

I have supported this action since I came to the Senate. I first cosponsored a resolution on this issue introduced on October 1, 1983. That resolution (S. 2031) was cosponsored by 50 Senators. Now, some 15 years later, it is my hope that with the momentum of the peace process, the message of the cosponsors to this bill will resonate sufficiently to move the administration to action on this.

On March 26, 1990, Senate Concurrent Resolution 106 was submitted and was subsequently passed calling for the move of the Embassy to Jerusalem. Again, the Congress acted on this subject through its recent correspondence on February 24, 1995 in its letter to Secretary of State Warren Christopher signed by 93 Senators.

During the August recess, I traveled to Israel as well as other countries. On September 28, I stated here on the Senate floor my impressions of the challenges facing American foreign policy in the near future. It was during that travel that I was able to speak directly with the President of Israel, Ezer Weitzman, Prime Minister Yitzhak Rabin, the leader of the opposition party Mr. Benjamin Netanyahu, as well as Chairman of the Palestine Liberation Organization, Mr. Arafat and significant Palestinian personalities now engaged in attempting to fashion a means to live side by side, Israelis with Palestinians. Many times during these conversations, we spoke of Jerusalem and the future. All of us were aware of the importance of Jerusalem to the future of the region.

Tomorrow, Members of Congress and their guests will convene in the Capitol Rotunda to celebrate the Inaugural ceremony for Jerusalem 3,000, a 15 month long celebration commemorating 3,000 years since the establishment of Jerusalem as the capital city of Israel by King David. I hope to be in attendance at this ceremony.

The action we take today is consonant with the observance of the ceremony as well as with the policy we have around the world in every country we recognize. The United States today locates its embassies, around the globe, in the city designated by the respective country as its capital. It is long overdue that this is our action in Israel. It is most appropriate that, as we move toward the period when both sides in the conflict are scheduled to move into negotiations over a permanent resolution, that the commitment to a date certain be made for the opening of our embassy.

We have been, and continue to be, the catalyst in bringing the parties to resolution; it is my hope that our action in the Senate today will be accepted and acted upon by President Clinton and that no further roadblocks will be put up which would impede the opening of the Embassy in Jerusalem on May 31, 1999, as provided for in this legislation.

I think it is very, very important that Jerusalem remain undivided, and I think the expression by the U.S. Con-

gress putting into law the timetable for moving our Embassy from Tel Aviv to Jerusalem is entirely appropriate, and accordingly I support that legislation. I yield the floor.

#### PROTECT THE PEACE PROCESS

Mr. BYRD. Madam President, this bill, which would mandate a move of the U.S. Embassy from Tel Aviv to Jerusalem by May 31, 1999, may be popular with a very vocal segment of the United States population, but it represents precarious foreign policy for the United States as a whole. The United States has played a central role in carrying forward the very difficult and sensitive negotiations that will, hopefully, bring a lasting peace to Israel and the Middle East. It ill behooves us now to undermine what is arguably the single most sensitive issue of the negotiations, that of the status of the holy city of Jerusalem, by impetuously acting to side with one party to the negotiations. If the United States is to be credible as a facilitator of the peace process, it must act with fairness and impartiality.

Proponents of this legislation argue that negotiations on the final status of Jerusalem are to be complete by May, 1999, so that this bill is compatible with the timetable of the peace process. But this presupposes the outcome of the negotiations, which do not even begin until next May. This may be exactly what the proponents desire. If it is "imperative to establish now the U.S. conviction that realistic negotiations must be premised on the principle that Jerusalem is the capital of Israel and must remain united," as an October 20, 1995 mailing from the American Israel Public Affairs Committee (AIPAC) asserts, then what is left to negotiate at all? Acting in advance of the negotiations undermines the incentive for the Palestinians, who also have political and religious claims to the city, to participate in the talks.

United States support for Israel is well known. Israel and the United States have close military and diplomatic ties. The United States provides more economic aid and military assistance to Israel than to any other single state. Moving the United States Embassy from its current location in Tel Aviv to Jerusalem at this time is not necessary to help shore up Israeli support for the peace process. It can wait and let the ground breaking in 1999 serve as a visible signal of the success of the peace negotiations, should the outcome be as expected. Not moving the Embassy at this time is, in my view, probably more important to help shore up the willingness of the Palestinians to continue along this rocky path to peace. Let the ground breaking for a new U.S. Embassy in Jerusalem in 1999 be a visible sign of U.S. support for the final outcome of the negotiations, if that is the result, rather than a continuing reminder to them that

the negotiations were rigged from the outset.

Jerusalem is an ancient city, considered holy by three of the world's religions, Christianity, Judaism, and Islam. There is no more volatile mixture in the world than religion and politics, and Jerusalem has suffered the devastating effects over the centuries as wars, occupations, and divisions have forever marked her walls and buildings. Peace is within our grasp, if we can act with sensitivity to acknowledge the ancient and competing claims to this most contested plot of land. No one, I believe, wants a city torn by terror and divisiveness, a Jerusalem that cannot stand as a beacon of tolerance and understanding among three religions and all of the peoples of the Middle East. Therefore, I will vote against this bill, which does so much to undermine the peace process.

Mr. ROBB. Madam President, I recognize the city of Jerusalem as the united, undivided, eternal, and sovereign capital of Israel, and where the United States Embassy is located should reflect that reality. While some have urged caution about relocating our mission in the midst of the peace process, it is my sense that such a move, as envisioned by the Jerusalem Embassy Relocation Act, will not create a detour on the road to achieving a comprehensive Arab-Israeli peace.

Jerusalem stands today as an international city, where the rights of all ethnic religious groups are protected and freedom of worship is guaranteed. Diverse religious faiths coexist peacefully. This week we are seeing a hopeful spirit of internationalism expressed by many world leaders celebrating the founding of the United Nations 50 years ago. Like the community of nations joining together in support of the United Nations many religious faiths and sects engender a collective spirit of interdenominational harmony in Jerusalem.

Madam President, Prime Minister Rabin has told the Israeli people that "I assure you that Jerusalem will remain united under Israel's sovereignty, and our capital forever." That expression leads me to the conclusion that the final status talks on the city should not focus on issues of overall sovereignty. Rather, making permanent each denomination's jurisdiction over its respective holy sites and collateral issues of autonomy should be the subject of the negotiations next year.

Even President Clinton has stated that "I recognize Jerusalem as an undivided city, the capital of Israel—whatever the outcome of the negotiations, Jerusalem is still the capital of Israel and must remain an undivided city, accessible to all." That statement represents a consensus that our Embassy belongs in the functional capital of Israel.

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.

Thus far in the peace talks, Israel has sacrificed the tangible—land—for the intangible—the security of its people. As we continue down the road of peace, Israel will cede valuable territory, natural resources, and political authority, while Palestinians will enjoy broader political and economic freedoms. There are no long-term guarantees for Israel. A single Hamas-sponsored terrorist attack can disrupt any sense of peace achieved at the negotiating table.

Madam President, that is why I endorse this move to demonstrate our long-term commitment to having our Embassy in Jerusalem which will symbolize the united and undivided character of this city. Such a move will not stand in the way of achieving a comprehensive peace. It will simply lay to rest doubts about the U.S. position on the status of our Embassy.

I also support the modified substitute offered by the majority leader last night that includes compromise language providing the President a national security interests waiver. I think it is appropriate that the President should be given the authority to waive the legislation if it would have dire consequences on the peace process.

Madam President, I joined as a cosponsor of this legislation some time ago, and believe it sends the right message at the right time to Israel. It is our decision alone to move the Embassy. With upcoming ceremonies in the rotunda of the Capitol celebrating the 3,000th anniversary of Jerusalem as the capital of Israel, I believe we will be serving the interests of peace in the Middle East by passing this legislation. So I urge my colleagues to support this effort to relocate our Embassy to the capital of the Jewish homeland.

Mr. COHEN. Madam President, this week in the Capitol rotunda the United States Congress will host the United States Inaugural Ceremony of Jerusalem 3000, beginning the celebration of the 3,000th anniversary of the establishment of Jerusalem as the capital of Israel.

It is a particularly appropriate time for the Senate to act on this important legislation that would reaffirm our commitment to Jerusalem as the undivided capital of Israel by directing the relocation of the United States Embassy to Jerusalem by 1999.

It has been over a decade since a majority of the Members of Congress, and I was proud to be among this group, called for the movement of our Embassy to where it belongs—in the capital of Israel. Since then, as Senator MOYNIHAN has recited in detail, the Senate and the other body have repeatedly adopted by overwhelming and frequently unanimous votes legislation

calling on the United States to affirm Jerusalem as Israel's undivided capital.

Most recently, nearly every Member of the Senate signed a letter to the President urging that the relocation take place no later than May 1999. This letter clearly rejected the assertion of some that declaring our intent to move our Embassy would endanger the peace process, noting that:

United States policy should be clear and unequivocal. The search for peace can only be hindered by raising utterly unrealistic hopes about the future status of Jerusalem among the Palestinians and understandable fears among the Israeli population that their capital city may once again be divided by cinder block and barbed wire.

We also endorsed in that letter Prime Minister Rabin's declaration that "United Jerusalem will not be open to negotiation. It has been and will forever be the capital of the Jewish people, under Israeli sovereignty, a focus of the dreams and longings of every Jew."

The bill we have before us, of which I am proud to be an original cosponsor, brings this legislative process to fruition by establishing in law United States policy that Jerusalem should be recognized as the capital of Israel and that our Embassy should be relocated there no later than May 31, 1999, and by authorizing funding beginning this year for construction of a United States Embassy in Jerusalem.

To help that ensure the executive branch implements this policy faithfully, the bill requires semiannual reports from the Secretary of State, beginning in January, on the progress made toward opening our Embassy in Jerusalem. It also would give the State Department a strong financial incentive by limiting the availability of its construction funding after 1999 until the Embassy opens in Israel's capital. As a practical matter, this limitation would not actually take effect until the middle of the year 2000, given the historical spend-out rates for the State Department's construction budget. But it emphasizes the importance Congress places on this matter.

Even with this inherent flexibility, however, the administration has shown resistance to this legislation. In response, Senator DOLE has now added a broad waiver authority that would allow the President to suspend this limitation on State Department construction if he believes it is necessary to protect the national security interests of the United States.

I should also note that the bill carefully states that the rights of every ethnic and religion group should be protected in the undivided capital of Jerusalem. Three major faiths revere Jerusalem as a holy city. The best way to protect the religious interests of members of all these faiths is to ensure that Jerusalem never again is divided, which would only threaten to reignite religious conflict.

Madam President, Senator DOLE and Senator MOYNIHAN are to be com-

mended for their persistent leadership in ensuring that this legislation has finally come for a vote on the floor of the Senate. I hope that, once the House of Representatives gives its approval, this legislation will be signed into law by the President, who during the 1992 campaign clearly stated that "I recognize Jerusalem as an undivided city, the eternal capital of Israel." Given the very strong support this bill rightly enjoys in both Houses of Congress, I think the President's advisers would be unwise to suggest another course of action.

And once this bill is enacted into law, through whichever mechanism, I trust that the President will move expeditiously to implement it and attain its objective before the May 1999 deadline.

Madam President, many of us in the Senate have had the opportunity to help cultivate America's special relationship with the State of Israel. As a strategic ally and an island of stability and democracy in an important but troubled region, Israel steadfastly supported American interests during the cold war. During the gulf war, when Saddam Hussein sought to gain control over Middle Eastern energy resources, Israel stood firmly with America, enduring savage attacks on its civilian population that were designed to split Israeli policy from United States policy.

Having protected U.S. interests in a hostile region for decades, the American-Israeli strategic alliance today is the foundation for the Middle East peace process. Without steadfast United States support for Israel, those among Israel's neighbors who have accepted the necessity for a negotiated peace settlement would not have done so. And without our continued steadfast support, the peace process will not be successful. Nowhere is this need greater than on the question of the status of Jerusalem.

Jerusalem is and will remain the undivided capital of the State of Israel, and we must not miss the opportunity to underline that fact—particularly today on the eve of the inauguration of the celebration of the 3,000th anniversary of Jerusalem's establishment as the capital of Israel. This legislation will help to ensure that the fourth millennium of this holy city will begin with an era of peace.

I urge my colleagues to support this legislation, so that we can pass it with a large majority and ensure its swift enactment into law.

Mr. LOTT. Madam President, I rise in support of S. 1322, a bill to relocate the United States Embassy in Israel to Jerusalem.

In the over 180 countries where the United States has a diplomatic presence, Israel is the only country where our diplomatic presence is outside of the capital city. It is time to pledge ourselves to moving our Embassy to Jerusalem, which is the legitimate capital of Israel. It is in our interest to

strongly support Israel and its continued administration of Jerusalem.

I am a cosponsor of this legislation, along with 63 other Senators. In a year some characterize as a very partisan year, you have a bipartisan consensus on this issue. Senators have come together for the national interest, something which is above politics.

This is what this bill is all about: The national interest. I have heard that this bill is solely about politics of the Presidential kind. That is not true—the proof is in the list of cosponsors: This list is bipartisan and balanced.

I have heard the argument against this bill, that moving our Embassy ahead of schedule would endanger the Middle East peace process. I am not persuaded by this argument. The United States has consistently recognized Jerusalem as Israel's capital. If we want to be an honest broker in peace talks between Israelis and Palestinians, we should be honest about our view of Israel's sovereignty over Jerusalem.

This bill would allow us to break ground in 1996 for the new Embassy. Next year will be the 3,000th anniversary year of Jerusalem. King David relocated his throne from Hebron to Jerusalem 3 millennia ago. Next year, America should move its Embassy to the city of David.

This bill is not a statement of animosity against any religion. Almost all Senators are on record supporting Israel's administration of Jerusalem as a unified and universal city, open to all followers of the three great world religions. This it has done for 28 years, and that will not be jeopardized.

This bill is not a statement against any country. This bill is for the official recognition on our part that our ally Israel has its governmental seat in Jerusalem. The peace negotiations can and should continue. We should facilitate such negotiations. Relocating our Embassy does not and should not have anything to do with ongoing peace talks.

So I think we should pass this bill, and I think the President should sign it. Jerusalem has always been at the crossroads of history and faith. We should begin next year to place our presence there.

I am reminded that people of the Jewish faith say at the end of the Passover and Yom Kippur services, "Next year, in Jerusalem." This expresses their hope of return and the centrality of Jerusalem in the Jewish faith.

I say something similar, Madam President: That I hope this bill passes, and next year, we will be in Jerusalem breaking ground for a new Embassy in the Holy City.

Ms. MIKULSKI. Madam President, I rise as a cosponsor of the Israel Embassy Relocation Act. I thank the sponsors of this legislation for amending it to give Israel more flexibility on when construction on our new Embassy will begin.

Jerusalem is and always will be the capital of Israel. For thousands of years the Jewish people prayed, "next year in Jerusalem." This prayer helped to sustain Jews even through the darkest days of the diaspora.

Even after Israeli independence, the holy sites of Jerusalem were closed to Christians and Jews. The Jewish quarter of the old city was destroyed. But since Jerusalem was unified in 1967, Jerusalem is open to all religions for the first time in its history.

I have visited Israel with Jews who were there for the first time. When we visited the Western Wall, I saw what it meant for them to touch the stones that their ancestors could only dream of. I saw that Jerusalem is not just a city or a capital. It is the religious and historic homeland of the Jewish people.

Why is Israel the only nation with which we have diplomatic relations that is not allowed to choose its own capital? The sight for the U.S. Embassy is in west Jerusalem, which has been part of Israel since its independence. We should have moved our Embassy long ago.

So over the years, I have supported every effort of Congress to call upon the executive branch to move our Embassy to Jerusalem. And each successive administration has ignored us.

But now, as Israel takes courageous steps toward peace, we are raising this issue again. And what should have been a clear statement on Jerusalem has become a political debate.

When this legislation was first introduced, I had some concerns about the requirement that construction on the new Embassy must begin in 1996. I did not cosponsor it because I believe that we would be imposing our own deadlines on the peace process. This new bill removes the arbitrary dates that fit United States elections rather than the will of the Israeli people. This issue is too important to politicize.

Madam President, this year we celebrate the 3,000 anniversary of Jerusalem. Let us mark this great event by reaffirming that Jerusalem is and always will be the capital of the State of Israel.

Mr. HATCH. Madam President, I stand here today to strongly support S. 1322, the Jerusalem Embassy Relocation Act of 1995.

I wish to commend the majority leader for his efforts in introducing this bill. I also wish to commend the efforts of Senator KYL and a number of my Democratic colleagues for ensuring that we possess a bill that will have, I hope, unanimous support here in the Senate.

The issue of Jerusalem has been debated on this floor for over a decade. I have always believed that Jerusalem is the capital of Israel, and I believe that now is the time for the United States Congress to recognize this reality. That is why I signed the letter to Secretary Christopher on March 20, 1995—along with 92 of our colleagues—that declared that "we believe that the

United States Embassy belongs in Jerusalem."

I understand that this legislation has been modified to address concerns that we may be restricting the President's foreign policymaking powers. With these modifications, I encourage the administration to join us in correcting a diplomatic anomaly that we have visited on our closest ally in the Middle East for too long: Of the diplomatic relations we hold with over 180 nations around the world, Israel is the only country in which our Embassy is not in the capital.

I have been and remain a strong supporter of the Middle East peace process. But through the years of my support, I have always maintained that the policy process must be driven by the participants, and that the United States' role is to support, not dictate, the terms of the negotiations. Israel has made some courageous concessions over these negotiations. It has waged a fight for peace that has been, on some days, as bloody as its previous wars.

Next year will begin the "Final Status" negotiations. There has been much positioning by certain parties over the future of Jerusalem. But Israeli governments have not vacillated over this issue, and their position has always been clear: Jerusalem is the seat of the Israeli Government, and Jerusalem shall remain the united capital of Israel. This is the conviction of the Israeli Government, the only democratic state and our most valuable ally in the region.

This should be our conviction now. Our ambivalence beyond this point will only muddle, and I believe frustrate, the final status negotiations. The parties must set the terms, and we must not confound expectations by perpetuating the anomaly of the U.S. Embassy in Tel Aviv. If we wish to continue supporting the peace process, and I firmly believe we should, then we must make clear that it is the policy of the U.S. Government to have its Embassy in Jerusalem by the conclusion of the peace negotiations at the end of this century.

Jerusalem just celebrated its 3,000th anniversary. Let us now declare that the U.S. Embassy will reside in that holy city by the end of this troubled 20th century. Let us now pass resoundingly S. 1322.

Ms. MOSELEY-BRAUN. Madam President, I strongly support S. 1322, the Jerusalem Embassy Relocation Implementation Act, legislation which would locate the United States Embassy in Israel in Jerusalem, Israel's capital city.

It is customary, indeed, universal, that an embassy is located in the capital city of every sovereign nation in which a diplomatic presence is maintained; that is why I cosponsored S. 1322, along with 62 of my colleagues.

Madam President, Jerusalem is Israel's chosen seat of government. It is where the President, Prime Minister, Parliament, Supreme Court, central

bank, and all other authoritative institutions of state are headquartered. It has been the capital of Israel since 1950. Moving the American Embassy is nothing more than an acknowledgment of what is in fact the reality—Jerusalem is the capital of the State of Israel.

Presently, the United States maintains diplomatic relations with 184 countries around the world. Of these, Israel is the only nation in which our Embassy is located in a city not regarded by the host nation as its capital.

Imagine, Madam President, the huge outcry, within and outside of government, if any foreign nation refused to locate its embassy in our capital or insisted that it would maintain relations with us, but not in the location we designated as our capital city. That kind of refusal would create serious and unnecessary tensions between the United States and that country. After all, the question of where to locate the capital of the United States is for the United States to decide—and no one else.

That same logic applies in this case to the capital of Israel. The question of where to locate its capital is for Israel to decide and no other nation or power to frustrate. And Israel decided long ago that Jerusalem would be its capital.

If the argument is made that Middle East peace negotiations are at a delicate stage, and that this is not the time for this legislation, my response to that is: Peace negotiations are always at a delicate stage. The pendency of discussions should not force an untenable discrimination against one of the negotiators.

Jerusalem has been the capital of Israel since 1950. The time for waiting is over. Forty-five years is a long enough period for closure of what should be a matter of simple fairness.

Critics of this legislation also argue that the passage—even the discussion—of this legislation will undermine the peace process, thereby harming Israel's security and strategic interests. However, the Government of Israel and its citizens, the ultimate authorities on Israel's security and strategic interests, do not share that view. They enthusiastically support the relocation of the American Embassy to the capital city, Jerusalem.

Others argue that the relocation of the American Embassy to Jerusalem would prejudice and prejudice the final status of Jerusalem negotiations under the Oslo agreement. I do not agree. The site the United States is considering for a future Embassy is in an area that has been part of Israel since its founding in 1948. Moreover, Israel's right to this section of Jerusalem is uncontested, even by the Palestine Liberation Organization.

Madam President, I understand and appreciate the uniqueness of the city of Jerusalem. It is unique in the world as a holy place. The hilltop city is sacred to Jews as the site of their ancient temple, to Christians as the birthplace

of Christianity, and to Moslems as the site from which Muhammad ascended into heaven. It is all of these things—and it is also the capital of Israel.

Each and every U.S. Embassy abroad exists to represent our Government to the government of the country in which it is located. The Government of Israel is in Jerusalem. Jerusalem, therefore, is the only place our Embassy should be.

The logic of locating our Embassy in Israel's capital city is overwhelming and compelling, which is why this legislation enjoys such widespread, bipartisan support in both the Senate and the House of Representatives. I urge the prompt passage of this legislation, and I look forward to the day in the near future when the United States Embassy opens in Israel's capital—Jerusalem.

Mr. FEINGOLD. Madam President, I am proud to be a cosponsor of the Jerusalem Embassy Relocation Implementation Act. Like almost all of my colleagues, I believe that an undivided Jerusalem is the legitimate capital of the State of Israel, and that United States policy should clearly reflect that. Accordingly, the United States Embassy should be housed in Israel's capital, just like it is in every other country, and not in the country's economic center.

Of course, the Jerusalem issue is practically unique in world politics. The ancient city is holy for Jews, Christians, and Moslems, and both Israelis and Palestinians claim Jerusalem as their capital. The Tomb of the Holy Sepulchre is sacred for Christians to honor Christ's death. Moslems claim the Dome of the Rock and the al-Aqsa mosque as the site of Abraham's sacrifice. Jews pray at the Kotel, the Western Wall, the last remaining wall of the ancient synagogues, as well as the scores of other holy sites nestled in so many quarters.

Named as the City of Peace, Jerusalem has unfortunately been split by war. Throughout history, Arabs and Jews and Christians have locked each other out, and have often accused each other of desanctifying religious monuments, and barring access to each other's holy places.

Incidents have occurred where Moslems have felt offended by desecrations of their holy monuments and religious foundations. My own memory is seared by the defacing of meaningful and historic synagogues in the Old City's Jewish Quarter in 1947-67, when the city was not controlled by Israel. I remember with pain the laundry that hung on the Wailing Wall, a place of immensely spiritual and sacred value for Jews. I cannot forget the pictures of Jewish tombstones thrown around the Mount of Olives cemetery just at the foot of the walls of the Old City.

Though the international community has tried to split Jerusalem under the political solution of corpus separatum, to my mind, the spirituality and emotion of the city make division impos-

sible. Given the 3,000 years of the history of Jerusalem, it will always be the heart of the Jewish people and the capital of the Jewish state. Indeed, it is the capital of the sovereign nation of Israel—a sovereignty the United States has heavily invested in and fiercely supported for 45 years. If our support for Jewish sovereignty over the land of Israel is to mean anything, then the United States should recognize Israel's capital appropriately.

Waiting years—if not decades—for the right moment to move the United States Embassy is not an appropriate recognition of Israel's sovereignty. As much as I hate to admit it, I do not think there will ever be a right time for a move with such emotional associations. And therefore, now is as right as ever. In exchange, Israel must guarantee universal access to other religions who seek to honor their holy places as well. I believe that, save some very unfortunate incidents, Israel for the most part has protected the right of access to Moslem and Christian holy places, and has a responsibility to continue to do so.

I am very sensitive to concerns that such a move by the United States at this time would undermine the peace process. I understand the risk that perhaps the United States would compromise its important position as an honest broker in the peace process: To that, I respond that America's position is nonnegotiable since Israel's claim to Jerusalem is nonnegotiable. Already, there should be no doubt of what the United States position is; hiding our Embassy in Tel Aviv does not change that.

I am also troubled by suggestions that such a move would predetermine the outcome of the final status talks between Israel and the Palestine Liberation Organization, and tie the chairman's hands in other critical negotiations. I am not persuaded, however, that the move of the U.S. Embassy from Tel Aviv to Jerusalem would have such a devastating effect. It is important to keep this proposal in perspective, and not underestimate the power of the commitment of the parties themselves to the peace process—wherever the U.S. Embassy is housed. Further, I believe that Prime Minister Rabin's own assertions that Israel will not cede Jerusalem are just as important to the process, and can guide United States actions on the issue.

The stationing of the United States Embassy in Jerusalem has been a widely supported proposal. The Democratic Party has included it as a plank in our platform since 1967. Sweeping majorities in Congress have urged it for years. It has not been a partisan issue; it has not been a personal crusade for just a few Members of Congress. Indeed, it is when we have broad-based and bipartisan support such as this that coherent and successful policies emerge. Israel has always been a beneficiary of such unity. For that reason, I appreciate Senator DOLE working

with the administration to craft a bill that can have near-unanimous support, and to avoid the nonsense of division on an issue like Jerusalem.

This year Jerusalem is celebrating its 3,000th anniversary. For it to remain the unclaimed capital of Israel is a shame. We should honor it, and the State of Israel, with the Jerusalem Embassy Relocation Implementation Act.

Mr. CHAFEE. Madam President, I fully recognize that Israel is one of the most strategic and important allies of the United States—the only working democracy in the Middle East. We should never waver in our support for a nation that has been militarily threatened by its neighbors since its founding over 40 years ago.

But I also strongly support the peace process that Israeli Prime Minister Rabin and the Palestine Liberation Organization began over 2 years ago. A glimmer of hope has emerged in recent years that the longstanding hostilities that have fueled conflict in this volatile region of the world may soon come to an end. It is imperative that the United States stand firmly behind the efforts of Israel and the Palestinians to reach agreement on the many disagreements that have divided these peoples for so long.

In announcing its accord on Jericho and the Gaza Strip 2 years ago, Israel and the PLO also agreed to negotiate the permanent status of Jerusalem beginning next year. The United States has stood firmly—and indeed has been a leader—behind negotiations on these and other unresolved issues that are aimed at achieving long-term peace.

I certainly recognize that Israel declared Jerusalem to be its capital in 1950. However, since 1967 the United States has called for a negotiated resolution of Jerusalem's status, a position restated by the September 1993 agreement between Israel and the PLO. I am convinced that the question of when we construct our Embassy in Israel should be left to the President and the State Department. Having Congress dictate to the State Department a construction schedule for our Embassy would surely disrupt and possibly derail the ongoing Mideast peace process, a most sensitive diplomatic effort.

Although the administration is given a national security waiver in the compromise version of this legislation, there is still no guarantee that the Embassy move could be waived if the peace process is halted. That is why the State Department remains opposed to this bill. Because of my support for the Mideast peace process and executive branch authority on foreign policy, I will vote against S. 1322.

Mr. KOHL. Madam President, I rise today as a cosponsor of this resolution to move the U.S. Embassy from Tel Aviv to Jerusalem. I strongly believe that Jerusalem is, and will always be, the undivided capital of the state of Israel. The United States Embassy should have been moved from Tel Aviv

to Jerusalem long ago, and I have supported many past efforts to that end. Earlier this year, I joined 91 other Senators in a letter to Secretary of State Christopher urging that our Embassy be moved as soon as possible.

Beyond the protocol concerns of maintaining an embassy outside a state's declared capital city, the U.S. Government is ignoring the centrality of Jerusalem to the Jewish people by keeping its embassy in Tel Aviv. Jerusalem is more than just a capital for the people of Israel. Israelis cherish Jerusalem for its historical and religious significance and hold it in great affection. As a result, this continued reluctance to move the Embassy to Israel's precious capital and most important city is perceived as the ultimate diplomatic snub. It is only appropriate that we correct this slight.

Jerusalem has emotional resonance that reaches far beyond the Middle East as the religious capital for all Jews and as an important religious site for many other faiths. The Israeli Government has earned our praise in its valiant efforts to ensure that people of all faiths have unhindered access to their holy sites. Unfortunately, Jerusalem has not always been so accessible, as Senator LAUTENBERG detailed for the Senate yesterday.

Mr. President, I have been somewhat skeptical as to whether we can pass legislation that will really move our Embassy from Tel Aviv to Jerusalem. The administration has expressed reasonable concerns that this measure is ill-timed and that in its original form could have had an adverse effect on the peace process. I am pleased that Senators FEINSTEIN and LAUTENBERG were able to work with the original sponsors of this measure to achieve a compromise to address the administration's concerns.

With or without this legislation, I continue to urge the administration to move the U.S. Embassy to Jerusalem as soon as possible. I urge my colleagues to support this bill to send that message to the administration.

Mr. MACK. Madam President, I rise in support of S. 1332, a bill to relocate the U.S. Embassy to Jerusalem. I have long supported placing the U.S. Embassy in Jerusalem. It is time that the United States recognized Jerusalem as the capital of Israel by placing our Embassy there. Such recognition is long overdue—47 years overdue. Over time, the location of the Embassy in Tel Aviv has taken on a significance that is at odds with our strong and unwavering support for Israel and Jerusalem as its undivided capital.

The United States failure to recognize Jerusalem as the capital of Israel has only served to embolden the enemies of Israel, leading them to think perhaps the United States, Israel's closest ally, was ambivalent about the status of Jerusalem. We are not. And it is long past time for us to demonstrate our steadfast commitment to an undivided Jerusalem as the historic, gov-

ernmental, and spiritual capital of Israel.

Much of the discussion on this bill has addressed concerns that relocation of the U.S. Embassy to Jerusalem would have a detrimental effect on the peace process. The opposite is true. An essential part of the peace process involves a clear understanding between the parties on a number of issues, an undivided Jerusalem as the capital of Israel is one. PLO compliance is another. On both counts, I want to be absolutely clear: both are essential to a lasting peace in the Middle East. Both are good for Israel and both are good for the Palestinian people. Both are fundamental prerequisites for moving forward into a phase of good relations between Israel and its neighbors. Both are necessary for stability, economic development, good government, and the rule of law for the Palestinian people.

Mr. PRESSLER. Madam President, I want to join the strong chorus of bipartisan support for S. 1322, the Jerusalem Embassy Relocation Act. As an original cosponsor of this bill, as well as the legislation introduced early this year, S. 770, I am pleased the Senate is taking decisive action. This bill already has more than 60 cosponsors—a testament once again to the strong bond between the people of the United States and Israel, our friend and ally in the Middle East. I urge my colleagues in the House of Representatives to pass this legislation and send it to the White House as soon as possible.

Swift passage would not only be appropriate, but timely. In less than 2 weeks, Prime Minister Rabin and Mayor Olmert of Jerusalem will be with us here in the Capitol to commemorate the 3,000th anniversary of the establishment of Jerusalem as the capital of Israel by King David. It was 45 years ago, in 1950, when Jerusalem formally was reestablished as the capital of Israel. Throughout this city's rich history, Jerusalem has been an important city to people of many faiths. It has been occupied by military governments, pseudo-states, and empires. However, for three centuries, only one State has called Jerusalem her capital—the State of Israel. Jerusalem is and should forever be the capital of Israel. Jerusalem is where our Embassy belongs.

The Senate repeatedly has expressed in a strong, unified voice that the United States Embassy in Israel should be relocated to Jerusalem. Earlier this year, I was pleased to join a vast majority of my colleagues—92 to be exact—in a letter to Secretary of State Warren Christopher, urging that the State Department begin taking concrete steps to relocate the U.S. Embassy to Jerusalem. The legislation we will pass today more than gets the process moving. Specifically, S. 1322 would set a definitive timeline for the construction and relocation of the

United States Embassy to Israel in Jerusalem. It would authorize funding over the next 2 years to ensure the timeline is met, including the opening of the U.S. Embassy in Jerusalem by May 31, 1999.

Madam President, I strongly disagree with those who claim that this legislation could threaten the Middle East peace process. There is no rational basis to question the Senate's commitment to achieving a lasting peace in the Middle East. All want to see the peace process succeed. The safety and security of all the people of Israel is critical to attaining a stable environment in the Middle East.

Clearly, a number of issues in the peace process remain to be worked out. However, there are a few facts that are not in dispute: Jerusalem is an undivided city. Jerusalem is a city open to all people of all nationalities and faiths. Jerusalem is the true capital of Israel. By relocating our Embassy in this historic city, we simply reinforce these facts—facts that reinforce U.S. policy. Nothing more. Nothing less.

Again, Madam President, I am proud to be an original cosponsor of this very important legislation. Throughout my career in the Senate, this body has passed a number of nonbinding resolutions recognizing Jerusalem as the capital of Israel. U.S. policy is clear. Congress has spoken many times. Now the time has come for action. I commend the majority leader, my friends and colleagues from New York—Senator D'AMATO and Senator MOYNIHAN—and my friend from Arizona, Senator KYL, for their tenacious leadership to see this bill through to final passage today. I can think of no action by the United States to be more appropriate on this extraordinary year—the 3,000th anniversary of King David's recognition of Jerusalem as the capital of Israel—than to place our Embassy in Israel's capital city, Jerusalem—a city forever free, forever undivided and forever the capital of the people of Israel.

Mr. DODD. Mr. President: I rise today to speak about S. 1322—Jerusalem Embassy Relocation Implementation Act of 1995. Let me say at the outset that I share the fundamental premise of the sponsors of this legislation, namely that Jerusalem is and should remain the undivided capital of the State of Israel. I also agree that the logical extension of that premise is that the U.S. Embassy should therefore appropriately be located in that city.

I have joined with my colleagues on numerous occasions expressing this view. Most recently, on March 20, I joined with 92 of my Senate colleagues on a letter to Secretary of State Warren Christopher stating our view that: it would be appropriate for planning to begin now to ensure such a move no later than the agreements on permanent status take effect and the transition period has ended, which according to the Declaration of Principles is scheduled for May 1999.

Mr. President, several weeks ago I had the privilege of being present at

the White House to witness the historic signing of the Interim Agreement on the West Bank and Gaza by Prime Minister of Israel Yitzhak Rabin and PLO Chairman Yasser Arafat. With the stroke of their pens, they took, the peoples of the Middle East one step closer to lasting peace. All of the efforts of those who were the enemies of peace could not deter these two brave leaders from their goal of finding the common ground that made that agreement a reality.

Since the establishment of the State of Israel more than 47 years ago, the people of Israel have sought to live in peace with their neighbors in the Middle East. For too long Israeli efforts to reach out for peace and dialog with its Arab counterparts were met with rejection and terrorism. Fortunately that has now largely changed. Clearly the break up of the Soviet Union and the gulf war were defining moments that totally reshaped the political landscape in the Middle East and improved the prospect for peace.

Mr. President, I fully understand the emotional attachment that Israelis—indeed all Jews—have for Jerusalem. I also respect the significance of this city for those of Moslem and Jewish faiths. Under Israeli sovereignty, all nations have enjoyed complete freedom of worship in a united Jerusalem. Moving the U.S. Embassy to Jerusalem will in no way effect freedom of access to holy places or Moslem and Christian continued control of their respective holy sites in that city.

We can all be justly proud of the enormous progress that has been made to date to undo the destruction and distrust that are the byproduct of decades of hatred and havoc in the Middle East. But we must also be realistic about the difficult issues that remain to be resolved. We must also be mindful of actions we might take here in this body that could further complicate efforts to reach a final agreement.

It is within that context that the administration's opposition to legislatively mandating the relocation of the U.S. Embassy to Jerusalem by a date certain should be understood. Having said that, I believe that at this point not to vote in support of this legislation would send the wrong signal to those who would prefer to see the Middle East remain in turmoil. It would send the wrong signal to those who may hold some allusion that our views about the undivided nature of the capital of Israel will somehow change.

Mr. President, I also would note that the changes that have been made to the original legislation by its sponsors do address some of the specific concerns expressed by the administration about earlier versions. I am pleased that ongoing discussions concerning the inclusion of Presidential waiver authority bore fruit.

Mr. President, while I may have had some doubts about the specific wording of the legislation or the timing of its consideration, I wholeheartedly en-

dorse its intent, and will join with my colleagues at the appropriate time in support of final passage.

The PRESIDING OFFICER. The distinguished majority leader is recognized.

Mr. DOLE. Madam President, this is an historic day for the Senate. Long discussed and long promised, today marks the day that means a U.S. Embassy in Jerusalem will be a reality. On October 13, 1995, along with Senators MOYNIHAN, KYL, INOUE, and 61 other colleagues, I introduced S. 1322, the Jerusalem Embassy Relocation Act of 1995. It modifies S. 770, introduced last May, by deleting the requirement setting the groundbreaking must be begun on the Embassy by May 1996. This legislation states that Jerusalem should be recognized as the capital of Israel and that our Embassy should be relocated to that city no later than May 1999. That is the bottom line.

I wish to say at the outset that the sponsors of this legislation do not want to undermine the peace process. We support the process of building peace in the Middle East.

In our view this legislation is not about the peace process, as the Senator from Arizona pointed out in a meeting we had the other day with the Senator from California, Senator FEINSTEIN, the Senator from New Jersey, Senator LAUTENBERG, and the Senator from Connecticut, Senator LIEBERMAN, time and time again.

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 prejudice the outcome of any future negotiations.

Years ago, I expressed some concern about the impact of Jerusalem and related issues could have on the prospects for peace. But we live in a very different world today. The Soviet empire is gone, and Arab States can no longer use cold war rivalries in their differences with Israel. Iraqi aggression against Kuwait has been reversed with American forces fighting shoulder to shoulder with Arab allies. American military forces remain in the Persian Gulf region. Jordan has joined Egypt in making genuine peace with Israel. The second phase of the Declaration of Principles is being implemented, Gaza is under Palestinian control, and Israeli withdrawal from West Bank towns has begun.

Even yesterday Arafat met with a group of 100 some Jewish leaders in New York City. I never thought it would happen. It happened.

No one can fail to see that the Middle East has changed dramatically. In my view, now is the time to set the deadline for moving the American Embassy to Jerusalem.

In the more than 5 months since this legislation was introduced, there was not one single overture from the Clinton administration. There were veto

threats and legal arguments, but no effort to even discuss our differences. Despite the administration's refusal to talk, the sponsors of the legislation remained willing to address concerns about the bill.

I had no doubt we can work it out and move forward on this legislation.

I want to thank my colleagues, Senator LAUTENBERG, Senator FEINSTEIN, and others for their willingness to cooperate and work out some of the differences we had, along, of course, with Senator KYL, Senator LIEBERMAN, Senator MOYNIHAN, and Senator INOUE.

The administration raised concerns over the lack of a waiver provision in the bill. Last Friday, they proposed a national interest waiver with no limits. In the interest of getting the broadest possible support—we hope, even including the support of the White House—the substitute adopted last night included a national security interest waiver. If the waiver is exercised, funding withholding would take place in the next fiscal year. This should take care of any possibly unforeseen impact of the legislation. Despite having the votes to prevail, we have demonstrated our willingness to meet the concerns raised. We did not want a confrontation with the White House. In sum, we have gone the extra mile, and now is the time for the Senate to speak.

Some have said the Israeli Government is opposed to this legislation. Nothing could be further from the truth. The architect of the Oslo accord, Deputy Foreign Minister Yossi Beilin recently made Israeli Government views very clear:

Any timing for transferring any embassy to Jerusalem, is good timing. The earlier the better. Israel is the only nation in the world that doesn't have a recognized capital.

As I said when introducing this legislation, the time has come to move beyond letters, expressions of support, and sense-of-the-Congress resolutions. The time has come to enact legislation that will get the job done.

Madam President, we have a very sound piece of legislation before us today. I would particularly like to thank the lead sponsors and those who have been helpful in the process.

I am pleased that Senator FEINSTEIN and Senator LAUTENBERG agreed to co-sponsor the legislation after the substitute was worked out last night.

It would seem to me we ought to have unanimous or near unanimous support for this legislation.

I ask unanimous consent that several items referred to in my statement be printed in the RECORD at the end of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SHAW, PITTMAN,  
POTTS & TROWBRIDGE,  
JUNE 27, 1995.

To: American Israel Public Affairs Committee  
From: Gerald Charnoff, Charles J. Cooper, and Michael A. Carvin  
Re S. 770: Bill to Relocate U.S. Embassy to Jerusalem

#### I. INTRODUCTION

This memorandum is in response to your request for an analysis of the constitutionality of the "Jerusalem Embassy Relocation Implementation Act of 1995," hereinafter S. 770, a measure introduced by Senator Dole in the first session of the 104th Congress. Maintaining that Jerusalem should be recognized by the U.S. as the capital of Israel, the bill, in a Statement of Policy, states that groundbreaking for the U.S. embassy in Jerusalem "should begin" by 31 December 1996 and that the embassy "should be officially open" by 31 May 1999. S. 770, 104th Cong., 1st Sess. §3(a). The measure further establishes that no more than 50% of the funds appropriated to the Department of State in fiscal year 1997 for "Acquisition & Maintenance of Buildings Abroad" may be obligated until the Secretary of State certifies that construction has begun on the U.S. embassy in Jerusalem. Id. §3(b). Similarly, not more than 50% of the funds appropriated in the same account for fiscal year 1999 may be obligated prior to certification by the Secretary of State that the Jerusalem embassy has officially opened. Id., §3(c). Additional provisions, contained in sections four and five of the measure, earmark certain funds for the relocation effort.<sup>1</sup>

The Office of Legal Counsel of the Department of Justice has taken the position that the funding mechanism incorporated into S. 770 is an unconstitutional infringement on the President's powers. See Bill to Relocate the United States Embassy from Tel Aviv to Jerusalem, Op. Off. Legal Counsel (May 16, 1995) ("The proposed bill would severely impair the President's constitutional authority to determine the form and manner of the Nation's diplomatic relations.") (hereinafter "OLC Op.").

#### II. ANALYSIS

The Office of Legal Counsel ("OLC") Opinion argues that the President has primary responsibility for foreign affairs and that his specific power to recognize foreign governments to exclusive. OLC Op., p. 2-3. Accordingly, OLC concludes that "Congress may not impose on the President its own foreign policy judgments as to the particular sites at which the United States' diplomatic relations are to take place." Id. at 3. OLC maintains that the imposition of fixed-percentage restrictions on the State Department's FY 1997 and FY 1999 acquisition and maintenance funds until specified steps are completed in the relocation effort constitutes an impermissible restriction on the President's discretion in foreign affairs. Although OLC does not in any way dispute Congress' plenary power over the purse, it maintains that Congress may not "attach conditions to Executive Branch appropriations requiring the President to relinquish his constitutional discretion in foreign affairs." Id. at 4, quoting Issues Raised by Section 129 of Pub. L. No. 102-138 and Section 503 of Pub. L. No. 102-140, 16 Op. Off. Legal Counsel at 30-31 (1992) (emphasis added). In support of this assertion, OLC places exclusive reliance on prior Executive Branch opinions which criticize congressional appropriations riders that directly required the President to take (or refrain from) a particular action by stating

that no appropriated funds could be used for the congressionally proscribed action. Id. at 3-4. See also Issues Raised by Section 129 of Pub. L. No. 102-138 & Section 503 of Pub. L. No. 102-140, 16 Op. Off. of Legal Counsel 18, 19 (1992), citing Section 503 of Pub. L. No. 102-140, 105 Stat. at 820 (1991) ("[N]one of the funds provided in this Act shall be used by the Department of State to issue more than one official or diplomatic passport to any United States government employee. . . ."); Appropriations Limitation for Rules Vetoed by Congress, 4B Op. Off. of Legal Counsel 731, 731-32 (1980), citing H.R. 7484, §608, 96th Cong., 2nd Sess. (1980) ("None of the funds appropriated or otherwise made available to implement . . . any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted. . . .").

OLC's assertion concerning the primacy of the Chief Executive in foreign affairs is well-supported,<sup>2</sup> and its further assertion that Congress may not interfere with these foreign policy prerogatives even when exercising its spending power is also consistent with long-standing Executive Branch precedent, although Congress has taken a different view.<sup>3</sup> The issue has never been resolved judicially.<sup>4</sup> However, OLC's assertion that S. 770 "requires" or "compels" the President to move the Embassy to Jerusalem, and is thus subject to the same constitutional objections as appropriation riders containing such unconditional requirements, is belied by the plain language of the bill and is otherwise unsupported by law or Executive Branch opinions.

S. 770 does not purport to restrict the President's ability to maintain an Embassy in Tel Aviv or to otherwise interfere with the President's authority to use appropriated monies in any manner he believes best serves the Nation's foreign policy interests. Rather, the measure merely states that, absent compliance with an established timetable for relocation of the U.S. Embassy in Israel, Congress will invoke its spending power to reduce the aggregate funding level that can be obligated in certain related discretionary accounts. Instead of a prohibition on the ability of the President to use money to exercise his constitutional powers, S. 770 merely provides a fiscal incentive for the President to exercise his discretion in a certain manner, though leaving him capable of eschewing these incentives and acting in direct contravention of Congress' wishes. Thus, such a mechanism in no way restricts the ability of the President to use his foreign affairs power to employ appropriated money as he sees fit.

That being so, S. 770 is different in this critical respect from any other appropriation rider ever objected to by Executive Branch officials as an unconstitutional infringement on the President's foreign affairs power or other executive powers. In all such cases, the appropriations riders have directed a particular course of action or inaction by prohibiting certain uses of appropriated funds, even if the President desired to take such actions in fulfilling his constitutionally-assigned duties. Issues Raised by Section 129 of Pub. L. No. 102-138 & Section 503 of Pub. L. No. 102-140, supra, citing Section 503 of Pub. L. No. 102-140, 105 Stat. at 820 (1991) ("[N]one of the funds provided in this Act shall be used by the Department of State to issue more than one official or diplomatic passport to any United States government employee. . . ."); Appropriations Limitation for Rules Vetoed by Congress, supra, citing H.R. 7584, §608, 96th Cong., 2nd Sess. (1980) ("None of the funds appropriated or otherwise made available shall be available to implement . . . any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted. . . .").

<sup>1</sup>Footnotes at end of letter.



The Attorney General and OLC have reasoned that if Congress is without constitutional power to make decisions for the President in areas the Constitution commits to his discretion, it matters not whether that intrusion is embodied in appropriations or other legislation. In exercising its power of the purse, Congress has no greater authority to usurp the President's exclusive constitutional authority than when it acts pursuant to other enumerated powers. See, *The Appropriations Power & the Necessary & Proper Clause*, 68 Wash. U. L. Q. 623, 30 (1990) ("[W]hen we hear discussions about Congress' weighty role in . . . the foreign relations power, and Congress adverts to 'the power of the purse,' it does not make sense. Congress still has to point to a substantive power. The power of the purse . . . is only procedural.") (remarks by the Honorable William Barr).

Here, in contrast, Congress imposes no restrictions on appropriated funds: such funds may continue to be used to maintain an Embassy in Tel Aviv should the President decide to leave the Embassy there. Accordingly, there is nothing in S. 770 "requiring the President to relinquish his constitutional discretion in foreign affairs" and thus OLC's reliance on Executive Branch condemnation of such appropriation riders is entirely misplaced. OLC Op., p. 4.

To be sure, if the President retains the status quo in Israel, the State Department will have less funds in two upcoming fiscal years than it would otherwise have, and so S. 770 is plainly designed to influence the President's decision on the Jerusalem Embassy. But this sort of "horse trading" is a basic staple of relations between the two political branches and hardly infringes the President's constitutional authority or powers. For example, the President has unfettered constitutional authority to nominate whomever he desires for, say, Surgeon General, and Congress does not unconstitutionally interfere with that presidential appointment authority by abolishing or reducing the funding for the Surgeon General's Office if certain nominees are proposed. Similarly, Congress may constitutionally pledge to reduce financial support for certain foreign interests or international organizations simply because it is displeased with the President's exercise of his responsibilities as foreign affairs spokesman or Commander-in-Chief. Since the use of these sorts of quid pro quos to influence the President's exercise of his constitutional duties does not unconstitutionally interfere with those duties, S. 770's establishment of such a device is similarly within Congress' constitutional authority.

By entrusting the President with the authority to definitively resolve certain questions, the Framers did not erect a prophylactic shield protecting the President against all attempts to influence the manner in which he resolves those issues. Accordingly, the Founders did not erect some special constitutional protection for the President which immunizes him from the give and take of inter-branch disagreements. Rather, they expected that a President of "tolerable firmness" would be able to resist congressional blandishments to pursue a course he deemed unwise, assuming such appropriations riders survived his veto in the first instance. Alexander Hamilton, "The Federalist No. 73," at 445 (C. Rossiter ed. 1961).

For this reason, even those scholars who believe Congress "ought not be able to regulate Presidential action by conditions on the appropriation of funds . . . if it could not regulate the action directly," Henkin, *supra* at 113, acknowledge that establishment of financial penalties or incentives to influence presidential action is permissible. Henkin, *supra* at 79. ("Since the President is always

coming to Congress for money for innumerable purposes, domestic and foreign, Congress and Congressional committees can use appropriations and the appropriations process to bargain also about other elements of Presidential policy and foreign affairs."). Indeed, the Attorney General has favorably opined on the constitutionality of an appropriation rider that imposed a markedly more onerous restriction on the President's exclusive Commander-in-Chief powers than S. 770 imposes on his foreign policy discretion. In 1909, Congress attached the following rider to the Navy's appropriation:

"[N]o part of the appropriations herein made for the Marine Corps shall be expended for the purpose for which said appropriations are made unless officers and enlisted men shall serve on board all battleships and armored cruisers, and also upon such other vessels of the navy as the President may direct, in detachments of not less than eight percentum of the strength of the enlisted men of the navy on said vessels." Naval Appropriations Act of 1909, 35 Stat. 753, 773, reprinted in *Appropriations—Marine Corps—Service on Battleships*, 27 Op. Att'y Gen. 259 (1909).

The Attorney General found this restriction constitutional because, "Congress has power to create or not to create . . . a marine corps, make appropriation for its pay, [and] provide that such appropriation shall not be made available unless the marine corps be employed in some designated way . . ." 27 Op. Att'y Gen. at 260.

So far as we can discern, neither OLC nor the Attorney General have subsequently disavowed or undermined the vitality of this Attorney General Opinion, although they opined at times that appropriation riders could not direct the President to take action within his constitutional sphere. Presumably, then, even Executive Branch officials have recognized a distinction between impermissible riders that mandate certain action or inaction and permissible ones which, like the Marine Corps appropriation, provide the President with at least a nominal choice between two courses of action, with financial "penalties" if he chooses the disfavored option. In the 1909 naval appropriation, the President's "choice" was between having marines constitute eight percent of battleship crews or having no funding for the Marine Corps at all. This complete defunding penalty for exercising the disfavored option is obviously far more draconian than the 50% reduction in construction funding occasioned by S. 770.

In short, there is an obvious and constitutionally significant difference between an appropriations law forbidding the President to take action which the Constitution leaves to his discretion and a law which merely sets out the negative financial consequences that will ensue if the President pursues a certain policy. This distinction between coercive laws and laws which offer financial incentives to exercise one's sovereign power in the preferred way has been well-recognized by the Supreme Court in directly analogous circumstances.

Most notably, in *South Dakota v. Dole*, 483 U.S. 203 (1987), the Supreme Court considered a congressional statute, known as Section 158, which directed the Secretary of Transportation to withhold five percent of allocable highway funds from any state in which individuals under the age of 21 could legally purchase or possess alcohol. Like S. 770, the funding mechanism in *Dole* constituted a congressional attempt to provide indirect financial inducement to affect policy in an area presumably beyond Congress' power to legislate directly.

Despite earlier recognition that the "Twenty-first Amendment grants States vir-

tually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system,"<sup>5</sup> the Court upheld this statutory incursion into state sovereignty, asserting that the "encouragement to state action found in §158 is a valid use of the spending power." *Dole*, 483 U.S. at 212. Accordingly, even though the Constitution assigned to the states the responsibility for establishing drinking ages, and thus Congress presumably could not direct the states to set a minimum age, this funding restriction was permissible because "Congress has acted indirectly under its spending power to encourage uniformity in the States' drinking ages." *Id.* at 206. Thus, such restrictions are permissible because the potential recipient of appropriated federal funds is free to reject Congress' financial inducement and exercise unfettered discretion in the relevant area, so long as the recipient is willing to endure the financial sacrifice that ensues. *Id.* at 211-212 ("Congress has offered . . . encouragement to the States to enact higher minimum drinking ages than they would otherwise choose. But the enactment of such laws remains the prerogative of the States not merely in theory but in fact."). Similarly, in upholding federal appropriation riders requiring the regulation of State employees' political activities, the Supreme Court has ruled that even though Congress "has no power to regulate local political activities as such of state officials," the federal government nevertheless "does have power to fix the terms upon which its money allotments to states shall be disbursed." *Oklahoma v. Civil Service Comm'n*, 330 U.S. 127, 143 (1947). The Court found that the state's sovereignty remained intact because the state could adopt "the 'simple expedient' of not yielding to what she urges is federal coercion." *Id.* at 143-144.

Thus, *Dole* would seem to directly establish that the sort of conditional funding provided by S. 770 is constitutionally permissible. In *Oklahoma* and *Dole*, the Tenth and Twenty-first Amendments provided the states with exclusive authority over their employees' political activities and citizens' legal drinking age, yet Congress did not unconstitutionally infringe these powers by offering financial incentives to adopt a particular policy. By the same token, the fact that the Constitution vests the President with exclusive recognition authority does not disable Congress from using its plenary spending power to seek to influence the exercise of that authority.

Like the drinking-age restriction in *Dole*, the funding mechanism in S. 770 merely attempts to induce recipients of federal funds to pursue policy ends advocated by Congress via clearly established conditions on future appropriations, while leaving that decisionmaker with the option of refusing such conditions. The President may exercise his discretion to retain the American embassy in Tel Aviv and accept the potential of reduced congressional funding in certain related discretionary accounts, or he can move the embassy. S. 770 does nothing to alter the fundamental fact that the decision as to where to locate the U.S. embassy in Israel "remains the prerogative" of the President "not merely in theory but in fact." *Dole*, 483 U.S. at 211-12.<sup>6</sup>

To be sure, the President differs from state governments because, as noted, he cannot pursue any action requiring expenditures without congressional funding. Thus a blanket prohibition against using appropriated funds does not leave him with any option to pursue the proscribed activity. Because of this distinction, a straightforward restriction against using any funds for an action



otherwise within the President's constitutional power is an effective prohibition against taking such action and thus presents a different, and more difficult, constitutional question. As noted, however, that is not the situation here. The President has been offered a choice directly analogous to that offered the states in *Dole*—he may pursue the congressionally disfavored option and accept the financial consequences or acquiesce to the preferred option without any such sacrifice.

OLC has nonetheless previously sought to distinguish *Dole* on the grounds that the Supreme Court's decision in *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise*, 111 S. Ct. 2298 (1991) (hereinafter "MWAA") found *Dole* "inapplicable" to issues that "involve separation-of-powers principles." Issues Raised by Section 129 of Pub. L. No. 102-138 and Section 503 of Pub. L. No. 102-140, supra, at 31. This assertion is patently untrue. MWAA in no way suggests that, while Congress is free to use its spending power to influence the sovereign power of states guaranteed by the Tenth Amendment and the Constitution's basic structure, the sovereign powers of the President are somehow different and thus immune from such congressional blandishments. Contrary to OLC's misleading selective quotation, MWAA never said *Dole*'s rationale was "inapplicable" to cases involving "separation-of-powers principles," it simply stated that *Dole*'s rationale was "inapplicable to the issue presented by this case." MWAA, 111 S. Ct. at 2309 (emphasis added). *Dole*'s rationale was inapplicable not because the sovereign authority of the President is somehow different from that of the states, but because the infringement of executive powers in MWAA was obviously and significantly different from the funding appropriation conditions at issue in *Dole*.

The issue that divided the dissenting and majority opinions in MWAA was whether Congress was effectively responsible for creating the Board of Review, which was composed of Members of Congress and had veto power over the Airport Authority's important decisions. Id. at 2313 (White, J. dissenting). The dissent argued that no separation-of-powers issue was implicated by this Board of Review because the Commonwealth of Virginia (and the District of Columbia) had created that Board and no federalism principles prevented the states from so utilizing the talents of Members of Congress. Id. According to the dissent, the fact that Congress had coerced Virginia to make this decision was of no moment because this "coercion" was no different than Congress' use of the spending power to influence states in *Dole*. Id. at 2316-17.

In the section of the opinion relied upon by OLC, the majority refuted both prongs of the dissent's arguments:

"Here, unlike *Dole*, there is no question about federal power to operate the airports. The question is whether the maintenance of federal control over the airports by means of the Board of Review, which is allegedly a federal instrumentality, is invalid, not because it invades any state power, but because Congress' continued control violates the separation-of-powers principle, the aim of which is to protect not the States but 'the whole people from improvident laws.' *Chadha*, at 951, 103 S. Ct. at 2784. Nothing in our opinion in *Dole* implied that a highway grant to a State could have been conditioned on the State's creating a 'Highway Board of Review' composed of Members of Congress."—Id. at 2309.

The first two sentences merely make the obvious point that since MWAA deals with a "federal instrumentality" and there was no question about the propriety of "federal

power to operate the airports," there is simply no issue of federal interference with state power.<sup>7</sup> Since there was no question of federal interference with, or bargaining for, state power, the only relevant question was who controlled the federal power—Congress or the Executive. In that regard, Congress had not "bargained" with the Executive by establishing financial conditions analogous to S. 770, but had directly commandeered control over the Airport Authority by establishing the Review Board.

The third sentence in the quoted passage simply says that *Dole* is inapplicable because the infringement in MWAA is different from the appropriation restriction in *Dole* and would be impermissible if applied to the states. This obviously belies the assertion that *Dole* was found inapplicable because different standards govern infringement on the President's powers than those which govern state intrusions. Specifically, *Dole* was distinguishable because, in MWAA, Congress did not provide money in return for Virginia exercising its sovereignty in a certain way. Rather, Virginia agreed to transfer its sovereignty over the Airport Authority to Congress. As the opinion's derisive citation to a "Highway Board of Review" makes clear, while the federal government may use its spending power to influence a state's exercise of its own sovereignty, Congress cannot use its spending power to induce the state to enhance congressional authority by creating congressionally-controlled federal instrumentalities. In short, Virginia was not trading away its own state power over airports; it had none. Rather, it was trading away the pre-existing Executive power over the airports to Congress. Since Virginia obviously had no Executive power to trade, Congress could not invoke *Dole* to justify its exercise of Executive power.

As this detailed review establishes, MWAA said that *Dole* was inapplicable because 1) there was no state power to bargain away, and 2) states cannot enhance congressional power in return for congressional dollars. Nothing in MWAA suggests that *Dole* was inapposite because the Executive, unlike states, in somehow disabled from agreeing to exercise his sovereign authority in a particular manner in return for increased congressional monies.

To the contrary, like the states, the Executive Branch, "absent coercion . . . has both the incentive and the ability to protect its own rights and powers, and therefore may cede such rights and powers." MWAA, 111 S. Ct. at 2309. The fact that preserving the President's powers against congressional enactments is ultimately designed to protect the "whole people from improvident laws" does not suggest a different rule, since the federalism concerns implicated in *Dole* were also designed to preserve the people's liberty. See *U.S. v. Lopez*, 115 S. Ct. 1624, 1626-27 (1995) ("Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."), quoting *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991); *New York v. U.S.*, 112 S. Ct. 2408, 2431 (1992) ("[T]he Constitution divides authority between federal and state governments for the protection of individuals.") (emphasis added.)

To be sure, under MWAA, Congress could not condition appropriations on the President's agreement to establish an "Israeli Embassy Board of Review," where congressional agents determine the location of the Embassy. The President cannot transfer his recognition powers to congressional decisionmakers and, as indicated, there is a

plausible argument that Congress cannot directly supplant the President's decisionmaking authority on such matters, even though directives in appropriations bills. Like any other sovereign, however, the President may consider many factors in making his own decisions. Just as he may consider the reaction of foreign countries, he may also consider a negative congressional reaction. Accordingly, nothing precludes Congress from seeking to influence that decision through use of its own constitutional powers including the spending power.

Indeed, OLC's contrary position demeans the President's constitutional status and certainly cannot be advanced in the name of a strong Executive. The OLC Opinion suggests that the President, unlike the states, lacks the ability or the will to resist Congress' financial inducements. Particularly given the existence of his veto power, this view of the President's authority vis-a-vis Congress is obviously untenable and irreconcilable with the Framers' views. The Framers did not erect a prophylactic constitutional umbrella protecting the President from the persuasive power of Congress' financial inducements, they forged only a shield against congressional directives. OLC simply ignores this vital distinction and the Executive Branch and judicial precedent which support it.

Under these precedents and a proper understanding of the constitutional framework, S. 770 does not violate any separation-of-powers principle or infringe any constitutional authority of the President.

#### FOOTNOTES

<sup>1</sup>Section 4 of S. 770 merely reprograms \$5 million in funds appropriated in the Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act of 1995, Pub. L. No. 103-317, 108 Stat. 1724, 60 (1994) (Title V contains appropriations specifically for the Department of State and related agencies.) Specifically, \$5 million previously contained in the aggregate account for expenses of general administration is earmarked for costs incurred in activities associated with the relocation of the U.S. embassy in Israel: Id., § 4 ("Of the funds appropriated for fiscal year 1995 for the Department of State and related agencies, not less than \$5,000,000 shall be made available until expended for costs associated with relocating the United States Embassy in Israel. . . .").

The \$5 million authorization is to remain in effect without temporal restriction until such funds are expended. § 4 Though the President is in no way obligated to spend the \$5 million earmarked for the relocation effort, such funds cannot be used for any other purposes. General Accounting Office, "Principles on Federal Appropriations Law" 6-6 (2. ed., 1992) (In an appropriations bill providing \$1,000 for "[s]moking materials . . . of which not less than \$100 shall be available for Cuban cigars . . . portions of the \$100 not obligated for Cuban cigars may not be applied to the other objects of the appropriation."); Earmarked Authorizations, 64 Comp. Gen. 388, 394 (1985) (asserting that where measure providing funding for the National Endowment for Democracy earmarks "Not less than \$13,800,000" for projects of the Free Trade Union Institute, "awards should not be made" where there is no worthy programs, "but the consequence of this [non-allocation] is not to free the unobligated earmarks for other projects."). Similarly, Section 5 of the bill earmarks a specified amount of the funds authorized to be appropriated in the Department of State's general account for "Acquisition and Maintenance of Buildings Abroad" in fiscal years 1996 and 1997, requiring that such earmarked funds be spent on the embassy relocation effort. As in Section 4, the budget authority is not temporarily restricted and is to last "until expended" on the relocation effort. Given the identical requirement that "not less than [the earmarked amount] . . . shall be made available" in fiscal years 1996 and 1997 respectively, the President has discretion as to whether to use the money, but cannot use earmarked funds for other general purposes.

<sup>2</sup>See, e.g., *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 705-06 n. 18 (1976) ("[T]he conduct of [diplomacy] is committed primarily to the Executive Branch."); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 410 (1964) ("Political recognition is exclusively a function of the Executive.");

*United States v. Pink*, 315 U.S. 203, 229 (1942) (Asserting that the executive's constitutional authority to recognize governments "is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition.").

<sup>3</sup>Congress has repeatedly used its control over appropriations to influence executive actions on foreign policy and has repeatedly opined that these conditions are constitutional. See, e.g., William C. Banks & Peter Raven-Hansen, "National Security and the Power of the Purse" 3-4 (1994); Louis Henkin, "Foreign Affairs and the Constitution" 114 (1972). ("Congress has insisted and Presidents have reluctantly accepted that in foreign affairs . . . spending is expressly entrusted to Congress and its judgment as to the general welfare of the United States, and it can designate the recipients of its largesse and impose conditions upon it."); "Report of the Committees Investigating the Iran-Contra Affair," S. Rept. No. 100-216, H. Rept. No. 100-433, 100th Cong., 1st Sess. 475 (1987) ("[W]e grant without argument that Congress may use its power over appropriations . . . to place significant limits on the methods a President may use to pursue objectives the Constitution put squarely within the executive's discretionary power."); Department of Defense Appropriations Act for Fiscal Year 1985, Pub. L. No. 98-473, §8066, 98 Stat. 1837, 1935 (1984), reprinted in Banks, *supra* at 138. ("During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting . . . military or paramilitary operations in Nicaragua. . . ."); Arms Control Export Act of 1976, Pub. L. No. 94-329, §404, 90 Stat. 729, 757-58 (1976) ("[N]o assistance of any kind may be provided for the purpose, or which would have no effect, of promoting . . . the capacity of any nation, group, organization, movement, or individual to conduct military or paramilitary operations in Angola. . . .").

<sup>4</sup>It is well-established that Congress may not use its spending power to coerce activity that itself violates a provision of the Constitution. See *United States v. Butler*, 297 U.S. 1, 69-70, 74 (1936); *United States v. Lovett*, 328 U.S. 303, 315-16 (1946) (striking a funding restriction as a bill of attainder in violation of the U.S. Constitution). Obviously, this doctrine has no application here since the Constitution does not prohibit moving the American Embassy in Israel to Jerusalem. However, OLC, as it has in the past, further maintains that the spending power cannot be used to force the President to take action that is perfectly constitutional, if the appropriation restricts the President's power to exercise his unfettered discretion in an area within his constitutional authority. There is no judicial precedent either way on OLC's extension of the independent constitutional bar principle in a separation-of-powers context. In the context of congressional funding conditions on state governments, the Supreme Court has unequivocally rejected an expanded notion of the independent constitutional bar:

"[T]he 'independent constitutional bar' limitation on the spending bar is not, as petitioners suggest, a prohibition on the indirect achievement of objectives which Congress is not empowered to achieve directly. Instead, we think that the language in our earlier opinions stands for the unexceptionable proposition that the power may not be used to induce activities that would themselves be unconstitutional."

*South Dakota v. Dole*, 483 U.S. 203, 210 (1987). See also *Oklahoma v. Civil Service Commission*, 330 U.S. 127 (1947). Of course, the President, unlike the states, has no access to funds other than those appropriated by Congress. Thus, unlike the situation with state governments, a prohibition precluding the President from spending any appropriated monies on a particular activity is a direct prohibition against pursuing that activity. This provides a plausible basis for distinguishing the statute involved in *Dole* from a direct appropriations restriction on the President's activities. As we discuss below, however, *Dole* provides direct support, where, as here, there is no prohibition against spending money on the President's desired activity.

<sup>5</sup>*California Retail Liquor Dealers Assn. v. Midcal Aluminum*, 445 U.S. 97, 110 (1980) cited in *Dole*, 483 U.S. at 205.

<sup>6</sup>The Supreme Court has recognized that at some point, a financial inducement becomes so lucrative that "pressure turns into compulsion" and such incentive becomes unconstitutional coercion. *Dole*, 483 U.S. at 211. See also, *Steward Machine Co. v. Davis*, 301 U.S. 548, 590 (1937). However, the *Dole* Court dismissed any claim of coercion involved in the drinking age funding provision, stating that the "rel-

atively small percentage" of highway funds involved in the cutoff were not coercive. 483 U.S. at 211. The Court further asserted that the mere fact that a conditional grant of money is successful in achieving compliance with congressional restrictions will not establish coercion. *Id.* seems clear that, given the minuscule amount of funding involved in S. 770, especially relative to the substantial highway fund allocations involved in *Dole*, the incentive mechanism at issue could not be deemed coercive. Should the President refuse to move the embassy, he would be barred from obligating funds amounting to a mere one percent of the budget authority reserved for international affairs in each of the fiscal years involved and a mere one one-hundredth of one percent of the aggregate budget in those same years. Office of Management & Budget, "Appendix to the Budget of the United States for Fiscal Year 1996" 692-93 (1995); Office of Management & Budget, "Historical Tables to Supplement the Budget of the United States for Fiscal Year 1996" 14, 69 (1995).

<sup>7</sup>The Court had previously noted that the Board of Review was "an entity created at the initiative of Congress, the powers of which Congress has delineated, the purpose of which is to protect an acknowledged federal interest, and membership in which is restricted to congressional officials. Such an entity necessarily exercises sufficient federal power as an agent of Congress to mandate separation-of-powers scrutiny." *Id.* at 2308.

JERUSALEM, ISRAEL,  
July 5, 1995.

The EDITOR,  
New York Times.

TO THE EDITOR: The debate about the relocation of the U.S. Embassy continues and I write to express my whole-hearted support of the Dole/Inouye legislation, which calls for moving the U.S. Embassy to Jerusalem by 1999.

Jerusalem has been the capital of Israel since the founding of the State in 1948. Throughout history, Jerusalem has been the capital of the Jewish nation and must remain so. For the Embassy of the United States—"Israel's closest friend"—not to be in the functioning capital of Israel is an anomaly. Israel is the only country in the world where the U.S. Embassy is located in a city not regarded by the host nation as its capital. The basis for the Embassy not being located in Jerusalem was incorrect from the beginning, and this policy should finally be corrected.

Jerusalem is sacred to all three monotheistic religions but its meaning is not equal for them. In Christendom and Islam there are many spiritual centers and many symbolic capitals. In Judaism and for the Jewish people, there is only one Jerusalem.

Public attention is focused on whether or not this is the "right time" for such a move. I believe it is. The placement of the U.S. Embassy in Jerusalem has been a consensus issue for the American Jewish community and for successive Israeli governments for years. In the last decade, both Houses of Congress have enacted four resolutions calling on the U.S. government to acknowledge united Jerusalem as the capital of Israel.

The Dole/Inouye legislation, which is co-sponsored by a majority of the U.S. Senate, will be put to a vote. It must be enacted by an overwhelming majority. Failure to do so will send a wrong message to the Arab States. It is imperative to establish now the U.S. conviction that realistic negotiations be premised on the principle that Jerusalem is the capital of Israel, and must remain united, Israelis of all political stripes are for the establishment of the U.S. Embassy in Jerusalem. The site reserved for the new Embassy is in West Jerusalem—on land which has been part of Israel since 1948.

Support for this legislation is, and has always been, bipartisan. Now is the time to move forward with it.

Sincerely yours,

TEDDY KOLLEK.

YOSSI BEILIN ON LEGISLATION TO MOVE THE UNITED STATES EMBASSY TO JERUSALEM

(Press conference with Israeli journalists, Oct. 12, 1995)

*Question.* Regarding the Jerusalem legislation to move the embassy from Tel Aviv to Jerusalem, are you pleased with the initiative and the timing of this?

BEILIN. Any timing for transferring any embassy to Jerusalem is good timing. The earlier the better, from my perspective. I am happy that there is the intention to do this. I'm only sorry that this has become part of election strife in Congress between the Republicans and Democrats in a bit of a cynical manner. To my disappointment, it has been promised by the opposition but then it was not carried out.

*Question.* Aren't you concerned that it will hurt the peace process or the standing of the U.S. in the eyes of the Arabs if the legislation will pass?

BEILIN. 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.

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. I agree with my friend from Arizona, that it is important to address the scope and meaning of the waiver provision. It is important that no one think that this 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 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

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. I yield the floor.

Mrs. FEINSTEIN. I yield 4 minutes to the Senator from New Jersey.

Mr. LAUTENBERG. I thank the Senator from California.

I would ask how much time is left, because I want to be certain that my colleague from Delaware has a chance to say a few words.

The PRESIDING OFFICER. After your 4 minutes, there will be 3½ minutes remaining on your side.

Mr. LAUTENBERG. And also for the Senator from California and the Senator from Connecticut. I will try to wrap up in a couple minutes because yesterday I think I expressed myself and my full support for this substitute.

I want to commend the majority leader, Senator DOLE, and Senator KYL for the hard work that they did to move this legislation along to ensure that the capital of Israel, the capital chosen by that State, is going to be home to our Embassy, as it ought to be.

Frankly, there was some difficulty in arriving at the consensus view that we finally did. And that was largely, not because we disagreed on the objective, that is, moving our Embassy to Jerusalem, but because perhaps there might have been an involvement that would have interfered with the orderly discussion of the peace process.

Madam President, the one thing that I want to be sure of is that as much as possible we stop the killing in the Middle East, that as much as possible we get these parties together on an open and honest basis. And the process is in being at this moment. There has not been in the history of the creation of the State of Israel a friendlier President than President Clinton is to Israel.

We saw on the lawn of the White House the celebration of the end of enormous hostilities that existed for decades where people just looking at one another were almost ready at first sight to kill each other.

Yesterday's story in the Washington Post was a poignant recollection of what happens to two families, one Arab, one Jew, who lost their sons, one responsible in a way for the death of the other, but nonetheless no one seeking revenge, no one looking for vengeance. What they wanted to do was make sure that other families did not have to mourn the loss of a son or a daughter, be they Palestinian or Jew.

That is the way we ought to be approaching this. And I think, Madam President, that is what is going to happen. All of us want the Embassy moved. The question is, we want it to happen as soon as possible, but we want the peace discussions to continue, as I said, in an orderly fashion.

I worked very closely with some dear friends, with Senator LIEBERMAN from Connecticut, with whom I share a very deep interest in the State of Israel, in Jerusalem, in the peace process, and with Senator BIDEN who has had a long history of support for Israel. And I want to commend Senator FEINSTEIN for her diligence, for her insight into the problem, and for getting us to this point where I believe that the supporting vote will be almost unanimous, as I believe it should be.

And so, Madam President, it is a moment that not yet calls for celebration, but does initiate a process of which I think we can all be proud.

Madam President, I support this substitute amendment.

Unlike the original bill, this amendment includes a waiver for the President. I believe the amendment will mandate the move of the American Embassy to Jerusalem while providing the administration flexibility in case it's necessary for national security reasons.

Madam President, I have long supported having the American Embassy in Jerusalem. I wish the American Embassy had been opened in Jerusalem long ago, when the State was established or when the city was reunified in 1967. I believe Jerusalem—a city I have visited many times—will always remain the undivided capital of the State of Israel.

The pace at which the Middle East peace process has yielded tangible results has been breathtaking. Just 2 years ago, on September 13, 1993, Prime Minister Rabin and Yasir Arafat agreed to end decades of bloodshed when they signed the historic Declaration of Principles and shook hands at the White House. Continuing their pursuit of peace, they signed the Cairo Agreement on Gaza and Jericho on May 4, 1994. And just weeks ago, on September 28, 1995, they again met at the White House to sign an agreement on the West Bank.

Jordan, too, has been brought into the process and has signed a formal peace agreement with Israel.

America should be proud of the role it has played in helping former enemies agree to end hostilities. To be sure, the parties in the Middle East needed to be

ready to take the giant step toward peace. It was their readiness and their political courage that made peace attainable.

The amendment we offer now would help protect the peace process should national security interests warrant it. The amendment would provide a national security waiver for periods of up to 6 months with prior reporting to Congress. It was included to give the administration a limited amount of flexibility.

It also includes a clear expression of the Congress' belief that Jerusalem should remain an undivided city in which the rights of every ethnic and religious group are protected. It expresses the Congress' clear view that Jerusalem should be recognized as the capital of the State of Israel and that our Embassy there should be established by May 1999.

I am firmly convinced, Mr. President, that the peace process will result in Israel retaining control over all of Jerusalem, and that Jerusalem will remain the undivided capital of Israel.

I am encouraged by support for the peace process. Even those who have lost their children to senseless acts of terrorism agree about the imperative of achieving peace. Earlier this year, a young college student from New Jersey, who was studying in Israel, was killed in a suicide bombing in Gaza. Her name was Aliza Flatow, and her death brought home to the people of New Jersey the urgent need to bring peace to the Middle East.

I was in Israel at the time of this terrible tragedy, and from there, I spoke to Aliza's parents in New Jersey. Despite the loss of their daughter and in the midst of grieving her loss, Aliza's father urged me to do whatever I could to support the peace process and to ensure that it would move forward unimpeded. Only the peace process, he said, holds the promise of bringing an end to these senseless deaths.

Our goal is to send a bill to President Clinton that will mandate the opening of the Embassy in Jerusalem. The amendment we are offering is consistent with that goal. It would represent a clear policy statement that the Embassy will be moved and is intended to preserve the President's constitutional authority. Absent a national security interest, it requires the Embassy to be established in Jerusalem by May 1999.

I urge my colleagues to support this amendment.

Mr. KYL. Madam President, I ask unanimous consent that Senator GRAHAM from Florida be added as a cosponsor to the legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. At this time I would yield time to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. KYL. How much time remains?

Mr. LIEBERMAN. I do not think I need more than 3 minutes.

Mr. KYL. I yield 3 minutes to the Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

I thank my friend and colleague from Arizona, not only for yielding time but for the extraordinary leadership and dedication he has shown in his support of this measure.

Madam President, perhaps it is appropriate that I begin with some words from the prophets.

Amos first.

In that day I will raise up the tabernacle of David that is fallen, and close up the breaches thereof; and I will raise up his ruins, and I will build it as in the days of old.

Then Jeremiah.

So says the Lord; Behold I will return the captives of the tents of Jacob . . . and the city will be rebuilt on its mound.

Madam President, tomorrow in this Capitol we will join in the worldwide celebration of the 3,000th anniversary of the entering of King David into the holy city of Jerusalem.

In our time, in 1948, thanks to the courage of the people of the State of Israel, thanks to extraordinary support from people throughout the world, including particularly the Government of the United States, we witnessed the creation of the modern State of Israel and the establishment of Jerusalem as its capital.

For the ensuing 47 years, for a lot of reasons that were not adequate, we in the United States, administration after administration of both parties, refused to locate our Embassy in Israel in the city of Jerusalem designated as the capital by that country as we do in virtually every other country in the world.

Today, thanks to the leadership of Senator DOLE who began this effort, of Senator MOYNIHAN who has fought for it for so many years, of Senator INOUE, Senator KYL, Senator BIDEN, who is on the floor, who has been unyielding and persistent in his support of this principle and, in the last few days, working together with Senators FEINSTEIN and LAUTENBERG, we have come to the point where I think we fashioned an extraordinarily strong and honest bill that will receive overwhelming bipartisan support in both Chambers and I hope will be signed by the President.

Madam President, I want to say that there have been concerns raised about the impact that passing this measure now would have on the peace process. In this regard, I will make two brief points. First, the location of the U.S. Embassy never was and never should be the subject of negotiations among third parties. It is our decision, it is an American decision, and we will make it here today.

Second, as a supporter of the peace process in the Middle East, I feel particularly that this is the moment, as trust grows—and honesty is at the core of our relations with the Israelis and the Palestinians and the Arab world—that we do what is honest and say clearly our Embassy belongs in Jerusalem, the city that has been denoted by the Israelis as their capital.

I will say in closing, ending, it seems to me, appropriately with a Psalm that we are realizing in this vote today the hopes expressed by David in Psalm 122, when he wrote:

Pray for the peace of Jerusalem: they shall prosper that love thee.

Peace be within thy walls, calm within thy palaces.

If I may offer a modern-day interpretation of the word palaces, calm be within thy embassies as they locate in the city of Jerusalem.

I thank the Chair and my friends and colleagues. I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I yield the remainder of my time to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware is recognized for 3 minutes, 32 seconds.

Mr. BIDEN. Madam President, thank you very much. I would like to thank my colleague from California for her leadership in bringing about what I think is a workable piece of legislation.

I would like to thank Senator MOYNIHAN, who is not here. In 1983, he started this process. He argued we should be doing this, and we are finally getting there.

With regard to the last point made by my colleague from Connecticut about the peace process, I have had the view for the past 24 years that the 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.

I argue that is why we are where we are today, because we did not relent under the leadership of this President and others. We made it clear that no wedge would be put between us, thereby leaving no alternative but the pursuit, in an equitable manner, for peace.

Those familiar, and all are on this floor, 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 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.

(Mr. KYL assumed the chair.)

Mr. BIDEN. They may have succeeded, Mr. President, 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.

Mr. President, it is unconscionable for us to refuse to recognize the right of the Jewish people to choose their own capital. What gives us the right to second-guess their decision?

For 47 years, we, and much of the rest of the international community, have been living a lie. For 47 years, Israel has had its government offices, its Parliament, and its national monuments in Jerusalem, not in Tel Aviv. And yet, nearly all embassies are located in Tel Aviv. I think this is a denial of fundamental reality.

Mr. President, are we, through the continued sham of maintaining our Embassy in Tel Aviv, to refuse to acknowledge what the Jewish people know in their hearts to be true? Regardless of what others may think, Jerusalem is the capital of Israel.

And Israel is not just any old country. It is a vital strategic ally.

As the Israelis and Palestinians begin the final status negotiations in May 1996—negotiations, I might add, that were made possible through the leadership of President Clinton—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.

I urge my colleagues to support this legislation.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. DOLE. Mr. President, I yield 2 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mrs. HUTCHISON. Mr. President, I thank the distinguished majority leader for bringing this to a head. It has not been easy. We have talked about this for years. The people of Israel have fought repeatedly to hold the State of Israel intact. They have designated their capital. The capital is Jerusalem. This historic, important religious city is their capital. I think it is most unusual for the United States to go to another city to establish its Embassy when the country where we are being hosted has established a different city for its capital.

The time has come long since for America to recognize the capital city of Israel. It is Jerusalem. It is time for us to move in a responsible way to

have our Embassy also in the capital city of Jerusalem.

I commend the majority leader and the Senator from Arizona for their leadership in this area. I appreciate the fact that all factions have come together. Clearly, there must be some leeway for the President to make this move in a timely way. I think that leeway has been granted. This is quite a reasonable resolution. The time has come for us to have our Embassy in the capital of Israel. The capital is Jerusalem.

Thank you, Mr. President.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that I be allowed to use my leader time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. I yield 1 minute to the distinguished Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, finally, after 50 years, the Congress is about to act to assure the movement of our Embassy to Israel's capital. This has been a bipartisan effort. I have been proud to cosponsor Senator DOLE's legislation, and it is truly a historic day. This is a meaningful day. It is a day where we finally acknowledge the reality, which is that Jerusalem is the capital of Israel and that at the end of the peace process will be the capital of Israel.

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.

I want to thank the Democratic leader. I want to thank the majority leader, also, for his leadership here. I yield the floor.

The PRESIDING OFFICER (Mrs. HUTCHISON). The minority leader.

Mr. DASCHLE. Madam President, let me commend the distinguished Senator from Michigan for his comments and associate myself with his remarks. This has been a bipartisan effort over the last several weeks, particularly the last several days.

There is little doubt that we all share the same goals. There has been a good-faith effort to reach an agreement that allowed us the confidence that those goals could be met.

I want to commend in particular the participants in those negotiations over the last several days, Senators FEINSTEIN, my good friend, Senator KYL, Senators LAUTENBERG and LIEBERMAN, and certainly the majority leader for all of the work that he put into ensuring that we would reach this point today.

I think it is fair to say we all agree on three shared goals. The first is the most obvious: moving the Embassy to Jerusalem. We recognize that Jerusalem is the spiritual center and the capital of Israel, as well as a special city for those all over the world. Each country, as so many have already indicated, has the right to designate its capital, and certainly our Embassy should be there.

Second, we want to ensure that Jerusalem remains an undivided city in which the rights of every ethnic and religious group are protected. That has been a goal articulated officially by this Senate since we adopted Senate Concurrent Resolution 106 in 1990.

Third, and perhaps most important in the context of this debate and the negotiations that have taken place, we want to ensure that the peace process moves forward.

Let me commend the administration for emphasizing as strongly as they have their concern for that last goal. It is their concern and their desire to ensure that we have the flexibility, that we have the opportunities, that we have all of the tools necessary to ensure that we can reach all three goals—that we move the Embassy, that we can ensure that it remains an undivided city, and, most importantly, that the peace process be allowed to continue.

I personally believe that the language that has now been agreed upon will provide the President the flexibility to ensure that the peace process can move forward. Definitely, the whole concept of a peace process is in our national security interest. That peace process must be contained. That peace process has to be nurtured throughout the next several years, and certainly the administration needs to proceed very carefully as we begin to articulate our goals as it relates to moving the Embassy.

The administration has concerns about the constitutionality of this legislation. I understand that. I hope that we can find this agreement has adequately addressed those concerns, as well.

Clearly, this has to be an effort on which we continue to work with the administration. I am very hopeful that, as a result of the tremendous work that has been done in the last several days, we can build upon our work with the State Department and with others in the administration to ensure that our goals are realized.

Let me again commend all of those who were instrumental in reaching this agreement, to ensure a U.S. commitment to an Embassy in Jerusalem, and equally as important, Madam President, to ensure that the U.S. commitment to the peace process maintains the kind of priority that we all have recognized during these very difficult talks.

The PRESIDING OFFICER. The Senator has 2 minutes and 12 seconds remaining.

Mr. KYL. Thank you, Madam President. Madam President, I am pleased and honored to close this debate on this important and historic legislation which will finally cause the United States Embassy to be relocated in Jerusalem, the capital of Israel, by the year 1999.

We all know that diplomacy is filled with subtleties but that some things are fundamental. One of those fundamental things is the relationship between the United States and Israel.

Key to that relationship is an underlying principle. The principle is that Jerusalem is the essence of the historical connection of the Jewish people for Palestine. That is why Jerusalem is the capital of Israel.

This legislation, which is a bipartisan presentation of congressional intent that finally actions replace words, that deeds replace words, and expressing that historical connection, as I said, is supported in a bipartisan way by the overwhelming majority of both sides of the aisle.

There are approximately 50 Republicans which have cosponsored this legislation, and it is strongly supported as well by the many Democrats who have spoken on it.

I think the key here is for the American people to finally express, as I said, in deeds rather than words, their support for Israel through the acknowledgment that Jerusalem is the capital by the relocation of the United States Embassy in the capital city of Jerusalem.

As Senator LIEBERMAN from Connecticut so ably pointed out, and Senator DOLE did as well, this is not about the peace process, which we all support. Rather, it is an expression on the part of the United States that no longer will there be any doubt about our position relative to Jerusalem. It is an honest position, as Senator LIEBERMAN said.

That is why, Madam President, it is so important for this body, in an overwhelming way, to express its support for the United States-Israel relationship by supporting this legislation to relocate the Embassy of the United States to the capital of Israel, Jerusalem.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The yeas and nays have been ordered. The clerk will call the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

The PRESIDING OFFICER (Mr. ASHCROFT). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 496 Leg.]

## YEAS—93

Akaka	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Gramm	Moynihan
Bond	Grassley	Murkowski
Boxer	Gregg	Murray
Breaux	Harkin	Nickles
Brown	Hatch	Nunn
Bryan	Hefflin	Pell
Bumpers	Helms	Pressler
Burns	Hollings	Pryor
Campbell	Hutchison	Reid
Coats	Inhofe	Robb
Cochran	Inouye	Rockefeller
Cohen	Johnston	Roth
Conrad	Kassebaum	Santorum
Coverdell	Kempthorne	Sarbanes
Craig	Kennedy	Shelby
D'Amato	Kerrey	Simon
Daschle	Kerry	Simpson
DeWine	Kohl	Smith
Dodd	Kyl	Snowe
Dole	Lautenberg	Specter
Domenici	Leahy	Stevens
Dorgan	Levin	Thomas
Exon	Lieberman	Thompson
Faircloth	Lott	Thurmond
Feingold	Lugar	Warner
Feinstein		Wellstone

## NAYS—5

Abraham	Chafee	Jeffords
Byrd	Hatfield	

## NOT VOTING—1

Bradley

So the bill (S. 1322), as amended, was passed as follows:

S. 1322

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Jerusalem Embassy Act of 1995".

**SEC. 2. FINDINGS.**

The Congress makes the following findings:

(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.

(3) 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.

(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.

(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.

(9) In 1990, the Congress unanimously adopted Senate Concurrent Resolution 106, which declares that the Congress "strongly believes that Jerusalem must remain an undivided city in which the rights of every ethnic and religious group are protected".

(10) In 1992, the United States Senate and House of Representatives unanimously adopted Senate Concurrent Resolution 113 of

the One Hundred Second Congress to commemorate the 25th anniversary of the reunification of Jerusalem, and reaffirming congressional sentiment that Jerusalem must remain an undivided city.

(11) The September 13, 1993, Declaration of Principles on Interim Self-Government Arrangements lays out a timetable for the resolution of "final status" issues, including Jerusalem.

(12) The Agreement on the Gaza Strip and the Jericho Area was signed May 4, 1994, beginning the five-year transitional period laid out in the Declaration of Principles.

(13) In March of 1995, 93 members of the United States Senate signed a letter to Secretary of State Warren Christopher encouraging "planning to begin now" for relocation of the United States Embassy to the city of Jerusalem.

(14) In June of 1993, 257 members of the United States House of Representatives signed a letter to the Secretary of State Warren Christopher stating that the relocation of the United States Embassy to Jerusalem "should take place no later than . . . 1999".

(15) 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.

(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.

(17) In 1996, the State of Israel will celebrate the 3,000th anniversary of the Jewish presence in Jerusalem since King David's entry.

**SEC. 3. TIMETABLE.**

(a) STATEMENT OF THE POLICY OF THE UNITED STATES.—

(1) Jerusalem should remain an undivided city in which the rights of every ethnic and religious group are protected;

(2) Jerusalem should be recognized as the capital of the State of Israel; and

(3) the United States Embassy in Israel should be established in Jerusalem no later than May 31, 1999.

(b) OPENING DETERMINATION.—Not more than 50 percent of the funds appropriated to the Department of State for fiscal year 1999 for "Acquisition and Maintenance of Buildings Abroad" may be obligated until the Secretary of State determines and reports to Congress that the United States Embassy in Jerusalem has officially opened.

**SEC. 4. FISCAL YEARS 1996 AND 1997 FUNDING.**

(a) FISCAL YEAR 1996.—Of the funds authorized to be appropriated for "Acquisition and Maintenance of Buildings Abroad" for the Department of State in fiscal year 1996, not less than \$25,000,000 should be made available until expended only for construction and other costs associated with the establishment of the United States Embassy in Israel in the capital of Jerusalem.

(b) FISCAL YEAR 1997.—Of the funds authorized to be appropriated for "Acquisition and Maintenance of Buildings Abroad" for the Department of State in fiscal year 1997, not less than \$75,000,000 should be made available until expended only for construction and other costs associated with the establishment of the United States Embassy in Israel in the capital of Jerusalem.

**SEC. 5. REPORT ON IMPLEMENTATION.**

Not later than 30 days after the date of enactment of this Act, the Secretary of State shall submit a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate detailing the Department of State's plan to implement this Act. Such report shall include—

(1) estimated dates of completion for each phase of the establishment of the United

States Embassy, including site identification, land acquisition, architectural, engineering and construction surveys, site preparation, and construction; and

(2) an estimate of the funding necessary to implement this Act, including all costs associated with establishing the United States Embassy in Israel in the capital of Jerusalem.

**SEC. 6. SEMIANNUAL REPORTS.**

At the time of the submission of the President's fiscal year 1997 budget request, and every six months thereafter, the Secretary of State shall report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate on the progress made toward opening the United States Embassy in Jerusalem.

**SEC. 7. PRESIDENTIAL WAIVER.**

(a) WAIVER AUTHORITY.—(1) Beginning on October 1, 1998, the President may suspend the limitation set forth in section 3(b) for a period of six months if he determines and reports to Congress in advance that such suspension is necessary to protect the national security interests of the United States.

(2) The President may suspend such limitation for an additional six month period at the end of any period during which the suspension is in effect under this subsection 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.

(3) A report under paragraph (1) or (2) shall include—

(A) a statement of the interests affected by the limitation that the President seeks to suspend; and

(B) a discussion of the manner in which the limitation affects the interests.

(b) APPLICABILITY OF WAIVER TO AVAILABILITY OF FUNDS.—If the President exercises the authority set forth in subsection (a) in a fiscal year, the limitation set forth in section 3(b) shall apply to funds appropriated in the following fiscal year for the purpose set forth in such section 3(b) except to the extent that the limitation is suspended in such following fiscal year by reason of the exercise of the authority in subsection (a).

**SEC. 8. DEFINITION.**

As used in this Act, the term "United States Embassy" means the offices of the United States diplomatic mission and the residence of the United States chief of mission.

Mr. KYL. Mr. President, I move to reconsider the vote.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Arizona for a unanimous-consent request without losing my right to the floor.

Mr. KYL. Mr. President, I ask unanimous consent that Senator PELL be listed as a cosponsor of the bill just passed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak for not to exceed 30 minutes—I will not require that much time—out of order.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.