-transcript/>

The Trump campaign's policy platform also unconditionally reaffirmed:

*"The U.S. will recognize Jerusalem as the eternal and indivisible capital of the Jewish state and Mr. Trump's Administration will move the U.S. embassy to Jerusalem."*³¹

The 2016 Democratic Party Platform confirmed that Jerusalem should remain Israel's capital and undivided, stating:

*"While Jerusalem is a matter for final status negotiations, it should remain the capital of Israel, an undivided city accessible to people of all faiths."*³²

Last month, the Senate Democratic Minority Leader, Senator Chuck Schumer renewed a call for the American embassy to be moved to Jerusalem saying:

*"As someone who strongly believes that Jerusalem is the undivided capital of Israel, I am calling for the U.S. Embassy in Israel to be relocated to Jerusalem. Moving the embassy as soon as possible would appropriately commemorate the fiftieth anniversary of Jerusalem's reunification and show the world that the U.S. definitively acknowledges Jerusalem as Israel's capital."*³³

The American public overwhelmingly supports Jerusalem as the undivided capital of Israel. In the 2014 McLaughlin & Associates poll, in response to the question, *"Do you believe that Jerusalem should remain the undivided capital of Israel?"*, a clear majority of 55% of Americans replied that Jerusalem should remain the undivided capital of Israel, as opposed to a mere 13% who believe it should not.³⁴ That is over a 4 to 1 ratio in favor of Jerusalem remaining as Israel's undivided capital.

³¹ "Joint Statement from Jason Dov Greenblatt and David Friedman, Co-Chairmen of the Israel Advisory Committee to Donald J. Trump," – Compendium of Positions Confirmed with Donald Trump, Medium, Nov. 2, 2016, at <https://medium.com/@jgreenblatt/joint-statement-from-jason-dov-greenblatt-and-david-friedman-co-chairmen-of-the-israel-advisory-edc1ec50b7a8>.

³² 2016 Democratic Party Platform, at http://s3.amazonaws.com/uploads.democrats.org/Downloads/2016_DNC_Platform.pdf

³³ "Schumer Renews Call for Embassy Move After Trump Puts Idea on Hold," JTA, Oct. 10, 2017, at <https://www.jta.org/2017/10/10/news-opinion/politics/schumer-renews-call-for-embassy-move-after-trump-says-give-peace-bid-a-chance>

³⁴ McLaughlin & Associates: "ZOA Release Of New Poll: Americans Show Overwhelming Support For Israeli Positions — Oppose Obama's Positions," Jan. 28, 2014, at <http://mclaughlinonline.com/2014/01/28/new-poll-americans-show-overwhelming-support-for-israeli-positions-oppose-obamas-positions/>

In mid-May, sixty top Christian leaders sent a letter to the president, organized by American Christian Leaders for Israel (ACLI), urging the president to end the waivers and move the American embassy to Jerusalem.³⁵

2. Moving the U.S. Embassy acknowledges reality (and will be more convenient for U.S. Government personnel):

Relocating the American embassy to Jerusalem would acknowledge the reality that Jerusalem is and has been the reconstituted State of Israel's capital and seat of government for almost 70 years.

The Jerusalem Embassy Act of 1995 found that the U.S. has already de facto recognized Jerusalem as Israel's capital, saying: "*The United States conducts official meetings and other business in the city of Jerusalem in de facto recognition of its status as the capital of Israel.*"³⁶

It is not surprising that official U.S. government business is regularly conducted in Jerusalem, and that relocating the embassy will be far more convenient and practical for U.S. embassy personnel: As the Jerusalem Embassy Act found: "*The city of Jerusalem is the seat of Israel's President, Parliament, and Supreme Court, and the site of numerous government ministries and social and cultural institutions.*"³⁷ Twenty-three out of Israel's twenty-six ministries, plus most other national government offices are all located in Jerusalem.³⁸

³⁵ See, e.g., "*Trump's Evangelical Supporters Disappointed About Israel Embassy Decision*," by Adelle M. Banks, Religion News Service, National Catholic Reporter, Jun 1, 2017, at <https://www.ncronline.org/news/politics/trumps-evangelical-supporters-disappointed-about-israel-embassy-decision>

³⁶ Jerusalem Embassy Act of 1995, *supra*, § 2.(16).

³⁷ *Id.*, § 2.(3).

³⁸ Israel's government ministries are listed by the Israel Ministry of Foreign Affairs, at <http://www.mfa.gov.il/mfa/aboutisrael/state/government/pages/israel%20government%20ministries.aspx>. The ministries' and government offices' addresses are listed at: <http://www.mfa.gov.il/MFA/AboutIsrael/State/Government/Pages/Addresses-%20Telephone%20and%20Fax%20Numbers%20of%20Government.aspx> Israel's ministries located in Jerusalem include the: Ministry of Communications; Ministry of Construction and Housing; Ministry of Culture and Sport; Ministry of Education; Ministry of Energy and Water Resources; Ministry of Environmental Protection; Ministry of Finance; Ministry of Foreign Affairs; Ministry of Health; Ministry of Immigrant Absorption; Ministry of Industry, Trade and Labor; Ministry of Intelligence Affairs; Ministry of the Interior; Ministry of Justice; Ministry for Pensioners' Affairs; Ministry of Diaspora Affairs; Ministry of Public Security; Ministry of Religious Services; Ministry of Science and Technology; Ministry of Social Affairs; Ministry of Strategic Affairs; Ministry of Tourism; and Ministry of Transport, National Infrastructures and Road Safety. Additional Israeli government institutions located in Jerusalem include the: Bank of Israel; Central Bureau of Statistics; Chief Rabbinate of Israel; Civil Service Commission;

3. Jerusalem is the Jewish People's Eternal Historic, Religious and Spiritual Capital. By Contrast, Jerusalem was Largely Ignored by Islam

Relocating the embassy to Jerusalem also acknowledges the reality that Jerusalem is and has been the Jewish people's historic and spiritual capital for over 3,000 years. Jerusalem is the capital of historic Jewish kingdoms; the site of Judaism's holiest sites; and central to Jewish prayer, including the famous Psalm "*If I forget you, oh Jerusalem, let me forget my own right hand*"³⁹; the conclusion of every Passover Seder and the Judaism's holiest day of the year, Yom Kippur, with "Next year in Jerusalem!"; and daily prayers for Jerusalem.

The Jerusalem Embassy Act confirms that:

"(4) The city of Jerusalem is the spiritual center of Judaism . . . and is also considered a holy city by the members of other religious faiths. . . .
[and]
*(17) In 1996, the State of Israel will celebrate the 3,000th anniversary of the Jewish presence in Jerusalem since King David's entry."*⁴⁰

Jerusalem was the capital of the Jewish nation under King David and other Jewish kings, for hundreds of years.

By contrast, Jerusalem was never the capital of any other nation. After the Arab conquest of Israel in 716 CE, the Arabs made Ramla their capital – *not* Jerusalem. Jerusalem has moreover never been a Palestinian Arab capital; indeed, there has never been a Palestinian Arab state.

Jerusalem is also the Jewish people's holiest city. Jerusalem's Old City (in the eastern portion of Jerusalem, the real Jerusalem) contains the millennia old Jewish Quarter and Judaism's holiest site, the Temple Mount where the First and Second Jewish Temples stood, long before the birth of Islam. And eastern Jerusalem also contains the world's oldest and largest (3,000 years-old) Jewish cemetery on the Mount of Olives. (Eastern Jerusalem is the real Jerusalem throughout Biblical and human history; Western Jerusalem was built in recent years.)

Council for Higher Education; Israel Academy of Sciences and Humanities; Israel Broadcasting Authority; Israel Land Administration; Israel Police; Knesset; Knesset Members' Offices; Law Courts; National Authority of Religious Services; National Insurance Institute; Office of the Chief Scientist; Postal Authority; Prime Minister's Office; and State Comptroller and Public Complaints Commissioner/Ombudsman.

³⁹ Psalm 137, verse 5, at http://www.chabad.org/library/bible_cdo/aid/16358/jewish/Chapter-137.htm

⁴⁰ Jerusalem Embassy Act of 1995, *supra*, § 2.(14) and (17).

Jerusalem is spoken of with reverence almost 700 times in the Torah, the Jewish holy books. Jerusalem is never mentioned in the Koran – not even once.

Throughout the millennia, Jews always pray *for* Jerusalem 20 times each day, remember Jerusalem in holiday and wedding ceremonies, and pray facing Jerusalem. By contrast, Muslims pray facing Mecca. There are *no* Muslim prayers for Jerusalem.

Muslims make their pilgrimages to Mecca; while Jewish pilgrimages are to Jerusalem. One of the five pillars of Islam (the five obligatory fundamental Muslim practices) is the “Hajj” pilgrimage to the Kaaba in Mecca, Saudi Arabia. The Torah commands the Jewish people to make pilgrimages to the Temple in Jerusalem three times each year, on Judaism’s three pilgrimage festivals (Passover, Shavuot and Sukkot).

Jews have lived in Jerusalem throughout the millennia. Since at least the mid-1800s, the majority of the people living in Jerusalem were Jews. Theodore Herzl wrote in his diary about his arrival in Jerusalem on the evening of October 31, 1898: “*The streets were alive with Jews sauntering in the moonlight.*” The 1907 prestigious Baedekers’ Travel Guide reported that at that time, Jerusalem had 40,000 Jews; 13,000 Christians and 7,000 Muslims.

Passover celebrates the Jewish people’s freedom from slavery in Egypt, and return to Israel. Matzah eaten at Passover seders symbolizes the poor, broken unleavened bread that Jews ate while escaping from Egypt, to return to Israel. Jews sing at the end of every Passover seder: “*Next year in Jerusalem*” and “*Rebuild the [Jewish] Temple in Jerusalem speedily in our days.*”

Hanukkah celebrates the Jewish Maccabees’ successful battles to free Israel from the Selucids (Syrian-Greeks) and overcome internal traitors (“Hellenists”) who adopted the Greek’s ways; followed by the Maccabees’ rededication of the Jewish Temple in Jerusalem. (The word Hanukkah means “rededication.”).⁴¹

In an attempt to create an Islamic religious connection to Jerusalem, Muslims point to Koran and *hadith* passages referring to Muhammad’s *dream* (*not* an actual event) of journeying to heaven on his steed Buraq from the Sacred Mosque in Saudi Arabia to the “farthest mosque.” However, the “farthest mosque” could not possibly have meant Jerusalem because the Koran refers to Palestine as the “nearest” place, and Jerusalem was a central crossroads in the Middle East – *not* a “farthest” place. Moreover, Jerusalem’s eventual “Al Aqsa Mosque” was built long *after* the Koran and the Hadith were written. The mosque was named “Al Aqsa” after the fact, to create a myth about the location of Mohammed’s dream. During Mohammed’s day, Jerusalem was ruled by Byzantine Christians, and a Byzantine Christian church stood on the Temple Mount.

⁴¹ “*The Story of Chanukah*,” Chabad, at http://www.chabad.org/holidays/chanukah/article_cdo/aid/102978/jewish/The-Story-of-Chanukah.htm

So little did Jerusalem mean to the Muslim Ottomans that, during the First World War, they abandoned it to the British without a fight and even contemplated entirely destroying the city before leaving it.

In 1948, six Arab nations invaded Israel, and Jordan captured and illegally occupied the eastern portion of Jerusalem for 19 years (1948-1967). During Jordan's illegal occupation, Jordan demolished 58 centuries-old Jewish synagogues, killed or expelled the Jews, pillaged tombstones of the 3,000-years-old Mount of Olives Jewish cemetery to line latrines, denied Jews access to their holiest religious sites, and harshly discriminated against Christians and churches. Jordan prohibited Christian churches and communities from buying land or opening new schools, required Christian schools to teach the Koran, and refused to allow Christian holidays.

Under Jordanian Arab Muslim rule, Jerusalem became a small isolated town. Arabs abandoned Jerusalem and moved to Amman.

Significantly, neither the Palestinian Liberation Organization (PLO)'s original National Charter (drafted in 1964, during Jordanian Muslim rule)⁴², nor the PLO's 1968 National Charter,⁴³ nor the Fatah (Arafat's terrorist group) Constitution⁴⁴ even mention Jerusalem, let alone call for its establishment as a Palestinian Arab capital!

During Jordan's 19-year illegal occupation of Jerusalem, Jordan also kept its capital in Amman, built Jordan's first university in Amman, as well as the King's numerous residences and their main mosque, and made its Friday prayer radio broadcasts from Amman – not from Jerusalem. From 1948 to 1967, Amman's population increased to five times its previous size, while Jerusalem's population did not increase at all. Arab leaders did not even bother visiting Jerusalem (with the brief exception of King Hussein). Jordan allowed eastern Jerusalem to fall into disrepair – to become a slum, with virtually no water or plumbing or electricity. This is of course not how an Islamic nation would treat a city that was really holy to Islam.

Tellingly, in the not-so-distant past, Muslims recognized the Temple Mount as the site of the biblical Jewish temples. Thus, the Jerusalem Muslim Supreme Council's publication, 'A Brief Guide to the Haram Al-Sharif' (1925 edition, page 4)⁴⁵, states about Jerusalem's Temple Mount that: *"Its identity with the site of Solomon's Temple is beyond dispute. This, too, is the spot,*

⁴² Palestine Liberation Organization Original National Charter (1964), Jewish Virtual Library, at <http://www.jewishvirtuallibrary.org/the-original-palestine-national-charter-1964>

⁴³ The Palestinian National Charter, 1968, Yale Law School, Lillian Goldman Law Library, at http://avalon.law.yale.edu/20th_century/plocov.asp

⁴⁴ Fatah Constitution, as of August 25, 2007, CAMERA, at http://www.camera.org/index.asp?x_context=7&x_issue=68&x_article=1704

⁴⁵ "A Brief Guide to Al-Haram Al-Sharif," Jerusalem, Published by the Supreme Moslem Council, 1925, at <http://www.bibleplaces.com/guide.pdf>

according to the universal belief, on which 'David built there an altar unto the Lord, and offered burnt offerings and peace offerings.'" (The quotation is from 2 Samuel 24:25.)

The same Muslim publication notes on page 16: *"In the west wall of the chamber, a door opens into a staircase descending to Solomon's stables. This is a vast subterranean chamber . . . It dates probably as far back as the construction of Solomon's Temple. According to Josephus, it was in existence and was used as a place of refuge by the Jews at the time of the conquest of Jerusalem by Titus in the year 70 A.D."* (After 1954, all such references to the biblical Temples were excised from this publication.)

Mideast scholar Prof. Francis Peters of NYU said that Muslims have always regarded Jerusalem *"with careless indifference."* There has never even been an important place of Muslim learning built or established there.

However, Leon Uris, famed author of *"Exodus"* wrote, *"Jerusalem has known only two periods of true greatness and these have been separated by 2000 years. Greatness has only happened under Jewish rule. . . Jews have remained constant in their love throughout the centuries. It is the longest and deepest love affair in the history of the world."*

4. The Embassy Relocation Will Enhance U.S. Security:

The embassy relocation will also strengthen American security and enhance worldwide respect for America by demonstrating that the United States can be counted on to keep her commitments to her allies. The move will demonstrate that America does not allow American policy to be determined by radical Islamist terrorist threats. Succumbing to such Islamist threats begets more threats and more violence, especially in the Middle East, where strength and maintaining one's honor are the coin of the realm. Concessions to the Palestinian Arabs have consistently led to more violence. Thus, if we want to *reduce* violence in Israel and throughout the Middle East, moving our embassy is the correct path.

We can also couple moving the embassy with additional policies to reduce violence, such as tough legislation to stop the Palestinian Authority (PA)'s unconscionable "pay to slay" payments to terrorists to murder Jews and Americans, and pushing for the removal of Hamas and Fatah social media pages inciting the murder of innocent Jews and Christians.

5. The Embassy Move Will Help – And Not Harm Any Peace Prospects

Relocating the American embassy to Jerusalem will not harm a peace process. Rather, as then-candidate Trump correctly explained:

"[W]hen the United States stands with Israel, the chances of peace really rise and rises exponentially. That's what will happen when Donald Trump is president of the United

*States. We will move the American embassy to the eternal capital of the Jewish people, Jerusalem."*⁴⁶

Among other things, moving the embassy will help peace prospects by diminishing the fantasy that Jerusalem is on the chopping block.

Indeed, Israel's government has reportedly argued to the U.S. administration that relocating the embassy would "*force the Arabs and Palestinians to wake up from a long-harbored fantasy that they could disassociate Israel and the Jewish people from Jerusalem.*"⁴⁷

Even though the embassy has not been moved since Israel's re-establishment, the prospects for the peace are dimmer than they were in 1995. That is because the impediments to peace have nothing to do with the location of the U.S. embassy. The impediments to peace are the Palestinian Authority's incitement of violence and hatred against Jews and others; payments to terrorists to murder Jews and Americans; and unwillingness to recognize a Jewish state in any shape or form.

Further, failing to move the American embassy propagates the Arab propaganda myth that peace would result if Israel agreed to divide Jerusalem. Dividing Jerusalem was previously tried and failed. There was no peace when Jordan illegally occupied the eastern portion of Jerusalem for 19 years (1948-1967); Jordanian snipers regularly shot Israelis walking to school or work.

The argument that moving the embassy could interfere with a peace process was properly rejected when the Jerusalem Embassy Act was enacted twenty-two years ago, and deserves no credence today. As then-Senator Biden stated during the Congressional hearings in 1995:

*"[T]he only way there will be peace in the Middle East is for the Arabs to know there is no division between the United States and Israel--none, zero, none. . . . As the Israelis and Palestinians begin the final status negotiations . . . it should be clear to all that the United States stands squarely behind Israel, our close friend and ally. **Moving the U.S. Embassy to Jerusalem will send the right signal, not a destructive signal.** To do less would be to play into the hands of those who will try their hardest to deny Israel the full attributes of statehood."*⁴⁸

⁴⁶ "Donald Trump's Speech to AIPAC" transcript, Time Mag., Mar. 21, 2016, at <http://time.com/4267058/donald-trump-aipac-speech-transcript/>

⁴⁷ "White House Announces 'Postponement' Of Jerusalem Embassy Move," by Michael Wilner & Herb Keinon, Jerusalem Post, June 1, 2017, at <http://www.jpost.com/Israel-News/Trump-renege-on-campaign-pledge-signs-waiver-to-maintain-US-embassy-in-Tel-Aviv-494445>

⁴⁸ Statement of Senator Joe Biden, Cong. Record Vol. 141, No. 165, Oct. 24, 1995 (Senate), p. S-15527, at <https://www.gpo.gov/fdsys/pkg/CREC-1995-10-24/html/CREC-1995-10-24-pt1-PgS15522.htm>

Senator Dole, who introduced the Jerusalem Embassy Act along with Senators Moynihan, Kyl, Inouye, and 61 other colleagues, likewise explained that

*"This legislation is not about the peace process, it is about recognizing Israel's capital. Israel's capital is not on the table in the peace process, and moving the United States Embassy to Jerusalem does nothing to prejudge the outcome of any future negotiations."*⁴⁹

Then-Senator Carl Levin (D-MI), a Jerusalem Embassy Act co-sponsor, also noted:

*"It will not help the peace process for there to be any ambiguity about where Israel's capital is. Our action today will help to eliminate any such ambiguity and to make it clear to all concerned that this country is finally going to do in Israel what we have done in every single country in the world, which is to place our Embassy in the capital city."*⁵⁰

Significantly, then-Israeli Deputy Foreign Minister Yossi Beilin, the far leftwing architect of the Oslo accord peace process – who was dedicated to the peace process and in an ideal position to know what would harm such a process – clearly explained that moving the embassy should occur *"the earlier the better,"* and that this would not hurt the peace process, noting:

*"Israel is the only nation in the world that doesn't have a recognized capital and I am not prepared to accept that if Israel has a recognized capital this will affect the negotiations."*⁵¹

It is now twenty-four years after the Oslo accords – and the prospect of achieving real peace with the Palestinian Authority is dimmer than ever, and likely non-existent. Recent events bear this out: The Palestinian Authority first lied to President Trump and then vehemently rejected President Trump's reasonable demands to end the PA's unconscionable "pay to slay" payments.⁵² The PA continues to preach hatred and violence against Jews and Christians in

⁴⁹ Statement of Senator Robert Dole, Cong. Record, Vol. 141, No. 165, Oct. 24, 1995 (Senate), pp. S15522-S15535, at <https://www.gpo.gov/fdsys/pkg/CREC-1995-10-24/html/CREC-1995-10-24-pt1-PgS15522.htm>

⁵⁰ Statement of Senator Carl Levin, Cong. Record, Vol. 141, No. 165, Oct. 24, 1995 (Senate), p. S-15534, at <https://www.gpo.gov/fdsys/pkg/CREC-1995-10-24/html/CREC-1995-10-24-pt1-PgS15522.htm>

⁵¹ Yossi Beilin on Legislation to Move the United States Embassy to Jerusalem, Press conference with Israeli journalists, Oct. 12, 1995, reprinted in Cong. Record Vol. 141, No. 165, Oct. 24, 1995 (Senate), pp. S15522-S15535, at <https://www.gpo.gov/fdsys/pkg/CREC-1995-10-24/html/CREC-1995-10-24-pt1-PgS15522.htm>, pp. S 11528, S 15531.

⁵² See "P.A.'s Abbas Lies to Trump that P.A. Teaches 'Culture of Peace' – But PA Pays Salaries to Terrorists," ZOA News Release, May 8, 2017, <https://zoa.org/2017/05/10362016-p-as-abbas-monstrous-lie-to-trump-p-a-instills-culture-of-peace-while-paying-salaries-to-terrorists/>; "PMW Special Report: The PA's Billion Dollar Fraud: The PA's Claim That It No Longer Pays Salaries To

schools, government controlled mosques and via all forms of media.⁵³ It is impossible to achieve peace with a Palestinian Arab entity that pays terrorists and teaches its school children to kill innocent Jews and Americans. The Palestinian Authority's maps, school atlases, official stationary and ruling party Fatah's emblem all show "Palestine" covering all of Israel. The PA continues to glorify Jew-killing terrorists by naming schools, streets, sports teams, children's camps and athletic teams after the terrorists.

Further, the PA entered into a reconciliation pact with designated foreign terrorist organization Hamas, which permits both Hamas or Fatah (the PA's governing political party) to continue terror.⁵⁴ And the PA is now demanding that the British government renounce and apologize for the Balfour Declaration.⁵⁵ As Jerusalem Post senior editor Caroline Glick succinctly put it, the Palestinian Arabs "*have not moved an inch in a hundred years.*"⁵⁶

In light of the long and ongoing history of Palestinian-Arab rejectionist "resistance" to peace, aren't the 69 years that have passed since Jerusalem became modern Israel's capital long enough to wait before we recognize this reality and move our embassy to Jerusalem?

6. Moving the U.S. Embassy to Jerusalem Will End the Discrimination Against the Only Jewish State in the World.

Terrorist Prisoners Is False," Palestinian Media Watch, April 27, 2017, at <http://palwatch.org/STORAGE/special%20reports/PMW%20report,%20PA%20billion%20dollar%20fraud,%20270416.pdf> ; "ZOA: PA's Abbas Lied to Sec'y Tillerson – They Still Pay Arabs to Murder Jews," ZOA News Release, June 15, 2017 (with citations), at <https://zoa.org/2017/06/10366373-zoa-pas-abbas-lied-to-secy-tillerson-they-still-pay-arabs-to-murder-jews/>

⁵³ See, e.g., "Palestinian Elementary School Curriculum 2016–17: Radicalization and Revival of the PLO Program," by Eldad J. Pardo, Hebrew University, April 2017, at <http://www.impact-se.org/wp-content/uploads/PA-Curriculum-2017-Revised.pdf>. (Hebrew University study reproducing page after page of the vicious anti-Semitic, anti-Israel statements found in PA textbooks at every grade level and for every subject, teaching "a strategy of violence and pressure . . . Children are expendable . . . [S]ystematic hatred of all things Jewish/Israeli . . . Palestinian students vow to 'saturate the 'generous' land' with their blood. Each student recites: 'I vow I shall sacrifice my blood . . . will remove/eliminate the usurper from my country, and will annihilate the remnants of the foreigners.' There is apparently no restriction on violence until the last Israeli is out of Palestine." Even math problems in the PA's math textbooks are based on numbers of "martyrs" to teach Arab children to "martyr" themselves to kill Jews.)

⁵⁴ "Fatah Seeks 'True Partnership' with Hamas; Neither Will Give Up Violence," by Itamar Marcus & Nan Jacques Zilberdik, PMW, Oct. 24, 2017 (quoting Fatah Central Committee officials Jibril Rajoub and Azzam Al-Ahmad) at http://www.palwatch.org/main.aspx?fi=157&doc_id=24054

⁵⁵ "Column One: Balfour's Greatest of Gifts," by Caroline B. Glick, Jerusalem Post, Oct. 27, 2017, at <http://www.jpost.com/Opinion/COLUMN-ONE-Balfours-greatest-of-gifts-508602>

⁵⁶ *Id.*

The U.S. embassy is in the capital of every other nation with which the U.S. has diplomatic relations. The Jerusalem Embassy Act of 1995 criticized this disparity, stating: "*The United States maintains its embassy in the functioning capital of every country except in the case of our democratic friend and strategic ally, the State of Israel.*"⁵⁷

Relocating the embassy will end the anomaly that Israel is the only country in the world in which the U.S. embassy is not located in the host nation's capital. The move will thus send a valuable message that Jews and the sole Jewish state are not second-class citizens – a message that will help combat anti-Semitism, and strengthen our bond with our key ally Israel. This will carry out the policy announced by then-candidate Trump in March 2016: "*When I become president, the days of treating Israel like a second-class citizen will end on day one.*"⁵⁸

The equitable concept that Jews and Israel should be accorded the same rights as other people and nations was also expressed long before President Trump's statement. In 1819, our nation's second president, John Adams (1797-1801), wrote letters to American-Jewish diplomat Mordecai Manuel Noah, stating:

"I wish your nation may be admitted to all the privileges of citizens in every part of the world. This country (America) has done much; I wish it may do more and annul every narrow idea in religion, government, and commerce."

and

*"I really wish the Jews again in Judea, an independent nation . . ."*⁵⁹

In 1984, Democratic then-Congressman (and ranking Democrat on the Europe and Middle East Subcommittee of the House Foreign Affairs Committee) Tom Lantos (D-CA) pointed out that our embassy is located in the capital city of 135 out of 136 countries with whom the U.S. maintains diplomatic relations (today the number of countries is closer to 200), and that the Jewish state

⁵⁷ Jerusalem Embassy Act of 1995, *supra*, § 2.(15).

⁵⁸ "*Donald Trump's Speech to AIPAC*" transcript, Time Mag., Mar. 21, 2016, at <http://time.com/4267058/donald-trump-aipac-speech-transcript/>

⁵⁹ "*John Adams Spoke as a Friend of Zionism and a Foe of Slavery*," A. H. Sakier, New York Times letters, Dec. 20, 1986 (quoting republication of Adams' letters in "*A Century of U.S. Aliya*," pub. Association of Americans and Canadians in Israel, 1961). See also "*The Selected Writings of Mordecai Noah*," edited by Michael Schuldiner and Daniel J. Kleinfeld, Discourse on the Restoration of the Jews, Greenwood Press, 1999, p. 127, at <https://books.google.co.il/books?id=Rp7F78jM9kcC&pg=PA127&lpg=PA127&dq=john+adams+i+wish+your+nation+may+be+admitted+to+all+the+privileges+of+citizens+in+every+part+of+the+world.&source=bl&ots=t1m7ajAX7h&sig=W3D15qub8SzdRAmtbg1jx7GeW2s&hl=en&sa=X&ved=0ahUKEwiLp4a75aHXAhXDfRoKHfYIAAcQ6AEILjAD#v=onepage&q=john%20adams%20i%20wish%20your%20nation%20may%20be%20admitted%20to%20all%20the%20privileges%20of%20citizens%20in%20every%20part%20of%20the%20world.&f=false>

of Israel is the only exception, and described the bipartisan Congressional support for moving our embassy to Jerusalem. Congressman Lantos stated

*"The time has come for us to take a clear and unequivocal stand on the issue of equal treatment. The time has come for us to abandon the discriminatory double standard we have observed toward Israel and locate our embassy in Israel's capital -- Jerusalem."*⁶⁰

Sadly, over three more decades have passed since those words were written, and still Israel is being accorded discriminatory treatment.

Congressman Lantos also noted that the U.S. has located its embassy in a foreign nation's capital even where there was no formal recognition of that capital. Congressman Lantos explained that even though the United States did not recognize East Germany's claim to East Berlin, the U.S. nevertheless located the U.S. embassy for East Germany in East Berlin. Rep. Lantos commented:

*"If we are broadminded enough to enunciate and observe this rational principle for dealing with a communist dictatorship, should we not follow that same rational principle in dealing with a democratically?"*⁶¹

A decade later, during the Congressional hearings for the Jerusalem Embassy Act, then-Senator Charles Robb (D-VA) expressed concern over the unequal treatment accorded to Israel, saying:

*"Among the 184 countries we maintain diplomatic relations with, Israel is the single exception to the rule of locating the United States chancery in the designated capital of each foreign nation. We have a responsibility to respect the decisions of where all countries locate their seat of government, and Israel should not be viewed in a different light."*⁶²

By ending this disparity, and relocating the U.S. Embassy to Jerusalem, the U.S. will send a valuable message that Jews and the sole Jewish state are not second-class citizens. That message will help combat anti-Semitism, and strengthen our bond with our key ally Israel. Relocating the embassy will thus carry out the policy announced by then-candidate Trump in March 2016: *"When I become president, the days of treating Israel like a second-class citizen will end on day one."*⁶³

⁶⁰ "Embassies in Capital Cities," by Rep. Tom Lantos (D) of California is the. Christian Science Monitor, June 20, 1984, at <https://www.csmonitor.com/1984/0620/062011.html>

⁶¹ *Id.*

⁶² Statement of Senator Charles Robb, Cong. Record, Vol. 141, No. 165, Oct. 24, 1995 (Senate), p. S-15523, at <https://www.gpo.gov/fdsys/pkg/CREC-1995-10-24/html/CREC-1995-10-24-pt1-PgS15522.htm>

⁶³ "Donald Trump's Speech to AIPAC" transcript, Time Mag., Mar. 21, 2016, at <http://time.com/4267058/donald-trump-aipac-speech-transcript/>

7. Relocating the U.S. Embassy Will Protect Religious Freedom:

Relocating the U.S. Embassy will also protect the cherished American value and universal human right of international religious freedom – a Trump Administration foreign policy priority which was the subject of a hearing in this Committee just last month.⁶⁴

Only under Israeli sovereignty are persons of all faiths been guaranteed – both in practice as well as by law – religious freedom and access to their holy sites and places of worship in Jerusalem.

By contrast, when Jordan captured and illegally occupied the eastern portion of Jerusalem from 1948-1967, Jordan demolished 58 centuries-old Jewish synagogues; killed or expelled the Jews in the Jewish Quarter of Jerusalem; pillaged tombstones of the world's oldest (3000 years old) Jewish cemetery to line roads and latrines.⁶⁵ Jordan set up barbed wire fences and machine gun nests through the heart of Jerusalem to completely deny Jews access to the holiest Jewish sites including the Temple Mount, and to almost always deny Israeli Christians access to their holy sites in the Old City as well.

And as former Congressman Tom Lantos explained:

*"[D]uring 19 years of Jordanian rule, Jews were denied access to the Western Wall, their holiest of shrines. The area around it was allowed to deteriorate into a slum. Even Christian and Muslim citizens of Israel were not allowed to visit any of their holy places while Jordan controlled East Jerusalem."*⁶⁶

Jordan did all this in violation of the Israeli-Jordan armistice agreement, which required Jordan to provide Israelis with free access to their religious holy sites and to the Mount of Olives cemetery.⁶⁷

⁶⁴ "Review of the U.S. Government's Role in Protecting International Religious Freedom," Subcommittee on National Security, Hearing date: Oct. 11, 2017 10:00 AM, 2154 Rayburn, at <https://oversight.house.gov/hearing/review-u-s-governments-role-protecting-international-religious-freedom/>

⁶⁵ "Jordanian Desecration of Mount of Olives Cemetery Described," JTA, July 5, 1967, at <https://www.jta.org/1967/07/05/archive/jordanian-desecration-of-mount-of-olives-cemetery-described>

⁶⁶ "Embassies in Capital Cities," by Tom Lantos, Christian Science Monitor, June 20, 1984, at <https://www.csmonitor.com/1984/0620/062011.html>

⁶⁷ Israel-Jordan Armistice Agreement, Apr. 3, 1949 (available at <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/israel-jordan%20armistice%20agreement.aspx>), Article VIII.2, required Jordan to provide "resumption of the normal functioning of the cultural and humanitarian institutions on Mount Scopus and

During the same period, Jordan also harshly discriminated against Christians and churches in eastern Jerusalem. Jordan undertook to Islamize the Christian quarter in the Old City of Jerusalem; prohibited Christian churches and communities from buying land and houses; required Christian schools to teach the Koran, refused to allow Christian holidays; ordered the compulsory closure of schools on Muslim holidays; and authorized mosques to be built near churches, thus preventing any possibility of enlargement.⁶⁸

The Jerusalem Embassy Act's findings succinctly confirm this history of Jordan's denial of religious access, and Israel's respect for and protect of the rights of all faiths, as follows:

"(5) From 1948-1967, Jerusalem was a divided city and Israeli citizens of all faiths as well as Jewish citizens of all states were denied access to holy sites in the area controlled by Jordan.

(6) In 1967, the city of Jerusalem was reunited during the conflict known as the Six Day War.

(7) Since 1967, Jerusalem has been a united city administered by Israel, and persons of all religious faiths have been guaranteed full access to holy sites within the city.

*(8) This year marks the 28th consecutive year that Jerusalem has been administered as a unified city in which the rights of all faiths have been respected and protected."*⁶⁹

If the eastern portion of Jerusalem was surrendered to a Palestinian Arab state, religious repression would reign as it did under Jordan's illegal occupation. **PA President Mahmoud Abbas openly states that "in a final resolution, we would not see the presence of a single Israeli, civilian or soldier, on our land."**⁷⁰ Jews would be cut off from their holiest places, including the Western Wall – which are located in the old city of Jerusalem.

Jewish sites in PA-controlled territory have already become virtually inaccessible to Jews. Palestinian Arabs (and PA police) have thrown rocks and Molotov cocktails, committed arson,

free access thereto; [and] free access to the Holy Places and cultural institutions and use of the cemetery on the Mount of Olives."

⁶⁸ "The Beleaguered Christians of the Palestinian-Controlled Areas," by David Raab, Jerusalem Center for Public Affairs (citing Yehoshua Porath, *The Palestinian Arab National Movement, 1929-1939: From Riots to Rebellion*, London, 1977, p. 109, cited in Bat Ye'or, *Islam and Dhimmitude: Where Civilizations Collide*, Teaneck, NJ: Fairleigh Dickinson University Press, 2002, pp. 160-161), at <http://www.jcpa.org/il/vp490.htm> .

⁶⁹ Jerusalem Embassy Act of 1995, *supra*, § 2.(5)-(8).

⁷⁰ "Abbas Wants 'Not a Single Israeli' in Future Palestinian State," by Noah Browning, Reuters, July 30, 2013, at <http://www.reuters.com/article/us-palestinians-israel-abbas/abbas-wants-not-a-single-israeli-in-future-palestinian-state-idUSBRE96T00920130730>

and murdered worshipers and Israeli soldiers protecting worshipers at Joseph's Tomb, the burial place of the Jewish patriarch Joseph, which is in PA-controlled territory.⁷¹

If a Palestinian Arab state controlled portions of Jerusalem, Christians would suffer the same discrimination that they are subjected to in areas currently under Palestinian Authority control. The PA has shown contempt for and desecrated Christian churches, statues, crosses and cemeteries; cut phone lines to monasteries; aired loudly amplified Muslim sermons during Christian services; broken into convents; harassed and arrested Christian converts; extorted money and confiscated land and property of Christians.⁷²

Perhaps the importance and attachment to the Jewish people of the Jewish holy places in the Old City of Jerusalem – and the pain of being cut off from them - can best be conveyed through the story of one man:

David Naeh⁷³ is an 81-year-old Jewish man and lifelong Jerusalemite, who was born in Jerusalem in 1936. Prior to 1948, David and his father went to the Western Wall to pray, and David's father's business – a small shop – was located near the Old City entrance. When Jordan conquered the area, David's father was forced to abandon his business, and David and his father could no longer pray at the Western Wall. During those next 19 years of illegal Jordanian occupation (1948-1967), David and his father and others would walk to Mount Zion, the highest point they could find, where one could perhaps see the top-most tips of the trees above the Western Wall – and say "there it is, there's the Kotel!" – even though the Western Wall could not really be seen from there – and pray facing there. Returning to the Western Wall in 1967 after the nineteen long years of separation felt extraordinary.

Conclusion

In closing, I would like to thank you for holding this hearing to review the important issue of implementing the Jerusalem Embassy Act of 1995.

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⁷¹ See "IDF Soldier Injured in Skirmish near Joseph's Tomb," Times of Israel, Sept. 21, 2015, at <https://www.timesofisrael.com/idf-soldier-hurt-in-skirmish-near-josephs-tomb/>; "Arson at Joseph's Tomb," The Atlantic, Oct. 16, 2015, at <https://www.theatlantic.com/international/archive/2015/10/josephs-tomb-nablus-fire-israel-palestinians/410914/>; "Israeli Killed by Palestinian Police in Joseph's Tomb Officially Recognized as Terror Victim," Haaretz, May 26, 2011, at <https://www.haaretz.com/israel-news/israeli-killed-by-palestinian-police-in-joseph-s-tomb-officially-recognized-as-terror-victim-1.364254>

⁷² "The Beleaguered Christians of the Palestinian-Controlled Areas," *supra*.

⁷³ Mr. Naeh was interviewed by ZOA in Jerusalem on Oct. 30, 2017.

Mr. DESANTIS. All right. Thank you, Mort Klein.

The chair notes the presence of our colleague, the gentleman from North Carolina, Mr. Meadows. And I ask unanimous consent that he be allowed to fully participate in today's hearing.

Without objection, it's so——

Mr. WELCH. Hold on now.

Mr. DESANTIS. I don't think he would want a recorded vote on that.

The chair now recognizes Dr.Koplow for 5 minutes.

STATEMENT OF MICHAEL KOPLOW

Mr. KOPLOW. Thank you, Mr. Chairman, Mr. Ranking Member, and members of the committee, for the invitation to appear before you to discuss the important issue of moving the American Embassy in Israel to Jerusalem.

As the title of this hearing aptly notes, there are both challenges and opportunities in moving the Embassy from its current location in Tel Aviv that make this issue particularly thorny. The basic calculus at hand is to balance issues of fundamental fairness against potential harm to American security and diplomatic priorities and U.S allies in the region.

Moving the Embassy to Jerusalem would rectify the historic wrong of locating the American Embassy in a city that is not Israel's declared capital. Israel's controlling rights to the modern city of Jerusalem are not today in dispute. Yet Israel is the only country whose capital is unrecognized. The presence of foreign embassies in Tel Aviv fuels the fear among Israelis that the full legitimacy of their state will never be acknowledged. Moving the Embassy to Jerusalem supports the basic notion of fairness, and maintaining the Embassy in Tel Aviv to remain in line with the rest of the international community is not sufficient reason to do so. There should be no ambiguity about Israel's true capital.

Nevertheless, there are potentially damaging national security implications if the Embassy is moved to Jerusalem. It is for these reasons that every President, including most recently President Trump, has declined to move the Embassy since the Jerusalem Embassy Act of 1995 was passed, and they should be weighed seriously.

There are three primary national security considerations for keeping the Embassy in Tel Aviv. The first is to prevent unnecessary violence. Jerusalem is possibly the most sensitive geopolitical site in the world and sudden moves there often lead to chaos that damages Israel's security in fundamental ways.

The most deadly violence committed by Palestinians against Israelis, including the First and Second Intifadas, and the 1996 Western Wall Tunnel riots are often sparked by fears, irrespective of whether they are unfounded, about a change in Jerusalem's status quo.

There is no definitive way of knowing whether moving the American Embassy to Jerusalem will result in riots or violence, but the danger of mass demonstrations protesting the Embassy move in Israel, the West Bank, and Muslim majority countries around the world will be high. This could affect not only the safety and security of Israelis but also the safety and security of American Embas-

sies and diplomatic personnel around the world. While extremists should not be granted a role as spoilers, the U.S. should do what it can to avoid unnecessary risks and harm to its own property and personnel.

The second reason is to safeguard the interests of other regional allies. Jordan and Egypt, in particular, are sensitive to issues surrounding Jerusalem and the Israeli-Palestinian conflict. And Jordan's peace treaty with Israel specifically recognizes its special and historic role in Jerusalem and the Temple Mount.

Moving the Embassy risks unrest in these countries and will make it more difficult for their governments to cooperate with the United States on other regional issues. Moving the Embassy will also put further strain on the peace treaties that Israel has with Jordan and Egypt, which are constantly subject to pressure due to their unpopularity with the Jordanian and Egyptian publics.

Finally, moving the Embassy now will damage any Israel Palestinian peace initiative that the Trump administration is planning to unveil, along with harming any future efforts in this arena by this administration or any successive ones. Moving the Embassy at the beginning of a renewed peace process rather than as the culmination of a successful round of negotiations will make a two-state solution, which has been longstanding American policy and is the stated policy of the Israeli Government, harder to achieve. It will sow Palestinian distrust of the United States as an honest broker and may lead the Palestinians to refuse to negotiate if they view one of the core final status issues as already being prejudged.

Moving the Embassy should be done in the context of a successful negotiating process, in keeping with decades of American policy precedents, and should not be done in the aftermath of a failed or stalled negotiation. In this instance, what is fair policy is not the same as what is prudent policy. Any change in the Embassy status must be comprehensively weighed against the grave and unintended consequences that may occur should the Embassy be relocated to Jerusalem at this point in time.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Koplow follows:]



November 8, 2017

Testimony Before the Subcommittee on National Security of the House Committee
on Oversight and Government Reform

“Moving the American Embassy in Israel to Jerusalem: Challenges and Opportunities”

Prepared Statement
Michael J. Koplow, Policy Director
Israel Policy Forum

Mr. Chairman, Mr. Ranking Member, and Members of the Committee:

Thank you for the invitation to appear before you to discuss the important issue of moving the American Embassy in Israel to Jerusalem. As the title of this hearing aptly notes, there are both challenges and opportunities in moving the embassy from its current location in Tel Aviv that make this issue particularly thorny. The basic challenge as I see it in this case is to balance issues of fundamental fairness against potential harm to the Trump Administration's diplomatic priorities and American allies in the region.

As the Members of this Committee know well, the Jerusalem Embassy Act of 1995 was intended to rectify the historic wrong of locating the American Embassy in a city that is not Israel's declared capital. Israel designated Jerusalem as its capital following the state's establishment and its victory in the War of Independence, and Israel's control and rights to West Jerusalem are not today in dispute. Indeed, the Armistice Agreements signed in 1949 between Israel and Jordan, Egypt, Syria, and Lebanon that established the Green Line placed the Jewish neighborhoods of West Jerusalem in Israeli territory, explicitly recognizing Israel's claim to the modern city of Jerusalem. There is no legal impediment to acknowledging West Jerusalem as Israel's capital.

The historical reason for the embassy being located in Tel Aviv is because the international community views the overall status of Jerusalem as being subject to negotiations between Israel and the Palestinians. This is not an issue in which the United States is an outlier in any way – while there were a small number of primarily Latin American countries that located their embassies in Jerusalem in the past, there have been no embassies in Jerusalem for over a decade. The fact that the United States has maintained this policy for more than half a century should not be sufficient reason to keep the embassy in Tel Aviv, nor should the United States shy away from moving the embassy simply to remain in line with the rest of the international community.

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The argument for moving the embassy to Jerusalem relies on a basic notion of fairness. Israel is the only UN member state whose capital – determined by its own democratically elected and sovereign government – is not accepted by the rest of the international community. Despite the fact that Jerusalem does indeed represent a complex problem whose ultimate settlement must be resolved through negotiations, this is a red herring. Israel's capital is in the section of Jerusalem that was built by Jewish residents of Palestine and has not been disputed since the cessation of hostilities in 1949. Its status is not disputed, and even the PLO accepts West Jerusalem to be part of Israel in the context of negotiations. West Jerusalem is also not the part of the city that is viewed by the United Nations as *corpus separatum* and being more appropriately placed under a special international regime. Many view the refusal to locate the American embassy in West Jerusalem as evidence that the issue is acceptance of Israel in any borders rather than a stand against Israel's application of its law to East Jerusalem or presence in the West Bank, fueling a fear among Israelis that the legitimacy of their state will never be fully recognized.

Furthermore, keeping the embassy in Tel Aviv does not constitute a purely neutral move. Israelis rightly feel that it signals an unwillingness to accept Jerusalem as the capital of Israel and the Jewish people, the return to which was the object of centuries of Jewish longing. An American embassy in West Jerusalem does not prejudice the status of the Old City or negate the eminently reasonable desire of Palestinians to have their future capital in East Jerusalem. Keeping the embassy in Tel Aviv grants a hecklers' veto to those whose real problem is with any Israeli presence in Jerusalem and who aim to deny the Jewish connection to Jerusalem.

In addition, the American Embassy's location in Tel Aviv twinned with the location of the American Consulate General in Jerusalem creates a blatant double standard. The consulate serves as an independent mission outside of the authority of the embassy, and is a de facto mission to the Palestinian Authority in the absence of an embassy in Ramallah. Thus, American diplomats who oversee U.S.-Israel relations are located in Tel Aviv in an effort not to prejudice any permanent status negotiations over Jerusalem, yet American diplomats who maintain the relationship with the Palestinian Authority work out of a mission in Jerusalem.

Israel's government institutions are primarily located in Jerusalem. It is inconceivable that any permanent status agreement between Israel and the Palestinians will not recognize Jerusalem as the capital of Israel. Maintaining the legal fiction that Israel's capital is disputed not only can be seen as grave disrespect to a critical American ally, but it also perpetuates an unreasonable notion among Palestinians and wider Arab publics that Israel's claim to Jerusalem is illegitimate and that the Jewish connection to Jerusalem is concocted. Moving the American Embassy to Jerusalem would send a powerful message about history, justice, and the value of supporting allies.

Nevertheless, despite the strong considerations that recommend relocating the Embassy, doing so would not be cost-free. The Jerusalem Embassy Act, while demonstrating Congress's recognition of the power in righting this historical wrong, recognized that moving the American Embassy from Tel Aviv to Jerusalem could have potentially damaging national security implications. As a result, Congress gave the president the authority to suspend for six months the budgetary cuts to the State Department that would automatically occur if the Embassy was not relocated to Jerusalem if doing so was necessary to protect the national security interests of the United States, and to continue that suspension for an indefinite number of six month periods if national security interests warranted it. Since the Jerusalem Embassy Act was passed and enacted, every president

has declined to move the Embassy and has consistently invoked his power to suspend these appropriations cuts, including most recently President Trump. There are three primary national security considerations that favor keeping the embassy in Tel Aviv: preventing violence in Israel and the West Bank and the targeting of American diplomatic facilities, safeguarding the interests of Sunni Arab regional allies, and maintaining conditions for the Trump Administration or any future administrations to successfully advance an initiative on the Israeli-Palestinian peace process.

The status of Jerusalem has always been the thorniest of the core issues at the heart of the Israeli-Palestinian conflict. Changes in the city's status quo – most prominently and most recently manifested in conflict over the Temple Mount this past July – lead to outbreaks of violence that can spin out of control and be difficult to manage, fundamentally putting Israel's security at risk. There is no definitive way of knowing whether moving the American Embassy to Jerusalem will result in chaos, riots, and violence. It is likely, however, that doing so will lead to unrest given the explosiveness of the issue, whether this takes place in Jerusalem, other spots in Israel, the West Bank, Muslim-majority countries, or at American embassies around the world. Moving the Embassy will be perceived as recognizing Israel's claim to Jerusalem at the expense of Palestinian claims to the city, and public rhetoric is certain to reflect this and tend toward incitement to violence and "defending al-Quds." Palestinian and Muslim populations are unlikely to respect the distinction between establishing the American Embassy in West Jerusalem and leaving the status of East Jerusalem subject to negotiations. This could affect not only stability and order in Jerusalem, but also the safety and security of American embassies and diplomatic personnel around the world. As noted above, moving the Embassy to Jerusalem would constitute a powerful symbol, but doing so must be weighed against the possibility that it will result in the loss of American, Israeli, and Palestinian lives. The danger of mass demonstrations throughout Muslim-majority countries protesting the Embassy move will be high. No decision to move the Embassy should be made before conducting a thorough assessment of the risks involved, which countries and locations are most likely to be affected, and the likelihood of the loss of life and property damage. Jerusalem is possibly the most sensitive geopolitical location on the globe, and moving the American Embassy outside of the context of a negotiated deal will have concrete security consequences.

Moving the Embassy to Jerusalem may also have a profound affect on American allies in the region. Jordan and Egypt in particular have restive populations that are sensitive to issues surrounding Jerusalem and the Israeli-Palestinian conflict, and Jordan's peace treaty with Israel specifically recognizes its special and historic role in Jerusalem. Moving the Embassy risks unrest in these countries that will also make it more difficult for their governments to cooperate with the United States on other regional issues. It will also create a significant political problem for the Jordanian monarchy, which is one of the United States' most – if not the absolute most – reliable Arab allies in the region and which has a majority Palestinian population. The need to maintain a united front against Iranian regional hegemony, continuing to prosecute the fight against ISIS forces and ISIS offshoots such as the terrorist group in the Sinai Peninsula, and staunching the flow of refugees from Syria in Jordan in particular are all American priorities that will become more difficult to maintain should there be a backlash from relocating the Embassy to Jerusalem. Doing so may also put further strain on the peace treaties that Israel has with Jordan and Egypt, which are constantly subject to pressure due to their unpopularity with the Jordanian and Egyptian publics.

Finally, moving the Embassy at this time will fatally damage any Israeli-Palestinian peace initiative that the Trump Administration is planning to unveil before it has a chance to get off the ground. It may also fatally damage any future efforts by this administration and any successive ones, putting a two-state solution permanently out of reach. President Trump has repeatedly stated his desire to broker a deal between the two parties, and moving the Embassy at the beginning of a renewed peace process rather than as the culmination of a successful round of negotiations will make this goal harder to achieve. It will sow distrust on the Palestinian side of the United States as an honest broker, and may lead the Palestinians to refuse to negotiate if they view one of the core final status issues as already being prejudged. None of this is to suggest that the United States may not have an interest in making clear that it recognizes Jerusalem as the capital of Israel, but rather to point out that doing so will have consequences that adversely affect one of President Trump's foreign policy priorities. Moving the Embassy should be done in the context of a successful negotiating process in keeping with decades of American policy precedents, and should not be done in the aftermath of a failed or stalled negotiation. The location of the American Embassy should be a variable that helps the peace process rather than harms it.

If the Embassy is indeed moved to Jerusalem, it must be done in a way that not only corrects the currently reigning historical injustice but also preserves and promotes the two-state solution, which is a critical and long-standing foreign policy and national security interest of the United States. This can only be achieved if the United States makes clear that an American Embassy in West Jerusalem does not mean that it recognizes Israeli sovereignty the entirety of the city and that moving the Embassy does not prevent the establishment of a future Palestinian capital in Jerusalem. If the United States were to relocate its Embassy to Jerusalem while simultaneously declaring that any embassy to the future state of Palestine – pending the successful outcome of permanent status negotiations between Israel and the Palestinians – will be located in East Jerusalem, this would be the only way to both legitimize Israel's rightful claims in Jerusalem and maintain a viable two-state solution in the future.

Alternatively, the United States could adopt the same policy that was recently adopted by Russia and that was welcomed by the Israeli government, which is to recognize West Jerusalem as Israel's capital but keep the Embassy in Tel Aviv until a permanent status agreement between Israel and the Palestinians has been signed. This policy option grants Israel the recognition in its capital that it deserves without prejudging the sovereignty of the disputed portion of the city, and it may also avoid the likeliest trigger for violence, which would be the relocation of the Embassy itself.

In sum, the decision to relocate the American Embassy to Jerusalem cannot be judged solely on the issue of fairness. While there are valid arguments on both sides, a decision to move the Embassy will not be cost-free, and the timing at the moment raises particularly thorny challenges. In this instance, what is fair and just may not be the same as what is wise. Any change in the Embassy's status must be carefully and comprehensively weighed against the grave and unintended consequences that may occur should the Embassy be relocated to Jerusalem.

Mr. DESANTIS. Thank you.

The chair now recognizes Professor Kontorovich for 5 minutes.

STATEMENT OF EUGENE KONTOROVICH

Mr. KONTOROVICH. Mr. Chairman, Ranking Member Lynch, members of the committee, thank you for having me at the hearing today.

My written testimony deals with issues involving the status of the corpus separatum, the structure of waivers under the act, but I'm going to forego those issues in my comments right now and focus on the objections to moving the Embassy because it seems, in a kind of diplomatic version of Augustine's prayer, everybody agrees that the Embassy should be moved, just not yet. And so I'm going to focus on those "not yet's," "not right now's."

The arguments focus on certain practical concerns, whose existence or realism can't really be proven while the waiver is issued, and so they are, in a sense, unfalsifiable. But one interesting thing about the arguments for not moving the Embassy, security arguments essentially, is that they have not changed in the 20-some years since the act's passage, despite the radical change in the security and political, geopolitical, situation in the region. In a sense, they are entirely unresponsive and invariant to political development.

They can be summarized like this: Don't move the Embassy until the Palestinians, and maybe the Jordanians and the Egyptians, say it's okay. Don't move the Embassy until they agree. This holds American policy, this holds a statute subject to veto and waiver by third countries. In no geopolitical conflict, in no geopolitical dispute do we give parties, do we give neighbors, a waiver on where the U.S. Embassy should be. That is to say, maybe Pakistan and India would like the U.S. Embassies to those countries to be somewhere else, but we don't ask them.

Now, it's not surprising that supporters of the Palestinians come and couch their arguments in national security terms, that is to say, implied threats of violence. Under the terms of the statute, the only reason for not implementing it is national security. The only permissible waiver is national security.

Not surprisingly, we commonly hear national security threats from the Jordanians and the Palestinians, that they're in a sense shoehorning their foreign policy and political concerns into this justification. It's not surprising that such threats continue to be made because the Palestinian Authority finds that such threats work. They continue to keep the U.S. Embassy from being moved. This means that waiving the act based on such threats, in fact, invites further threats. Waiver creates its own predicate.

I should point out that the security arguments have been significantly undermined by recent developments in the region. The security arguments were first made when the act was passed over 20 years ago, and they continue to be recited as if nothing has changed.

One, the Sunni States, in particular Saudi Arabia, are—as of now—literally at war with Iran. They cannot afford a rift with the United States. The notion that Saudi Arabia would endanger itself—it just shot down yesterday an Iranian-provided missile with

a Patriot missile battery—the notion that it would endanger the air security of Riyadh over the Embassy issue is preposterous. The notion that Jordan would expose itself to ISIS threat because of the Jerusalem Embassy issue is preposterous.

So there has been a fundamental realignment in the Arab world. Twenty years ago, when people said that the Arab street is going to explode, that meant one thing. Now, I would point out, the Arab street has already exploded, principally internally. We need not fear riots against the U.S. in Damascus. The U.S. no longer has diplomatic representation there. Benghazi happened, not because of the Jerusalem Embassy. In other words, the people committed to keeping America out of the MiddleEast already, they are fully incentivized. U.S. Embassies in the area are constantly under threat. There was a threat this year to the Embassy in Cairo. Indeed, in 1998, two U.S. Embassies in Africa were blown up, in Tanzania and Kenya.

The response of the United States was not to cut and run and say: Wow, there are people who threaten violence to our presence here; we might as well leave.

The response by Congress was to appropriate nearly \$1 billion for embassy security and, of the executive, to hunt down the perpetrators and ensure that they come to justice. That's the American response.

There is no other situation in which threats to embassies, especially to a major ally, are a reason for not having diplomatic representation in a country's capital.

In particular, this has a very bad consequence for the peace process because it puts Israel in a special unique category where its existence, its sovereignty over its capital, is only provisionally recognized. It's recognized with a question mark. Israel is a country in a class of one. That undermines the peace process.

Moreover, the Palestinians base their claims to a state to the Jordanian and Egyptian conquest of areas of the British mandate in 1949. Large parts of Jerusalem, including potential locations for the Embassy, are not in those areas illegally conquered by Jordan and Egypt, and the Palestinians have no conceivable claim to them. Waiting for a—tying this to the peace process makes the Palestinians' eyes bigger than their plate and gives them an appetite for that which they could not potentially have and fundamentally undermines the peace process.

[Prepared statement of Mr. Kontorovich follows:]

U.S. Policy on Israel Held Hostage by Threats and Outdated Arguments

Prepared written testimony of:

Prof. Eugene Kontorovich
Northwestern University School of Law;
Kohelet Policy Forum



U.S. House of Representatives Committee on Oversight &
Government Reform, National Security Subcommittee hearing:

*“Moving the American Embassy to Jerusalem: Challenges and
Opportunities”*

November 8, 2017

Chairman DeSantis, Ranking Member Lynch, and honorable members of the Subcommittee, I am honored to be invited to testify before you today about implementing the Jerusalem Embassy Act, which will take full effect on Dec. 2, absent a presidential waiver issued prior to that date. I am a professor at Northwestern University Pritzker School of Law, where I teach constitutional and international law. I am also the head of the international law department at the Kohelet Policy Forum, a Jerusalem think-tank. I have written dozens of scholarly articles on various aspects of U.S. foreign relations law and the Arab-Israeli conflict, which have been published in leading law reviews and peer-reviewed journals. My scholarship has been frequently cited in leading foreign relations cases in federal courts, and I have testified repeatedly before Congress, as well as the European Parliament. I also co-wrote an amicus brief to the Supreme Court in *Zivotofsky v. Kerry*, the Jerusalem passport case.

My testimony today will explain the reasons behind the U.S. embassy's current location, and explain the structure of the Embassy Act. It will show that the Embassy's location outside of Jerusalem undermines U.S. foreign policy and helps isolate Israel. It will then consider the oft-repeated national security arguments in favor of delaying the Act's implementation. These arguments have not aged well since they were first rehearsed upon the law's passage 22 years ago. Moreover, they reward threats of violence, and allow U.S. policy to be held hostage by terrorists and aspiring terrorists.

1. What a waiver really means

I will begin by discussing the structure of the Jerusalem Embassy Act, and how it operates. Jerusalem is the only world capital whose status is denied recognition by the United States. To remedy that, in 1995 Congress passed the Jerusalem Embassy Act, which mandates moving the U.S. Embassy to a "unified" Jerusalem. The implementation of the law has been held in abeyance due to semiannual presidential waivers for "national security" reasons.

Crucially, the law already requires the embassy to Israel to be moved to that country's capital, Jerusalem. It is important to stress that the waiver available to the president under the Jerusalem Embassy Act of 1995¹ does *not* waive the obligation to move the embassy. That policy has been fully adopted by Congress in the Act (sec. 3(a)(3)) and is not waivable.

Congress, having total power over the spending of taxpayer dollars, does not have to pay for an embassy in Tel Aviv, regardless of the Executive branch's foreign policy preferences. Thus, the Act's enforcement mechanism is to suspend half of the appropriated funds for the State Department's "Acquisition and Maintenance of

¹ Jerusalem Embassy Act of 1995, Pub.L. 104-45, Nov 8, 1995, 109 Stat. 398.

Buildings Abroad” until the law’s terms are complied with. The waiver provision simply allows the president to waive the financial penalty for renewable six-month periods. The waiver does not change the underlying substantive obligation of having the embassy in Jerusalem as a condition for ongoing State Department funding.

Moreover, the law says nothing about “moving” the embassy. Rather, the requirement is to “officially open” an embassy, which can be done with a mere declaration upgrading the status of one of the existing consular facilities in the city. It does not require the physical relocation of the facility in Tel Aviv or any of its functions.

Under the structure of the Act, once a six-month waiver expires, the full force of the Act’s funding provisions take effect beginning the subsequent fiscal year (sec. 3(b)). Once a waiver period expires without a waiver being issued, no further waivers are possible. It is important to stress that literally nothing need be done to implement the Act – the president must simply refrain from signing a waiver. Such an action need not be interpreted as any kind of statement about or change in U.S. policy, a fact that gives the Executive significant diplomatic cover. That is because U.S. policy is already established by the Act. And that law does not allow for any waiver based on foreign policy concerns. Any arguments for further waivers based on concerns about the (apparently moribund) Israeli-Palestinian peace process, the reactions of Arab states, and similar concerns are entirely illegitimate and cannot be considered. The Act only allows the president to issue a waiver when it is “necessary” to protect national security.

2. What the Embassy’s Status Means

It is important to understand the reasons for the Embassy’s current location outside Jerusalem, and its implications for U.S. foreign policy. The current situation results in an American foreign policy stance that is both dangerous to Israel, discrediting to the U.S., and fundamentally incoherent. The U.S. embassy was never established in Jerusalem, because the U.S., upon Israel’s creation, refused to recognize any part of the city as under Israeli sovereignty. This policy was originally due to the United Nations General Assembly’s 1947 proposal, in Resolution 181, to partition Mandatory Palestine into three non-continuous Jewish sectors and four non-contiguous Arab sectors, each of which would become a separate country. In this arrangement, the greater Jerusalem area would be a “corpus separatum,” an internationalized city under no sovereignty. The General Assembly’s proposal had no legal force and was unworkable, and in any case completely rejected by the Arab states, who opposed a Jewish state within any borders. Thus, the proposed treatment of Jerusalem by Res. 181 should have been absolutely irrelevant in 1948, and it is nothing but a historical footnote today.²

² Abraham Bell & Eugene Kontorovich, *Palestine, Uti Possidetis Juris, and the Borders of Israel*, 58 Ariz. L. Rev. 633, 677-78 (2016).

In no other respect does the U.S. give any deference to Res. 181's proposed borders – it does not doubt Israeli sovereignty over the Tel Aviv neighborhood of Jaffa although it would have fallen under Arab sovereignty under the proposed partition plan. Even more absurdly, the deference to Jerusalem's *corpus separatum* status only operates against Israel. The borders of the proposed international city exceeded those of the city today, and in particular included significant parts of Bethlehem, so as to incorporate Christian holy sites. Yet the U.S. treats Bethlehem as part of the territory administered by the Palestinian Authority, instead of treating it as a *sui generis* entity as it does the Israeli-controlled parts of the *corpus separatum*. The insistence on maintaining the policy legacy of a hypothetical *corpus separatum* when it comes to Israel but not the Palestinians locks in a deeply anti-Israel bias in America's regional diplomacy. The refusal to locate the embassy in Jerusalem is both anachronistic and incoherent.

What is worse, by giving deference to pre-1948 border proposals, the Embassy's current location casts a permanent question mark on the U.S.'s acceptance of the State of Israel. It suggests – contrary to U.S. policy – that Israel's legitimate borders are somehow related to those proposed by U.N. G.A. Res. 181.

All this does concrete harm. By refusing to even give force to Israel's sovereignty within the 1949 Armistice lines, any U.S. brokering of a peace process loses all credibility. Moreover, this encourages Arab maximalism by implying that Israel is a uniquely probationary state, and suggesting they have some say in territory that was never under Arab control. The current arrangement requires the maintenance of a silly charade where U.S. officials must commute through the country's most difficult traffic to interact with the Israeli government, while being meticulously careful to not mention what country that government sits in. All this is deeply discrediting to U.S. diplomacy. America can hardly reassure Israel about its security concerns in any peace deal when it allows itself to be held hostage by threats of violence. Finally, it must be noted that the U.S. failure to implement the Embassy Act has done absolutely nothing to moderate the Palestinians' resistance to a negotiated diplomatic solution.

3. National security waiver and discredited predictions

The central argument against moving the embassy is that it would lead to violence, and in particular to attacks against American targets. As explained above, these are the only permissible arguments for waiver under the Act. But the basis of those warnings has been undermined by the massive changes in the region since 1995. In 1995, the Middle East was controlled by stable Arab autocracies that sought to suppress anti-U.S. actions, while at the same time being highly critical of U.S. support for Israel. Today, the Sunni Arab

states have found common cause with Israel and the U.S., and the specter of jihadist violence is no longer a threat, but a reality.

While the Palestinian issue was once at the forefront of Arab politics, today Israel's neighbors are preoccupied with a nuclear Iran and radical Islamic groups. For the Sunni Arab states, the Trump administration's harder line against Iran is far more important than Jerusalem. Indeed, with Saudi Arabia now under direct attack by Iranian-backed Shiite forces, the Sunni states have every reason to suppress any anti-American efforts. To be sure, implementation of the law could in principle serve as a pretext for attacks by groups like ISIS and al Qaeda. But these groups have already declared war against the U.S., and are fully motivated to carry out attacks to the extent of their capacity. The despicable attack on the U.S. consulate in Benghazi and the silly pretexts offered for it, serve as a powerful reminder of this point. While any attacks carried out after a waiver is not issued may be "dedicated" to the issue, this does not mean the expiration of a waiver will increase the capacity or determination of America's enemies. The U.S. cannot be threatened by what is already happening.

Invoking hypothetical threats as a reason for distorting U.S. foreign policy towards a key ally is itself deeply inconsistent with U.S. foreign policy and basic prudence. U.S. embassies in the Middle East routinely face concrete and specific threats.³ Indeed, in 1998, Islamic terrorists blew up the U.S. embassies in Dar El Salaam, Tanzania, and Nairobi, Kenya. These attacks were said to be a response to various aspects of U.S. foreign policy.⁴ But America did not respond by rethinking those policies, or by withdrawing its embassies from those cities. Instead, the Executive undertook to hunt down and punish the perpetrators, while Congress appropriated extraordinary amounts for improved security at diplomatic facilities around the world.⁵

Arguing that the U.S. not carry out its policy with regards to its closest ally in the Middle East amounts to an argument for treating Israel differently, and thus implicitly validates those who deny Israel's full status among the nations of the world.

Indeed, recent events have shown how hollow threats of retaliation in the wake of changing policies on Jerusalem are. In April of this year, Russia suddenly announced that it recognized Jerusalem as the capital of Israel.⁶ This made Russia the first and only country in the world to recognize Jerusalem as Israeli in any way – a major development.

³ For one of many examples, see Michael Edison Hayden, *US Embassy in Egypt warns of 'potential threat' from terrorist organization*, ABC News, (May 24, 2017), available at <https://abcnews.go.com/US/story?id=46844440>.

⁴ Lawrence Wright, *The Looming Tower: Al Qaeda and the Road to 9/11*. (New York: Knopf 2016).

⁵ Susan Epstein, *Diplomatic and Embassy Security Funding Before and After the Benghazi Attacks*, Congressional Research Service Report (Sept. 10, 2014).

State Department Fact Sheet, *Funding for Embassy Security* (Aug. 4, 1999), available at https://1997-2001.state.gov/regions/africa/fs_anniv_funding.html.

⁶ Russian Foreign Ministry, *Statement regarding Palestinian-Israeli settlement* (April 6, 2017), available at http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2717182.

It was an extraordinary change in policy for the Kremlin, which had always been a steadfast backer of the Palestinians.

Prior to Moscow's recognition announcement, experts would have predicted that such a unilateral recognition would provoke anger and violence from at least the Palestinians. Note what happened next: No explosions of anger at the Arab world. No end to Russia's diplomatic role in the Middle East. No terror attacks against Russian targets. Indeed, Moscow's dramatic Jerusalem reversal has largely been ignored by the foreign-policy establishment because it disproves their predictions of mayhem.⁷

Once the President fails to issue a waiver, the Palestinian Authority would have every incentive to downplay the significance of the move – as they did with Moscow's recognition – because to do otherwise would be to concede a fundamental diplomatic defeat. The Abbas government is unlikely to want to do that.

4. Conclusion

It is not surprising that the Palestinian Authority threatens dire consequences if the U.S. moves its Israeli embassy. It has found that such threats work. This means that waiving the Act based on such threats in fact invites further threats: the waiver creates its own predicate. The national security arguments for waiver in effect allow U.S. foreign policy to be taken hostage by terrorists, or anyone willing to make threats. America's stance on such an important issue cannot be dictated by terror. Instead, the U.S. should make clear that if the PA allows any action against Israel or the U.S. in response to a non-waiver, the U.S. will close PA offices in Washington.

Finally, I would recommend that the U.S. Embassy ultimately be moved to the site of the current U.S. Consulate in the Armon Hanetziv neighborhood. Only this can give full effect to Congress's policy of moving the Embassy in a "unified" Jerusalem. This location is in what was a demilitarized zone under the 1949 Armistice Lines. The Palestinian claim to those areas of Mandatory Palestine conquered in an aggressive war by Jordan and Egypt do not apply to this area. However, it would signal that the U.S. does not regard these Armistice lines as creating no-go zones for Jews or Israelis.

Moving the Embassy to this location could catalyze the peace process by showing the Palestinians that there is a cost to their repeated refusal of Israel's offers of statehood, which the U.S. has supported. The Palestinians have been offered an independent state in the peace negotiations in 2000 and 2001, and Netanyahu was reportedly prepared to make far-reaching concessions in 2014. Each time, the Palestinians said no. Never has there

⁷ Eugene Kontorovich, *Russia Recognizes Jerusalem as Israel's Capital. Why Can't the U.S.?* (May 14, 2017).

Prof. Kontorovich

Jerusalem Embassy testimony

been a national independence movement that has refused an independence offer on the grounds that it does not include all the territory the movement seeks. Imagine if the United States refused to accept peace with Britain because it did not give the newly independent colonies the northern border they sought. Yet the Palestinian rejection of successive proposals carries no negative consequences for them — it just raises the expectations from Israel in the next round.

One of the main reasons for the failure to reach a peace deal is the unspoken assumption that protracted and repeated Palestinian rejectionism costs them nothing diplomatically, while creating constraints for Israel. Moving the Embassy to Jerusalem, and in particular to the current major consular facility, would break this deadlock and open the doors to progress.

Thank you for giving me the opportunity to address these issues, and I welcome your questions.

Mr. DESANTIS. Thank you.

The chair now recognizes himself for 5 minutes.

Ambassador Gold, sometimes in America, people will say: Yeah, yeah, yeah, we want to move the Embassy, but the Israelis really don't want the Embassy in Jerusalem.

I've been to Israel recently. Left, right, center, they all said to move it. Is that accurate that Israel would welcome it? Not that Israel is dictating what President Trump does, but would it be welcome in Israel.

Mr. GOLD. A, I believe it would be welcome. B, this sounds like Act II of something we went through earlier in the year called the Taylor Force Act, where people were saying Israel doesn't really want it. Really? Is that true? Somebody went to Tel Aviv and had coffee in a coffee shop and came back as an expert on Israel?

So let me reassure you: Our Prime Ministers have all sought, if we're asked, that the U.S. Embassy be moved. Yitzhak Rabin, who was the father of the Oslo Agreements in the 1990s, spoke about Jerusalem remaining united under the sovereignty of Israel. And our public opinion polls indicate support for that. That is not the same as the Embassy, but it's all part of the same complex. Support for Jerusalem, the U.S. position in Jerusalem is at an all-time high.

Mr. DESANTIS. And correct me if I'm wrong, but there's no Knesset located in Tel Aviv. The Prime Minister's residence is not there. Your Supreme Court, it's all in Jerusalem, the seat of your government, all the major players. The people that we would want to be dealing with are in Jerusalem.

Mr. GOLD. In December 1949, at the end of the first Arab-Israeli war, much of the world community advised Prime Minister David Ben-Gurion: Don't move—don't move—your capital to Jerusalem.

And, of course, he gave some of the lines, which I shared with you earlier, that Resolution 181 has no moral force, and he declared that Israel was moving its Embassy to Jerusalem—moving its capital to Jerusalem. The Knesset was moved to Jerusalem as a result of his decision back then in 1949.

Mr. DESANTIS. Israel, one of the remarkable things is just the archaeological wonders. I mean, you know, our country is just a blip on the map compared to the thousands of years of history. But how was that treated under the Arab occupation between 1949 and 1967, some of the destruction?

Mr. GOLD. Well, actually, since we weren't engaging in archaeology in a territory which Jordan claimed and their archaeological investigations were not particularly advanced, it wasn't affected.

However, I will tell you this: Under our understandings with Jordan, we have said that the administration of the Muslim shrines on the Temple Mount are in the hands of the Waqf, which is a kind of endowment for religious institutions in Jordan. The Waqf has been completely irresponsible with respect to the areas under its jurisdiction. So, for example, when the Northern Branch of the Islamic Movement, the branch of the Muslim Brotherhood in Israel, engaged in illegal construction activities under the Al-Aqsa Mosque and then the Al-Aqsa compound, they removed hundreds of tons of archaeological rubble from the Temple Mount and threw it in a dump site outside, in the outskirts of Jerusalem. Since then, Israeli

archaeologists have gone through that rumble and found precious items that have been saved. So I doubt, given that record, that these archaeological sites would be well taken care of if the management for East Jerusalem changed.

Mr. DESANTIS. Ambassador Bolton, the point was made by Professor Kontorovich that the Gulf States, these Arab states, they are worried about Iran; they have a President now in America who believes Iran is a threat, who thinks the nuclear deal was a bad deal. Are they all of a sudden not going to work with us and Israel simply because we move our Embassy to Jerusalem?

Mr. BOLTON. No, I think it would have no material effect at all either on the broader geostrategic in the Middle East or on the Middle East peace process involving Israel or really on anything significant. You know, there's a lot of rhetoric in public in diplomatic matters that suits the political needs of the people who are uttering the words, when behind the scenes you're hearing something completely different, which is, "We understand."

The issue for me is, what's in the best interest of the United States? How are our interests best served? How can our diplomats be most effective? And I think the argument there is incontestable. What hurts us is when we give in to unfounded pressure and intimidation because it says something about the United States that we won't do what's purely common sense. It's harmful to us. It's harmful to Israel. It's harmful to the stability in the region.

Mr. DESANTIS. Professor Kontorovich, the statement that was issued and entered into the record by Ambassador Kurtzer compared U.S. posture towards Jerusalem with Russia annexation of Crimea, that if we think Crimea was wrong, how could we possibly want our Embassy in Jerusalem. Do you think those two things are parallel to one other?

Mr. KONTOROVICH. I think there's a lot to learn from our reaction to Crimea that's relevant to Jerusalem, but it goes exactly in the opposite direction of what Ambassador Kurtzer suggests, and I would refer you to my article and commentary on Crimea and Israel's borders.

The reason America did not recognize Russia's seizure of Crimea is not because the people there are not Russian or they don't want to be part of Russia. It was because it was part of the Ukrainian Soviet Socialist Republic until Ukrainian's independence. And under international law, when a new country is created, its borders are the borders of the last top-level administrative unit in that area. So, when Ukraine is created, Crimea is within its borders, even though how that came to be was not necessarily fair, democratic, or reflecting self-representation. We go by that doctrine. We say Crimea belongs to Ukraine.

When Israel became a country, the last top-level administrative unit was the British mount—Mandate for Palestine. There was no *corpus separatum*. There was no West Bank. And thus the presumptive borders of Israel upon its birthday include all of Jerusalem, not to mention Judea and Samaria, and thus Jordan's invasion would be like Russia's invasion of Crimea, and it would have been an act that we can give no recognition to.

Mr. DESANTIS. Thank you. I now recognize the ranking member, Mr. Lynch.

Mr. LYNCH. Thank you very much, Mr. Chairman.

Dr. Koplow, the United States is currently relying on the cooperation of our Arab allies, like Egypt, Saudi Arabia and Jordan, in cooperation to really stabilize the security interests in the region, including for Israel.

Jordan, we've had unequivocal support from King Abdullah against ISIS. He said: We will root them—there's a quote here, he's quoted, "a relentless war against ISIS," and "hit them in their own ground." He's been in unequivocal support of our efforts there. I harken back to, in Egypt, when the Morsy regime came in after Qadhafi's—Mubarak's removal, they actually were considering abrogating the 1979 Egypt-Israel Peace Agreement that was negotiated between Anwar el-Sadat and Menachem Begin, for which they received the Nobel Peace Prize. Now with al-Sisi's regime in there, they have lived up to the letter of the law and secured the situation on Israel's southern border with respect to Gaza.

In deciding if we should move the U.S. Embassy now, should the U.S. at least consider and engage these neighbors in terms of what that move would present to, you know, the monarchy in Jordan or al-Sisi's government in Egypt.

Mr. KOPLOW. I think that absolutely the U.S. needs to consider the opinions of these other allies.

Israel, of course, is our most stalwart and reliable ally in the region, but we do have our Arab allies as well with whom we work on a number of things. Take Jordan, in particular. Right now, Jordan is a vital partner of the United States in counterterrorism operations. It's a vital partner in the fight against ISIS. Jordan contributes troops in support to the U.S.-led coalition forces fighting ISIS.

Jordan also has an enormous refugee problem, as we've noted from Syria. And staunching the flow of refugees is in American interest as well. And, of course, it is within Jordan's interest to continue these things, but there are ways in which they cooperate with the United States now that may be more difficult should we move the Embassy.

We, this year, conducted the largest ever military exercises with the Jordanian Army than we ever had. That is the type of thing that public pressure can be brought to bear and have those cut off. And I would note that there are recent examples in Jordan and in other countries around the region where domestic politics, because of public pressure, indeed trumps national security interests.

For instance, in the Israeli-Palestinians here, the Palestinian Authority in July stopped cooperating with Israel on security coordination, which is the biggest factor in preventing terrorism in Israeli cities, and security coordination certainly helps the PA in keeping the PA in power. That security coordination was not restored until only a few weeks ago. Now, that's something that it was in the PA's security interest to maintain, but public pressure over Israeli-Palestinian issues prevented it from happening.

With Jordan as well, currently there is no Israeli Ambassador in Jordan. She was recalled due to an incident in the Israeli Embassy in Jordan. The Jordanian Government certainly has an obvious interest in continuing to cooperate with Israel on national security

grounds, but again, public pressure can sometimes lead to consequences that are not good for either country.

And so, in Jordan, in particular, I think it's something to worry about, and with Egypt as well. Of course, Egypt is a partner against ISIS in Sinai and elsewhere, but it's also important to note that, in the last 2 months, Egypt has taken on a much larger role in keeping things quiet in Gaza than they have before. Again, public pressure is brought to bear on these countries, even though they are not democracies. There are still audience costs that affect these things. And I think that if the United States moves the Embassy, it is going to put much of this cooperation at risk. And as I noted in my testimony, it's something that we should absolutely consider when weighing the balance of interests here.

Mr. LYNCH. Thank you.

The members of this committee probably are in the Middle East, including very frequently to Israel, but to some of these neighboring countries on a frequent basis. The cooperation of Egypt in Gaza—I've only been into Gaza a couple of times—but such a proximate threat, Egypt's military cooperation is extremely, extremely important. The concerns raised by King Abdullah in Jordan about—you know, sometimes I think we take for granted that we've got a friendly administration there in Jordan.

And is there, I mean, think about it: If we had a hostile government in Jordan, what would that mean? Is King Abdullah's concerns about his monarchy, his government being tipped over by the street, some of the more—not insurgent—but more radical elements of the population there, is that legitimate, or do you think it's overstated?

Mr. KOPLOW. Certainly, I don't think anyone can predict whether it will happen, but I think that, to the extent that King Abdullah and the Jordanian Government expressed these concerns, we should certainly take them seriously. Jordan is a country that is majority Palestinian. Some estimates have it as large as 70 percent Palestinian. They are very sensitive to issues within the Israeli-Palestinian conflict, and these types of issues really, as I noted, create lots of pressure on the King of Jordan to either cease cooperating with Israel or to cut back cooperation with the United States. And Jordan, in particular, is sensitive to issues in Jerusalem, as I noted, given its historical role there and given the role that the Israeli Peace Treaty grants to Jordan over holy places in Jerusalem.

And, really, any sudden moves, when it comes to Jerusalem, impact Jordan in a real way. As you noted, Jordan is as reliable an Arab ally as we have in the region. They are vital for our security on a number of fronts. I think that even risking the danger of the Jordanian Government being replaced or something happening to King Abdullah really would impact American national security interests in a fundamental way in the Middle East.

Mr. LYNCH. Thank you.

Thank you, Mr. Chairman. I yield back. Thank you for your courtesy.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes Mr. Comer for 5 minutes.

Mr. COMER. Thank you, Mr. Chairman.

Ambassador Bolton, the Trump administration has clearly stated that it intends to move the U.S. Embassy to Jerusalem and, quote, “the question is not if that move happens, but only when,” end quote.

Ambassador Bolton, when is the appropriate time to make this move and why?

Mr. BOLTON. Well, I think the appropriate time to make the announcement is today. And let me just say, in respect of the comments that have been made about the strategic implications of a move, as I said in my prepared statement, I think we should take very seriously the concerns of countries like Jordan and Egypt. But I don’t think that means they have a veto. I think it means we do what diplomats do. We consult with them in advance. We explain our reasons. We work with them to facilitate their ability to explain to their own citizens why it’s happening.

And let’s be realistic; the construction of a new embassy is not something that happens in 24 hours. First, you have to announce it. Then you have to break the ground. I suppose you have to design the Embassy first. You have to build it. You have to dedicate it. You have to—this is going to take place over years. And so there’s a long period of time involved. And if the decision to go forward floor by floor of the Embassy varied with the temperature of the Middle East peace process, this building could take forever to build.

I think it’s very important that we understand that the country in the world most sensitive to the regime in Jordan, most aware of the implications for security, is Israel. And it defies credulity to think that Israel would advocate a step that could cause King Abdullah to be overthrown and a terrorist regime to take power there. They’re not going to do it, and neither are we.

Mr. COMER. Thank you, Ambassador. With the stalled peace process and deteriorating security situation in the Middle East, what do you think the U.S. could do to best support Israel and stand by our ally? Obviously, you touched on moving the embassy, but what are some other things?

Mr. BOLTON. Well, beyond the embassy, I think the greatest threat to peace and security in the Middle East remains the Iranian nuclear weapons program, which has not paused, has not slowed down, has been camouflaged by the Iran nuclear deal. I have disagreed with the administration on the handling of that deal. I would break it immediately and establish a new reality.

But I think specifically in terms of Gaza and the West Bank, I really think that the United States is taking advantage of a potential for a reopening of the peace process. I think it’s significant that the Trump administration is moving at the beginning of its term, not at the end as happens so often in the past. And I don’t know whether the chances for success are any better or any worse. But when it comes to the embassy issue, the administration’s effort is going to have its ups and downs, like all peace processes. And if you said after a step forward in the peace process, well, we don’t want to risk that by moving the embassy, or at a downturn in the peace process, well, we don’t want to tank it entirely by moving the embassy, this is how not now becomes not ever. And I think that’s a mistake.

I think when the United States acts in a realistic way, recognizing a reality in a particular region, it enhances our credibility, it demonstrates that we are prepared to act on the basis of reality. That makes our efforts I think more likely to succeed, not less likely.

Mr. COMER. Right. One of my colleagues had mentioned that when they were in Israel everyone that they had talked to, or the majority of the people in Israel supported moving the embassy. When I was in Israel this summer, that was my impression too, speaking to a vast array of Israelis there in Jerusalem and Tel Aviv. Getting back to the embassy, opponents of moving the embassy, opponents here in Congress, have cautioned that it could hinder the peace process. Do you believe peace negotiations between Israel and the Palestinians, do you think that that would impede that in any way? And why or why not?

Mr. BOLTON. No, I don't think it would affect the overall Middle East peace process. I think the embassy move has been given a symbolic significance well in excess of its practical effects. If you believe, and some do, that the United States is fundamentally biased against the Arab side, that it's so much in the tank for Israel that we can't be an honest broker, and they cite the billions of dollars of military and economic assistance we have given to Israel since Camp David—and quite properly, in my view—they look at the world historical events that have affected the Middle East since the 1967 war at least, what possible effect can moving the embassy have in comparison to all of that? I mean this has taken a pebble and made it into a mountain.

And the way to break through that, and I do think it is scholasticism, as I said in my testimony, is to move forward with actually relocating the embassy, acknowledging the reality that Jerusalem is the capital of Israel. It's going to be in an area west of the green line that nobody except a proponent of eradicating Israel entirely would ever say would be in a Palestinian state. So putting it in a place that nobody's disputing cannot affect either final status or the broader peace process.

Mr. COMER. Well thank you, Ambassador. My time is up. I just want to conclude by saying I look forward to working with the Trump administration as we change directions with our policy towards Israel, and hopefully strengthen the support that we have with our greatest ally in that region.

I yield back.

Mr. DESANTIS. The gentleman yields back. The chair now recognizes the gentleman from Vermont for 5 minutes.

Mr. WELCH. Thank you very much, Mr. Chairman, and for calling this hearing. And I thank all of the witnesses for your testimony. I think all of us here are strong supporters of Israel, even if we have some disagreements about particular issues, including the wisdom of moving the capital. And I think all of us here supported the very significant 10-year aid package to Israel. Ambassador Gold, you mentioned that President Trump made a commitment to move the capital and as you—pardon me?

Mr. GOLD. The embassy.

Mr. WELCH. The embassy. Thank you. And as you know, around the time of his inauguration, I think at his inauguration, King

Abdullah came here. And my understanding from press reports is that he personally requested the President not to do that. Was President Trump wrong in accommodating the request of King Abdullah?

Mr. GOLD. Well, I can't say what King Abdullah said to President Trump because I wasn't there and I don't know.

Mr. WELCH. No, let's be serious here. We know that King Abdullah was opposed to moving the embassy.

Mr. GOLD. Look, let's say he was. You have to decide on the basis of your own interests. How much would moving the embassy have an effect on your—

Mr. WELCH. My question is was President Trump wrong in accommodating that request in not moving the embassy to Jerusalem, as he promised to do during the campaign?

Mr. GOLD. What I am saying is this: Whether you have a President who is a Republican or a Democrat—

Mr. WELCH. This is a specific question, Ambassador.

Mr. GOLD. Okay.

Mr. WELCH. I am asking about was President Trump wrong in that decision?

Mr. GOLD. My view, and I can only speak for myself, is that we hail the decision of an American President to move the embassy to Jerusalem. We are not going to second-guess the timing. That's an American interest.

Mr. WELCH. So President Trump was not wrong?

Mr. GOLD. I am not going to second-guess the tactics, the timing of moving it. He gave his word in principle that he is going to move the embassy. And I believe that he is going to do it.

Mr. WELCH. I am going to interrupt. I just want to say something. I think President Trump is showing great energy in the Middle East and with Israel. I think what Mr. Greenblatt is doing and what Mr. Kushner are doing is good. Now, would you agree that King Abdullah is a very important and loyal ally of the United States?

Mr. GOLD. I believe King Abdullah is a loyal ally of the U.S., and he is an important partner to the State of Israel, and we have a peace treaty with Jordan as well.

Mr. WELCH. My understanding is that there is significant progress in the relationships between Israel and many of the Sunni Arab states, Saudi Arabia, Jordan, Egypt. Is that your view as well?

Mr. GOLD. I fully agree with that view. I think what is happening in the Middle East—

Mr. WELCH. I don't have a lot of time. So is it in the interests of the United States and Israel to maintain solid relationships with those Sunni Arab states?

Mr. GOLD. It is in the interests of the U.S. and Israel, in my judgment, to build on those relations and encourage them. And if you may give me one more sentence on that issue, the principal factor affecting the Sunni Arab world is what you do with Iran. That is—

Mr. WELCH. So you would agree with Ambassador—I take it you would agree with Ambassador Bolton that we should rip up that Iran nuclear deal?

Mr. GOLD. No, I think you should upgrade it. I think you should take out the flaws and come up with a better agreement.

Mr. WELCH. I only have a little time. Ambassador Bolton, I just want to ask you a question. Is it your view that at the present time the holy sites in Jerusalem are secure with the Israeli security system?

Mr. BOLTON. Well, I think they are as secure as they can be under the circumstances.

Mr. WELCH. Would they be more secure——

Mr. BOLTON. I would like to answer your question to Ambassador Gold. I think the President was wrong in accepting the recommendation of King Abdullah, if that's what he said, and if that's what the President did.

Mr. WELCH. Right. I appreciate your candor.

Mr. BOLTON. I couldn't wait.

Mr. WELCH. Let me ask you this. There is a question on the holy sites. And all of us want them to be secure. Will they be more secure, in your view, if the embassy is moved to Jerusalem?

Mr. BOLTON. It will have absolutely no effect on the security of the holy sites.

Mr. WELCH. Ambassador Gold?

Mr. GOLD. I said in my testimony that you should encourage the common values that we have.

Mr. WELCH. No, the question is will the security of the holy sites be enhanced if the embassy is moved to Jerusalem?

Mr. GOLD. If anyone thinks that Israel may under certain circumstances or pressures withdraw from the core of Jerusalem and withdraw from the holy sites, you will have an explosion of violence, not reduced violence.

Mr. WELCH. I see my time is up, but my questions are not answered.

I yield back.

Mr. DESANTIS. The gentleman yields back. The chair now recognizes Mr. Hice for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman. I think it can be reasonably and effectively argued that the Obama administration undermined actually Israel's claim to Jerusalem by allowing the U.N. Resolution 2334, which specifically stated that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity. That's bothersome to me personally.

Ambassador Bolton, let me ask you this. What was the impact of the Obama administration's decision to allow the U.N. Security Council to pass that resolution?

Mr. BOLTON. I think it was very destructive. I think it was utterly uncalled for. I think it was profoundly wrong. And I hope that the Trump administration will bend every effort to find a way, as much as it can practicably be done, to reverse that resolution. I think the right position was that articulated by President George W. Bush, which is that Israel is entitled to live behind boundaries that provide for peace and security. And the notion that the 1967 lines have any—which are really the 1949 armistice lines—have any binding juridical effect is completely wrong. And indeed, the armistice agreements of 1949 all expressly say that these are armi-

stice lines with no political value. We can argue that for a long time. But let me just say I think it was gravely damaging to American interests for President Obama to allow that resolution to be adopted.

Mr. HICE. I agree with you. Would you say that that resolution was consistent with past U.S. policy?

Mr. BOLTON. No, past U.S. policy, I think under Presidents Republican and Democratic alike, would have called for the veto of that resolution.

Mr. HICE. So what motivated the change?

Mr. BOLTON. I think President Obama had demonstrated over 8 years that he thought Israel was responsible for much of the instability in the Middle East. Much as I think that he believed the United States and its views in the previous administration on Iran and other issues had caused instability. I think that motivated his decision. And I think he was 180 degrees in the wrong direction.

Mr. HICE. So it was an anti-Israel policy?

Mr. BOLTON. I don't know any other way to characterize it.

Mr. HICE. I don't either. Would moving the embassy to Jerusalem help rectify that problem?

Mr. BOLTON. I don't really think it would change the fundamental reality of the resolution. Indeed, the thrust of my argument here is that moving the embassy is simply a practical, efficient decision for the United States to make in the interests of greater effectiveness for its own diplomacy. The only politicization in this issue comes from those who say that somehow they can affect a decision that is properly made by the United States and Israel where our embassy goes. That's the politicization. That's the interference. That's what should be unacceptable to the United States.

Mr. HICE. Okay. Thank you. Mr. Klein, let me ask you, in light of this resolution that we are discussing, which quite frankly I totally agree is blatantly against Israel, can you discuss with the committee how the U.N.'s action impacted Israel?

Mr. KLEIN. Well, this resolution was completely absurd in that it stated that the Jewish section of Jerusalem is occupied Arab territory, the Western Wall and the Temple Mount, Judaism's two holiest sites, is occupied Arab territory. It had no practical impact on Israel because in Israel everyone realizes it's absurd. And even throughout the world most people realized that's absurd. It really only sent a message of astonishing, really breathtaking hostility that President Obama's administration had towards the Jewish State of Israel.

Mr. HICE. And the entire U.N. I mean it seems there is a blatant anti-Israel sentiment in the U.N. across the board that needs to be addressed. What can the United States do to help prevent and change this anti-Israel sentiment?

Mr. KLEIN. Well, Ambassador Haley is beginning to do that by calling them out on their irrational and absurd positions against Israel when they ignore truly evil and horrific regimes throughout the world. And I think one thing that can be done, and there is legislation moving in that direction, is to make it clear to the U.N. that America will stop apportioning its share of funding of the U.N. if they do not change this outrageous resolution. I think if that happened, that resolution would be changed immediately. As op-

posed to the embassy not being moved immediately, that resolution would be changed immediately.

Mr. HICE. Thank you for the recommendation. Thank you, Mr. Chairman. I yield.

Mr. DESANTIS. The gentleman yields back. And the chair now recognizes Mr. Jordan for 5 minutes.

Mr. JORDAN. I thank the chairman. Ambassador Bolton, how many countries are there in the world?

Mr. BOLTON. We have diplomatic recognition with over 190. There are 193 members of the U.N. There are——

Mr. JORDAN. One hundred ninety-three countries. My guess is we are the United States of America, we are the biggest, strongest country on the planet. My guess is we have embassies in just about every one, maybe not Iran and North Korea and a handful.

Mr. BOLTON. A few we don't recognize.

Mr. JORDAN. Yeah, a few we don't recognize, right? So 180-some countries we have got an embassy in those countries. Is that right?

Mr. BOLTON. That's correct.

Mr. JORDAN. And in all those countries the embassy is in the capital or the seat of government except for one. Is that right?

Mr. BOLTON. Well, the only exception—the answer to that is yes, basically. The only exception to that is occasionally a country moves its capital city.

Mr. JORDAN. So it takes you a while to relocate.

Mr. BOLTON. I looked this up to be sure. For many years our embassy in Belize was in Belize City even though the capital was in Belmopan. But I see 10 years ago we finally moved our embassy. So we may be down to Israel alone.

Mr. JORDAN. So 188 countries that we recognize we have an embassy, every single one we put the embassy in the capital or the seat of government.

Mr. BOLTON. There must be something to that.

Mr. JORDAN. Except one. Now Israel, became a country in 1948. Is that right?

Mr. BOLTON. Pardon me?

Mr. JORDAN. Israel became a country, it became a state in 1948?

Mr. BOLTON. We were the first country to recognize its independence.

Mr. JORDAN. Exactly. My next question, and who was the first head of state to recognize the Nation of Israel?

Mr. BOLTON. Harry Truman.

Mr. JORDAN. Harry Truman, President of the United States of America. And then just a few years ago—well, I guess more than a few years ago—1995, we passed an act Jerusalem Embassy Act, that almost every single Member of Congress voted for. Is that right?

Mr. BOLTON. That's correct. Overwhelmingly.

Mr. JORDAN. I think it was a voice vote in the House, but in the Senate it was like 93 to 5, right?

Mr. BOLTON. Something like that.

Mr. JORDAN. And for this act to take effect and for the embassy to go to Jerusalem—this is amazing—Congress doesn't have to do anything, something we are actually pretty darn good at, right?

And frankly the President. Doesn't have to do anything. Is that right?

Mr. BOLTON. That's correct. And it was a sign Congress was willing to pay for it too, which is also interesting.

Mr. JORDAN. So we don't have to do anything, the President doesn't have to do anything. Everyone has spoken. The President campaigned on this. The American people elected him, as this was a central issue of his campaign, we do it everywhere else except one country, which, oh, just happens to be one of our best friends in the entire world. Is that right?

Mr. BOLTON. That's correct.

Mr. JORDAN. This is what gets me. It is like this is real simple to me. This is about remembering your friends. This is about loyalty. This is about recognizing the fact that there is one country in the world who stands with us every single time. They happen to be the one country where we get our Judeo-Christian value system from, the State of Israel, and yet they are the one nation where we won't put the embassy where it's supposed to be.

And particularly now when you think about what we went through the last 8 years with the previous administration, and more importantly what happened the last few months of that administration at the United Nations. This is the right time to do this thing. And that's why the President recognized it, campaigned on it, and one of the reasons I would say the American people elected him. Would you agree, Ambassador Bolton?

Mr. BOLTON. I think that's entirely true. Yes.

Mr. JORDAN. So let's just get it done. Let's just get it done. Right?

Mr. BOLTON. I am entirely persuaded.

Mr. JORDAN. All right. I kind of thought you would be. That's why I asked the questions of you. I think actually most of the panel is. I want to thank the chairman. He has worked hard on this. I want to thank all our witnesses who came here. Most importantly, I want to thank the President of the United States, who had the courage who said this was the right thing to do, the time is now, particularly in light of what we went through the last 8 years.

Let's get this done. Let's get it done as quickly as possible. I understand there is some practical concerns. You have all outlined them. Ambassador Gold outlined them. That's fine. But let's get this done. It is the right thing to do, and when it comes—you got to remember who your friends are, who share your common set of values, the values that I think make the world a better place. Let's recognize all that and get this thing done.

With that, I yield back.

Mr. DESANTIS. The gentleman yields the rest of his time to the chairman. Mort Klein, the significance of Jerusalem obviously I think is self-evident to the Jewish people. But in America, you are involved in politics, you know folks from Jewish activists, the Christian activists. This city matters to people here in America, does it not?

Mr. KLEIN. Yes. As a matter of fact, the most recent polls show that Americans support moving the embassy to Jerusalem and keeping it an undivided city by over 4 to 1. So it's really overwhelming. And by the way, even the liberal ministers, I just wanted to add like Yossi Beilin, extreme left wing ministers, said the

embassy must be moved immediately. So that is really the consensus in Israel overwhelmingly.

But yes, in America the overwhelming majority of people support this move and have supported it for 22 years, since it's been—if I may say, the fundamental premise of why there is a debate is that the Arabs claim that Jerusalem is holy to Muslims. That's the premise. If it was not holy to Muslims, if they said they want to move it, that Haifa was holy to them, nobody would even talk. But this is a fundamental falsehood. The majority of people living in Jerusalem since the mid-1800s have been Jews, second largest number of people, Christians. The Muslims are the third since the mid-1800s. And the Arabs say, well, our Koran says that Muhammad went from Jerusalem to heaven. But what does it really say? It says Muhammad had a dream—not an occurrence, a dream—that on his winged horse he flew from the sacred mosque to the furthest mosque. The evidence makes it clear that this claim that the furthest mosque in Jerusalem can't be.

When Palestine is mentioned in the Koran, it's referred to as the closest land, not the furthest land. So Jerusalem, which is in Palestine, cannot be the furthest mosque when Palestine is the closest land. And listen to this. One more thing. Palestine then had not yet been conquered by the Muslims. There wasn't a single mosque in Palestine when the Koran was written.

Mr. DESANTIS. Great. The gentleman's time has expired, and the chair now recognizes Ms. Foxx for 5 minutes.

Ms. FOXX. Thank you, Mr. Chairman. And I want to thank all of our witnesses here today. It is a very enlightening presentation. And I want to say I want to associate myself with the comments of some of my colleagues. That way I don't have to repeat the comments of my colleagues.

Ambassador Gold, the first thing I want to say is I think you do a wonderful job when you present the many different cases that you present when I occasionally have a chance to see you in the media. But I want to follow up on your verbal testimony. You mentioned the topic of Israel's ability to preserve the integrity of the status quo of the holy land sites. I find this interesting given that detractors of moving the embassy claim that it would be inflammatory and inciting.

Can you expand on the ability of Israel to prove as a stabilizing force for religious exercise and speech and ward off religious incitement? Do you think Israel's sovereignty with respect to Jerusalem would be a positive influence on religious pluralism throughout the region?

Mr. GOLD. First of all, Israel views itself as sovereign in Jerusalem today. That's the situation. Now, in terms of protecting stability and security in that area, just go on the major holidays to the area of the Temple Mount, come on Ramadan and see how many tens of thousands of Muslims are praying near the Al Aqsa Mosque because they can't even get into the Al Aqsa Mosque because it's so full. Come on the time of Christmas to the Church of the Holy Sepulchre and see all the Christians who stream in for Christian holidays in the Old City. And then come to the Western Wall and see on the Jewish holidays, particularly the pilgrimage

festivals like Passover, Shavuot, and others, come to the Old City and pray at the Western Wall.

Jerusalem works. It operates well. And changing or expressing uncertainty of any kind about Israel's position only feeds radical elements who want to argue that the Jewish people have no connection with Jerusalem, or feeds all kinds of other baseless theories.

Last but not least, I want to make this point, because it is an I think a current point that is very important. There is a sheik named Ra'ad Salah who heads the northern branch of the Islamic Movement, which is basically part of the Muslim Brotherhood. He used to come to Jerusalem a lot. He has been running around Israel and the region saying Israel is undermining the foundations of the Al Aqsa Mosque. And this heats up the whole region, this lie. And by the way, he has faced prosecution in the Israeli legal system. But one of the things we have to do is expose this lie, because frankly, the only one who ever threatened the foundations of any of the Muslim shrines has been him when he led groups to dig out tons of archeological areas near the Al Aqsa Mosque and created all kinds of problems which I don't have time to go into.

Israel is taking care of the holy sites, it has been taking care of the holy sites, and will continue to take care of them. And if you don't have a responsible power to protect the holy sites, you are setting up a recipe for the next regional conflict.

Ms. FOXX. Thank you very much, Ambassador. And again, I want to thank all of our witnesses for being here today. And thank you, Mr. Chairman, for the time. I yield back.

Mr. DESANTIS. The gentlelady yields back. The chair notes the presence of our colleague, the gentleman from California, Mr. Issa. I ask unanimous consent that he be allowed to fully participate in today's hearing. Without objection, it is so ordered.

The chair now recognizes the gentleman from Florida, Mr. Ross, for 5 minutes.

Mr. ROSS. Thank you, Mr. Chairman. I appreciate the timing. You know, Ambassador Bolton, when you opened up you dispelled some of the myths with regard to the basis for not moving the embassy. And I guess one of them that concerns me the most was the second point about the fragility of the peace negotiations going on in the Mideast and how this may disrupt it. What impact did the U.N. Resolution 2334 have on the impact of the peace process in the Mideast?

Mr. BOLTON. Well, I think it was decidedly negative because it gave the false impression that the Palestinians and their supporters could win in the halls of the United Nations what they failed to win at the negotiating table.

Mr. ROSS. And we turned a blind eye to that with an abstention.

Mr. BOLTON. It was a catastrophic decision by the Obama administration.

Mr. ROSS. Would you agree that any successful peace negotiation has to have the United States at the table?

Mr. BOLTON. Anybody who doesn't understand that doesn't understand reality.

Mr. ROSS. And if we are going to negotiate, should we not negotiate from a position of strength? I mean if you are going to nego-

tiate to win, I would suggest that that would be the way we would go about doing this.

And then we allow tacit approval of the U.N. Resolution 2334, which shows our weakness to our greatest ally. And then we get resistance for moving an embassy because it's going to disrupt the peace process. The anomaly there is just illogical. Not that what we do here has any basis in logic or reason.

But I guess my second point is that, and Ambassador Gold, you talked about this, about the sanctity of the holy sites. Who better than the Israeli people, who have been the protectorate of these holy sites, to allow them to continue to do so? And would it not, again in accordance with logic and reason, dictate that the move of the embassy from Tel Aviv to Jerusalem would give even a higher sense of security and a higher sense of clearance to allow for an even greater preservation of these sites?

Mr. GOLD. And I want to remind you between 1948 and 1967, when we lost the Old City, our holy sites were attacked. We have photographs. Actually, I was going to put them up, and I don't know what happened to our audiovisual, we had holy sites that came under attack, medieval synagogues blown up by shells of the invading armies that came in at that time. That's not something Israel did, that's something our neighbors did when they moved into Jerusalem. So our proven record in protecting holy sites is open for everyone to see.

Mr. ROSS. And in fact not only open for everyone to see, but open for everyone to see regardless of ethnicity, religious background, nationalism, anything. I guess my point is that here we are arguing over what I think are baseless arguments to not move the embassy, and yet we stand again in abeyance with the peace process that if we are going to deal with a peace process, it would seem to me that if the U.S. is going to be a partner to succeed in a Mid-east peace that we should then show some strength.

And that greatest sense of strength, now be it deliberate—I don't mind waiting 6 months or a year to make sure that it's the right move and we make sure that we have reached out to our allies—that it would seem to me that our best position in order to effectuate a peace, if peace is sought by the Palestinians, that moving the embassy in and of itself would be a step in the right direction. Would you all agree with me?

Mr. BOLTON. I think that's certainly correct. And I think it goes to what I believe is the fundamental misconception about the potential impact of an embassy move, which assumes in part that the United States today is in equipoise between the Palestinians and the State of Israel, when in fact if you look at the imbalance in economic assistance, billions and billions to Israel compared to a relatively smaller amount through the U.N. and directly, nobody can believe that we are in equipoise on that.

So the issue is not in the abstract would some people disagree with us to move the embassy, but what is the aggregate delta, what is the real change in the strategic reality in the region? And the answer is the change is de minimis.

Mr. ROSS. I agree with you.

Mr. GOLD. Let me just make one point.

Mr. ROSS. Ambassador Gold.

Mr. GOLD. When you are involved in negotiations, one of the strategies to make negotiations work is to get the parties into what I would call the box of realism. If people have wild-eyed fantasies that they can achieve goals that there isn't a chance in hell of reaching, you are never going to go forward. You move the embassy, you create a box of realism for our neighbors. Israel's not going to give up Jerusalem. Somebody better digest that. It's going to be the capital—it has been the capital of Israel and will remain the capital of Israel. Your moving the embassy reinforces that box of realism and brings us just that much closer to a negotiated solution.

Mr. ROSS. Thank you. I realize my time has expired. I yield back.

Mr. DESANTIS. The gentleman yields back. The chair now recognizes the gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Thanks. I am going to go down a little bit different path here. Anyone can answer this. Right now of course the United States maintains a diplomatic representative to the Palestinians. And that is in West Jerusalem.

Is there any doubt, if you are familiar with where that diplomatic representative is, is there any doubt, does anybody dispute the fact, except the most extreme elements, that that diplomatic representation is in Israel?

Mr. BOLTON. Well, the location of the building is in West Jerusalem, but in actual fact, and this has been true for over a quarter of a century, even longer, that consulate has been perceived at the State Department as the de facto embassy to the Palestinian State. And that's a problem in and of itself.

Mr. GROTHMAN. Right. Just to compare the two as far as, you know, what we're dealing with here. Could you compare the idea that as a practical matter the Palestinian representative or embassy is in Israel, but we can't put the Israeli Embassy, the American Embassy to Israel in Jerusalem?

Mr. BOLTON. I think there is actually a consulate facility in—east of the green line that does things like provide visas for Palestinians. But honestly, this goes to a larger point that I don't think any of us perhaps covered except in the prepared testimony about rationalizing what our view is on a potential outcome of the peace process to begin with, and whether we think a two-state solution is still viable. I am not sure you can solve that all at once. And that's why the question of whether we should relocate our embassy into indisputably sovereign Israeli territory in West Jerusalem is actually the easiest part of it and the first thing we can do.

Mr. GROTHMAN. I really loved Ambassador Gold's comments, because he hit the nail on the head. You know, I think we move the embassy, it would put some realism into some discussions over there. I will bring up another matter, though. Since we are talking about where the Israeli Embassy is, we just spent a second here on where as a practical matter the American Embassy to the Palestinians is.

Do you think it would introduce a dose of reality if we moved that embassy or representative, whatever you want to call it, to Ramallah, rather than put it in Jerusalem? Does that also, the fact that that building is in Jerusalem, does that also kind of encourage this lack of common sense or lack of reality in the region?

Mr. BOLTON. I think others will want to comment on this, but I think we need to revisit the entire concept of having a kind of permanent de facto embassy to a Palestinian state that doesn't exist yet. I mean that person, at least the last time I was in the State Department, the consul general in Jerusalem is instructed not to have contact with officials of the Government of Israel, that their job is to talk to the Palestinians. That's one reason why the consulate there has the authority, which a few other consulates do, to send cables back to Washington without the approval of the Ambassador in Israel, the country in which it's located.

And I just think this has been in aid of perpetuating the myth that if you think about it hard enough, a Palestinian state will appear out of nowhere. I think that's a mistake from the U.S. point of view. It's not realistic.

Mr. GROTHMAN. Ambassador Gold, you care to comment?

Mr. GOLD. If we take some of the principles that Ambassador Bolton has put forward about where embassies are located, you know, I think he is right, we don't—Ambassador Bolton is correct, we don't have yet a political solution to the Palestinian side.

We don't know where Palestinian self-governing institutions will be located. And it would make sense that in the future any embassy would be located near those institutions. You know, sometimes there are Palestinians and Jordanians who speak about a federation or confederation.

Does that mean that the U.S. Embassy in Amman should be involved? Who knows? But we are not yet at a political solution. So it's a little premature to start saying where the U.S. Embassy representing U.S. interests to the Palestinians should precisely be.

Mr. GROTHMAN. Okay. On the status quo, just to reiterate what you said, in the status quo as long as the U.S. Embassy is not in Jerusalem, it kind of implies that that could become a permanent state of affairs. And as long as what is operating as the de facto American Embassy to Palestine is in Jerusalem, it also kind of leaves the idea out there that that could be a permanent state of affairs. Correct?

Mr. GOLD. So I think what you are implying, and I think it is true, it gives a net effect that the Palestinians have a leg up on the claim in Jerusalem, which is not fair, which needs to be remedied.

Mr. GROTHMAN. Correct. Thank you very much.

Mr. DESANTIS. We have one of our strongest allies, only democracy in the Mideast, and yet we act like Jerusalem's not their capital, Tel Aviv. But then you have Palestinian Arabs who have rejected states, have gone to war with Israel for years and years, and we have something in Jerusalem for them. I mean it really is maddening. Good questions.

The chair now recognizes Mark Meadows for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman. Thank you for your leadership on this issue. Obviously, as being members of the Republican Conference, there is always a very willing partner on behalf of the gentleman from Florida on issues that are pro-Jewish and pro-Israel, and I thank you for your leadership. Ambassador Bolton, let me come to you. Would you suggest that there are a

number of people in the State Department that are vehemently opposed to moving the embassy to Jerusalem?

Mr. BOLTON. Absolutely. And look, this is a problem at the State Department. I wrote about it in my book that I wrote after I was at the U.N., that there are elements in the Department who are excellent civil servants who follow the direction of new Presidents. There are others who think they should run American foreign policy. And they have been running this issue for as long as anyone can remember.

Mr. MEADOWS. So to your knowledge were any of those people at the State Department elected on November 8th?

Mr. BOLTON. No, strangely, and they are not mentioned in the Constitution either.

Mr. MEADOWS. And to your knowledge, when the President ran on this particular issue, do you believe that there were a number of people who felt like there was a reset in terms of our relationship with the Jewish community, and finally the United States of America?

Mr. BOLTON. Yes. And I think it's a campaign promise that a lot of people paid a lot of attention to. I think it's very important.

Mr. MEADOWS. So would you characterize this as a campaign promise that if the President failed to follow through on that would be a major disappointment to the Jewish community?

Mr. BOLTON. Well, I will just speak as a Lutheran, it would be a major disappointment to me.

Mr. MEADOWS. As an Evangelical, it will be a major disappointment to me. And I can tell you that it is something that not only have we brought up with the President directly, I can tell you that he understands the commitment that he has made on this particular issue.

Dr. Koplow, I am going to come to you. There is always one skunk at the party. And so as we look at this, obviously you don't believe that we should be moving the embassy to Jerusalem. Is that correct?

Mr. KOPLOW. I believe that national security considerations at this time dictate that we should probably leave it in Tel Aviv at least for another 6 months.

Mr. MEADOWS. All right. So what has changed over the last 20 years in terms of our national security interests? I mean because we continue to debate this over and over. Do you know who Erekat is?

Mr. KOPLOW. I am sorry?

Mr. MEADOWS. Do you know who Erekat is? Or Erekat?

Mr. KOPLOW. Oh, Saeb Erekat, of course

Mr. MEADOWS. So you know who he is. So how long has he had his job?

Mr. KOPLOW. Certainly as long as I can remember.

Mr. MEADOWS. Yeah. Well, the closest thing to eternal life here is an eternal job of being able to negotiate a peace agreement between the Palestinians and the Israelis. Wouldn't you agree?

Mr. KOPLOW. Yes.

Mr. MEADOWS. All right. So since he has not been successful in over 21 years, and the embassy has not been in Jerusalem, how could moving the embassy to Jerusalem have affected his track

record? I mean so if we move it do you think he will be any less successful?

Mr. KOPLOW. Do I think Erekat will be any less successful?

Mr. MEADOWS. Yes.

Mr. KOPLOW. I can't imagine that he personally will be less successful.

Mr. MEADOWS. I agree. So from a national security standpoint, is the Knesset fairly secure?

Mr. KOPLOW. Yes.

Mr. MEADOWS. I have been there. It's very secure. So are you saying that we couldn't secure our embassy in Jerusalem? Is that what you are saying or you are just saying that geopolitically it makes national security less viable?

Mr. KOPLOW. I have no doubt that we would be able to secure our embassy in Jerusalem the same way that we secure our embassy in Tel Aviv.

Mr. MEADOWS. I agree. So what empirical data do you have that would suggest that this would create a national security incident? Because you were just talking, because I find your logic fascinating, you were just talking about how the Palestinians were pushing back against the security agreement, and yet the embassy is in Tel Aviv. So why would—I mean there is something to the logic that doesn't seem to mesh.

Mr. KOPLOW. I think that there are a number of issues regarding Jerusalem that affect national security both for us and for Israel. The embassy is one of them. It's not the only one. But in general, as I note in my testimony, things that occur in Jerusalem tend to be the spark for—

Mr. MEADOWS. So you are saying the very presence of a building in Jerusalem is going to create a national security issue?

Mr. KOPLOW. I think it very well may.

Mr. MEADOWS. Okay. And you don't have any empirical data to support that. That's just your feeling being a doctor from Georgetown in political science, right?

Mr. KOPLOW. Based on the fact that other violent incidents in Israel are generally sparked by changes in Jerusalem, I think that one can assume that this is—

Mr. MEADOWS. Could you possibly be wrong?

Mr. KOPLOW. Absolutely.

Mr. MEADOWS. Okay. Ambassador Bolton.

Mr. BOLTON. Just one quick point. On this question of physical security for American diplomats, I think anybody, probably many people on the committee, have been to Tel Aviv. You have seen our embassy. I can only imagine the heartburn that it causes in what we call OBO at the State Department, the Overseas Building Operations Bureau, the Diplomatic Security Bureau. It's very close to a main street. In contemporary terms, we would never build an embassy like that again.

Obviously, building a new embassy in Jerusalem would give us ample opportunity to include the most advanced security techniques that we could. And I think our personnel would be safer in a new facility than in the embassy that they currently occupy in Tel Aviv. And we don't need to be reminded of the risks to our people overseas. None of us want to see those risks continued.

So from that perspective, which involves American lives right on the front end, I think every consideration argues for moving the bulk of our personnel to Jerusalem.

Mr. MEADOWS. Well, I agree. December 1st is a critical date because we have another waiver. It would be a great message that this President could send on the 50th anniversary of reunification that we go ahead and finally move the embassy to the eternal capital of Israel, Jerusalem.

I yield back.

Mr. DESANTIS. The gentleman yields back. The chair now recognizes the gentleman from California, Mr. Issa, for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. I am going to pick up where my colleague from North Carolina left off. Dr. Koplow, and I will not describe you as anything other than a member of the party here, but since you seem to have concerns, let me run through a couple of quick questions. Do you know where the Ambassador spends most of—U.S. Ambassador to Israel spends most of his time while he is in Israel?

Mr. KOPLOW. In the past, ambassadors have spent their time in Tel Aviv. And having met with Ambassador Friedman a few weeks ago, it was down in Tel Aviv.

Mr. ISSA. It's interesting, because I always see them at the King David, because as long as the Knesset is in session that's where they live, right?

Mr. KOPLOW. In the past they have not lived in the King David every time the Knesset is in session, but I believe the State Department keeps a residence in the King David for the ambassador's use.

Mr. ISSA. Exactly. The State Department keeps a residence for the Ambassador at the King David, and has for decades. Ambassador Gold, would you confirm that from your experience, that if you want to meet the Ambassador in Jerusalem that's pretty much the digs he has to meet you at, isn't it?

Mr. GOLD. There has been an American facility in one of Jerusalem's hotels.

Mr. ISSA. So, I stay at the King David by choice, so we will just leave it as my favorite hotel in the city, Colony being a second. Now, having said that, the security at the King David is pretty good for a hotel. Ambassador Bolton, does it begin to meet the setbacks of safety, security for embassy personnel and the Ambassador that are the minimum standards of today's embassies?

Mr. BOLTON. No. It doesn't even come close. And I can tell from my own personal experience when I was in New York, these security questions are extremely important. And we don't need Benghazi to remind us of it. These are Americans who are doing their jobs for us, are at greater risk because of the travel necessity between Tel Aviv and Jerusalem now, because of the insecure facilities, and because of the lost opportunity of building more secure facilities in Jerusalem.

Mr. ISSA. And Dr. Koplow, you have you been in the consulate, the full consulate that exists in East Jerusalem that services mostly Palestinians?

Mr. KOPLOW. I have not.

Mr. ISSA. I have. It's a very large facility. Actually it's embassyesque in its setback and size. Have you been in the consul general's compound, which is separate, in West Jerusalem?

Mr. KOPLOW. No.

Mr. ISSA. You know where the YMCA is over there?

Mr. KOPLOW. Yes.

Mr. ISSA. It's a block and a half away. Now the interesting thing is the consul general does maintain a facility, and regularly mostly heads in and out of the West Bank, if you will. And I personally think it is a good location because it allows him a very safe location no matter what may be happening in the West Bank. But, in fact, they almost always on a daily basis go back and forth.

What I find interesting is his facilities have significant setback considering it was once a private estate. The facility is permanent and has been expanded. The consulate that exists nearby is substantial and was built to modern standards. And yet today, as the Knesset meets in Jerusalem, the Ambassador stays in temporary rented facilities at some location in Jerusalem, and has no real proper place to conduct diplomatic business.

So my question to you, Doctor, separate from the question of the term embassy for a moment, knowing that we have a facility for the consul general which is substantial, we have the actual consulate facility that does consular-type work, particularly, you know, visas and so on, is there any reason that we should not have proper safe facilities for the Ambassador when he or she is meeting—going in and out of meetings with the government, which is substantially normally located in Jerusalem, at least when the Knesset is in session?

Mr. KOPLOW. I think that would be a question for the State Department to decide. I think in this case the security concerns aren't about the facility itself. I think the security concerns are more about wider geopolitical security and the overall security situation in Jerusalem for Israelis.

Mr. ISSA. Okay. So Congressman Juan Vargas, a former Jesuit priest, now a Congressman, and myself have a bill that calls on the State Department to build a permanent and substantial facility to house safely the Ambassador to Israel in or near Jerusalem for purposes of conducting the business of the American people before this Nation. Do you inherently have any problem with that portion, if you will, with that sub law? It doesn't say embassy. Do you have a problem with putting our Ambassador in a safe location and in proximity to the Government of Israel?

Mr. KOPLOW. Without having seen the bill, I am reluctant to—

Mr. ISSA. Just take my description and I will write it to match your agreement.

Mr. KOPLOW. I would say certainly in general I support anywhere the Ambassador is that facility should be secure.

Mr. ISSA. Okay. So if I can summarize, with the chairman's indulgence, the one thing that this entire panel I think agrees, based on head shaking, is that the current Government of Israel, of the Israeli people, is located in Jerusalem. That that government regularly meets there. That the Ambassador—U.S. Ambassador has an obligation to regularly be there, and is there regularly. That that Ambassador is not currently in facilities that meet the Inman or

other common standards of security, nor does it have the ability to host people in the way that ambassadors normally do at the embassy.

That the embassy in Tel Aviv, sitting on—by the way, the other side of is sitting on the ocean. It's beautiful but it's also not protectable. That that facility is dated, and by definition doesn't meet the standards. And so regardless of the President's decision on the question of moving the embassy, we have a facility deficit, a security deficit that needs to be corrected, and the logical place to secure the Ambassador for most of the time is in a city where he currently does not have permanent U.S. facilities. I think that's what I heard everyone shaking their head for.

So as the President decides this question, he's really deciding the question of safety of diplomats and security and our country's ability to do business with the capital—I am sorry, with the Government of Israel. Is that one we can all agree on even though I—

Mr. DESANTIS. The gentleman's time has expired.

Mr. ISSA. I know, but I am going for that long agreement, Chairman. Can I get a yes?

Mr. DESANTIS. I gave you some indulgence. We got to go because I know Brian Mast has got to move on, so I want to recognize him for 5 minutes.

Mr. MAST. Thank you, Chairman, for the invitation to join your committee today. This has been a much needed hearing. I am going to ask just some very self-evident questions because this is such a self-evident issue, at least in my opinion.

So I will just start at the end down here. Mr. Kontorovich, you know, can you tell me, what is the capital of the United States of America?

Mr. KONTOROVICH. The Capital is Washington, D.C., of course.

Mr. MAST. Certainly. And Dr. Koplow, in what U.S. city does Egypt maintain their embassy?

Mr. KOPLOW. Washington, D.C.

Mr. MAST. That's exactly right. We maintain ours in Cairo. Mr. Klein, I am sure you know the city in which—the U.S. city in which Jordan maintains their embassy?

Mr. KLEIN. It could have been in Jerusalem. They chose Amman.

Mr. MAST. That's where we maintain our embassy. They maintain their embassy here in Washington, D.C. Certainly Ambassador Gold, I am sure you know where Saudi Arabia here in the United States maintains their embassy.

Mr. GOLD. They maintain their embassy in the center of American power and influence, the Capital of the United States, Washington, D.C.

Mr. MAST. You better believe it. And we maintain ours in Riyadh. Ambassador Bolton, I am certain that you can say where Israel and 177 other nations maintain their embassies here in the United States of America.

Mr. BOLTON. Turns out to be Washington.

Mr. MAST. That's exactly right. So I guess short of invasion, I really can't think of a bigger slap in the face to any nation's sovereignty, their right to self government, their legitimacy than not recognizing their capital or their center of government. I think that us not celebrating having an embassy in Jerusalem, having the

presence there, our diplomatic mission in Israel, having it there, I think it's absolutely a slight to our greatest of allies every single day.

So in that, you know, I am going to keep my remarks very brief and just say this. You know, we are the leader of the free world. That is an undisputed fact and rightly so. So we need to be calling on every person in this town, every person in this building to lead and establish our embassy in the center of freedom in the Middle East, and that is the true capital of Israel, Jerusalem.

Thank you for the opportunity to be here, Chairman, and I yield back.

Mr. DESANTIS. Yield the balance of your time to me?

Mr. MAST. Absolutely.

Mr. DESANTIS. I thank the gentleman. I just wanted to thank the witnesses for your testimony. I think we have gotten a lot of very good information. I think it was presented very crisply. And I just come away from the hearing more convinced than ever that we need to follow this 1995 law.

I would love to do it before the end of the year to coincide with the 50th anniversary of Jerusalem's reunification during the Six-Day War. But I think from a security perspective it makes sense. I think from the religious freedom perspective, the endorsement of Israeli stewardship over those religious sites is something that is very important both here, there, and I think throughout the world. And I think geopolitically, people will see that America is standing with a close ally. And that's exactly what we need to be doing at this point in time.

The hearing record will remain open for 2 weeks for any member to submit a written opening statement or questions for the record. If there is no further business, without objection the National Security Subcommittee stands adjourned.

[Whereupon, at 11:58 a.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security
Hearing on
“Moving the American Embassy in Israel to Jerusalem: Challenges and Opportunities”
November 8, 2017

Statement submitted by

Daniel C. Kurtzer¹

It would be a diplomatic mistake and detrimental to American interests for the United States to relocate our embassy to Jerusalem in the present posture of the Israeli-Palestinian dispute. During my four years as President George W. Bush’s Ambassador to Israel—and indeed throughout three decades of government service devoted almost entirely to advancing the interests of the United States vis-à-vis Israel and the Palestinians—no topic was as sensitive as Jerusalem.

Congress has long been attuned to the unique nature of this issue. In enacting the Jerusalem Embassy Act of 1995, Congress prudently included a waiver provision permitting the executive branch to defer implementation of an embassy move. For 22 years, four presidents from both parties have exercised that waiver authority to avoid committing the United States to the consequences of such a unilateral change. Consistent with that longstanding judgment, the President should continue to waive implementation of the Act, while at the same time exerting significant effort to break the diplomatic stalemate in the peace process.

Several important factors underpin this policy recommendation.

First, it has long been United States policy to oppose unilateral actions by either party – or by third parties – that seek to change the status quo outside of the negotiations. If the United States were to engage in unilateral action on this central disputed issue, we would substantially undermine our ability to persuade the parties

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themselves, or other third parties, to avoid doing so. For example, the United States has expended important diplomatic capital to oppose unilateral Palestinian efforts to secure full member status in international organizations in the absence of a political settlement. To date, many of these efforts have been successful. A unilateral move of our embassy to Jerusalem would cost the United States deeply in terms of credibility on such issues, and that cost would far outstrip any supposed benefits to both the United States and, I believe, Israel.

Second, the extraordinarily close relationship between the United States and Israel -- which I was proud to help build during my government service -- is no secret, including to the Palestinians. Indeed this relationship is itself a critical pillar of U.S. foreign policy. However, our ability to be -- and be seen to be -- the indispensable third party whose leadership and authority are vital to steward the parties to a negotiated resolution that is squarely within our own interests would be compromised by a decision to move our embassy to Jerusalem. We would be crossing a clear red line for the Palestinians and for many Arab and Muslim states, including those with whom we share friendship and regional security interests. The interests of the United States would not be advanced by crossing that line.

To be sure, it is apparent to all observers that western Jerusalem is certain to be incorporated within the State of Israel *de jure*, as it already is *de facto*, in the context of a final status resolution. But the terms of that resolution, including the borders of Jerusalem have yet to be agreed. A move of our embassy to any location within Jerusalem would be seen to prejudice both the final status and the ultimate determination of the agreed borders. Israel unilaterally expanded the municipal boundaries of Jerusalem after the June 1967 war. Situating our embassy in Jerusalem before the parties themselves have agreed to such a step would be construed as functional acceptance on the part of the United States of Israel's decision to enlarge that municipal boundary.

The United States has been a steadfast supporter of Israel through thick and thin for decades. But across those decades, the United States has also held firm to the principle that international boundaries are not to be modified by force or unilateral action. How can we articulate principled opposition to the action of others -- for example, Russia's annexation of Crimea -- if we look the other way when our friends and allies do the same thing?

It must also be noted how this decision, if undertaken, would increase the security threat to U.S. diplomats, citizens and facilities in many parts of the Muslim world. Certainly, such violence would be absolutely unjustified. And equally, United States policy should never be driven away from the correct outcome by threats of terror.

Here, though, the outcome is the wrong outcome -- one that would cause a serious setback in our interests for no discernible policy gain.

In diplomacy, timing is often as important as substance. In my own experience, there was at least one possible moment when we might have made this embassy move successfully -- in a way consistent with our stated policy, and attuned to the pitfalls noted above. In the weeks before the 1993 signing of the Oslo Accord, when I was on the Administration's "peace team," I proposed simultaneously moving our embassy to West Jerusalem and establishing a second mission in East Jerusalem to represent United States interests vis-à-vis the Palestinian Authority. I argued that the political breakthrough of Oslo provided an opportunity to achieve something of importance for both Israelis and Palestinians. To my regret, no action was taken. Since then, there has not been a similar fortuitous moment in which the United States could have undertaken a bold diplomatic move of benefit to both parties with respect to Jerusalem. When such a moment arises, I will be first in line to push for this move, but I see no plausible basis to conclude that the current political and diplomatic circumstances present anything like such a moment.

Two important notes: the issue of where the United States embassy to Israel is located must not be confused with the question of the connection between the Jewish people and Jerusalem. The historical, religious and political connections between the Jews and Jerusalem are a matter of fact, not opinion. Palestinian leaders and others who have sought to deny this connection are simply wrong, and their arguments should be rejected categorically. But that is a different discussion than whether it advances U.S. interests to undertake a particular provocative diplomatic move at this time. As articulated above, it does not.

The issue also should not be decided by the lawyers. There is a significant divergence of views regarding the legal status of Israel with respect to the territories it occupied as a result of the 1967 war. The debate over whether Israel's control of Jerusalem constitutes a "belligerent occupation" or some other status is important, but must not be dispositive with respect to what is clearly a policy (and political) decision.

A final and personal note regarding the Jerusalem Embassy Act of 1995. I recognize the strong sentiment within Congress that our embassy should be located in Jerusalem. In the context of a final status deal, I wholeheartedly endorse that move. In the meantime, though, the reality is that the Act has compromised the security of Americans by hindering the ability of those in the field to improve embassy security. During my tenure as Ambassador, I could not certify that our chancery building in Tel Aviv was secure. It sits between two busy streets, does not have adequate setback, and was not constructed to the standards now required for our diplomatic buildings. During the second Palestinian Intifada, a suicide bomber attacked a café just a few feet

north of the embassy, and another suicide bomber attempted an attack against a restaurant just a few feet south (this attack was prevented by our extraordinarily brave embassy security personnel). Yet we could not even consider a move to a more secure facility, because the Act prevented us from doing so other than by moving the embassy to Jerusalem. Thus, Congress's well-intentioned legislation has become a barrier to ensuring the security of American personnel. I urge Congress to take the appropriate steps to ensure that the Act does not continue to prevent moving the embassy temporarily to a more secure location until a peace agreement is reached and the embassy can be relocated permanently to Jerusalem.

For all these reasons, therefore, I strongly recommend that the President continue to waive the provisions of the Jerusalem Embassy Act of 1995 and that the U.S. Embassy not be relocated to Jerusalem until a final status agreement is reached between Israel and the Palestinians. I also recommend that the Congress permit the embassy to relocate to a more secure location until it can be moved to Jerusalem after a peace accord is reached. And I recommend equally strongly that the administration intensify its efforts to achieve a peace settlement to this longstanding dispute.

I thank the Committee for permitting me to include this statement in the record.