

availability of internationally-accepted legal principles which would render the issues appropriate for judicial disposition." The Court then quotes from the Supreme Court's opinion in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964):

"It should be apparent that the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice."

Since the 9th Circuit issued its opinion in 1981, there have been major developments in international law that impact directly on the subject matter at issue. As we discuss in greater detail below, the 1990's have witnessed a significant increase in efforts to seek compliance with basic international norms of behavior through international courts and tribunals. In addition, there is strong evidence of an emerging consensus in international law that price fixing by cartels violates such international norms. Accordingly, a court choosing to apply the act of state doctrine to a dispute with OPEC today may very well reach a different conclusion than the 9th Circuit reached almost twenty years ago.

You should also examine whether the anticompetitive conduct of the international oil cartel is being effectuated by private companies who are subject to the enforcement of U.S. antitrust laws (for example, former state oil companies that have now been privatized) rather than sovereign foreign states. If such private oil companies are determined to in fact be participating in the anticompetitive conduct of the oil cartel, then we would urge that these companies be named as defendants in an antitrust lawsuit in addition to the OPEC members.

(2) *A suit in the International Court of Justice at the Hague based upon "the general principles of law recognized by civilized nations," which includes prohibiting oil cartels from conspiring to limit production and raise prices*

In addition to such domestic antitrust actions, we believe you should give serious consideration to bringing a case against OPEC before the International Court of Justice (the "ICJ") at the Hague. You should consider both a direct suit against the conspiring nations as well as a request for an advisory opinion from the Court through the auspices of the U.N. Security Council. The actions of OPEC in restraint of trade violate "the general principles of law recognized by civilized nations." Under Article 38 of the Statute of the ICJ, the Court is required to apply these "general principles" when deciding cases before it.

This would clearly be a cutting-edge lawsuit, making new law at the international level. But there have been exciting developments in recent years which suggest that the ICJ would be willing to move in this direction. In a number of contexts, we have seen a greater respect for and adherence to fundamental international principles and norms by the world community. For example, we have seen the establishment of the International Criminal Court in 1998, the International Criminal Tribunal for Rwanda in 1994, and the International Criminal Tribunal for the former Yugoslavia in 1993. Each of these bodies has been active, handing down numerous indictments and convictions against individuals who have violated fundamental principles of human rights. For example, as of December 1, 1999 the Yugoslavia

tribunal alone had handed down 91 public indictments.

Today, adherence to international principles has spread from the tribunals in the Hague to individual nations around the world. Recently, the exiled former dictator of Chad, Hissene Habre, was indicted in Senegal on charges of torture and barbarity stemming from his reign, where he allegedly killed and tortured thousands. This case is similar to the case brought against former Chilean dictator Augusto Pinochet by Spain on the basis of his alleged atrocities in Chile. At the request of the Spanish government, Pinochet was detained in London for months until an English court determined that he was too ill to stand trial.

The emerging scope of international law was demonstrated in an advisory opinion sought by the U.N. General Assembly in 1996 to declare illegal the use or threat to use nuclear weapons. Such an issue would ordinarily be thought beyond the scope of a judicial determination given the doctrines of national sovereignty and the importance of nuclear weapons to the defense of many nations. The ICJ ultimately ruled eight to seven, however, that the use or threat to use nuclear weapons "would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law." The fact that this issue was subject to a decision by the ICJ, shows the rapidly expanding horizons of international law.

While these emerging norms of international behavior have tended to focus more on human rights than on economic principles, there is one economic issue on which an international consensus has emerged in recent years—the illegitimacy of price fixing by cartels. For example, on April 27, 1998, the Organization for Economic Cooperation and Development issued an official "Recommendation" that all twenty-nine member nations "ensure that their competition laws effectively halt and deter hard core cartels." The recommendation defines "hard core cartels" as those which, among other things, fix prices or establish output restriction quotas. The Recommendation further instructs member countries "to cooperate with each other in enforcing their laws against such cartels."

On October 9, 1998, eleven Western Hemisphere countries held the first "Antitrust Summit of the Americas" in Panama City, Panama. At the close of the summit, all eleven participants issued a joint communique in which they express their intention "to affirm their commitment to effective enforcement of sound competition laws, particularly in combating illegal price-fixing, bid-rigging, and market allocation." The communique further expresses the intention of these countries to "cooperate with one another . . . to maximize the efficacy and efficiency of the enforcement of each country's competition laws." One of the countries participating in this communique, Venezuela, is a member of OPEC.

The behavior of OPEC and other oil-producing nations in restraint of trade violates U.S. antitrust law and basic international norms, and it is injuring the United States and its citizens in a very real way. Consideration of such legal action could provide an inducement to OPEC and other oil-producing countries to raise production to head off such litigation.

We hope that you will seriously consider judicial action to put an end to such behavior.

UNITED STATES SENATE,
Washington, DC.

DEAR COLLEAGUE: In light of the very serious problems caused by the recent increase

in oil prices, we know you will share our view that we should explore every possible alternative to stop OPEC and other oil-producing states from entering into agreements to restrict oil production in order to drive up the price of oil.

This conduct is nothing more than an old-fashioned conspiracy in restraint of trade which has long been condemned under U.S. law, and which should be condemned under international law.

After some considerable research, we suggest that serious consideration be given to two potential lawsuits against OPEC and the nations conspiring with it:

(1) A suit in Federal district court under U.S. antitrust law.

(2) A suit in the International Court of Justice at the Hague based upon "the general principles of law recognized by civilized nations," which includes prohibiting oil cartels from conspiring to limit production and raise prices.

We ask you to sign the enclosed letter to President Clinton which urges him to consider these two litigation options. As you will note from the letter, the subject is quite complicated and is set forth in that letter as succinctly as it can be summarized.

If you are interested in co-sponsoring, please have staff call David Brog of Senator Specter's staff at 224-9037 or Bonnie Robin-Verger of Senator Biden's staff at 224-6819.

Sincerely,

ARLEN SPECTER.

JOSEPH BIDEN.

Mr. SPECTER. Any Senators who may be listening to this or any staff members, I invite them to call David Brog of my office at 224-4254 or Bonnie Robin-Verger of Senator BIDEN's office at 224-5042. We would like to get a good showing and see if we can't get the President to take a really tough position against these cartels which have so disadvantaged so many Americans.

The PRESIDING OFFICER. The distinguished Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I ask unanimous consent to speak as in morning business for up to 15 minutes.

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

FUELS TAX REDUCTION

Mrs. LINCOLN. Mr. President, I rise today to discuss S. 2285—a bill that is so flawed I can't believe the majority wants to end debate on it before the debate has even begun, with no committee hearings, no floor debate, no bipartisan discussion over something as important as the tax base for our highway and transportation infrastructure needs. This is literally an "Our Way or the Highway" bill, and I will choose the highway.

As a southerner, I represent a large number of farmers and about 1,600 independent trucking firms. Eleven hundred of those firms are one-truck operators; 250 operate 10 or fewer trucks. I've got at least seven of the largest trucking firms in the Nation based in my State, as well as the world's largest retailer, which operates about 4,000 trucks, and one of the largest food processors which operates about 1,500. I am opposed to S. 2285 and should I have the opportunity, I will vote against it.

First of all, none of the truckers or farmers that operate in my State would receive any benefits from the bill being discussed today, or any of the other bills that are based on a reduction in Federal excise taxes.

They are calling this proposal the "federal fuels tax holiday" I can tell the Senate that if this bill passes, we won't be celebrating in Arkansas.

A key point that must have been overlooked by the authors of this bill is that some States like Arkansas, any reductions in Federal fuel excise taxes automatically require a penny-for-penny increase in the State fuel excise tax.

If we could have had committee hearings on this bill, perhaps the entire body might know that my State, along with Oklahoma, Nevada, Tennessee, and California all have provisions that will in some way negate any decrease in the Federal tax by increasing the state tax.

Many States use the funds they receive from the Federal Government transportation formulas to issue bonded debt. They depend on the gas tax to pay for these bonds and to fund their transportation needs.

Smartly, many of the States recognized that you can't always rely on the promises you get from Washington. I am glad that the State legislators of my State had the wisdom and the foresight to anticipate ill-conceived notions by Congress such as the bill before us today that would put our highway and transit programs at risk.

Further, even in those States that would not automatically increase excise taxes, there is no guarantee that the consumers would see a price decrease at the pump. These taxes are charged at the wholesale level.

The only thing this bill offers is a "sense-of-the-Congress" clause that says to the big business: "Here you go, have a huge tax decrease; by the way, we sure hope you guys will pass it on."

Further, there is no credit in the bill for retail stocks. That means that even if this tax reduction were to pass both Houses and make it past the President with lightening speed, the gas in retail inventories would still be priced with the tax. There is no telling how long it would take for the fuel that wasn't taxed to finally make it to consumers.

One last thing about cutting the Federal excise taxes on fuels: these are the dollars that go into our highway trust fund. I know that this bill has some statutory hocus-pocus that takes the money out of general revenues, but are we really protecting the highway trust fund, and Social Security by hopping from trust fund to trust fund until we find one that the voters aren't watching?

They say this bill is paid for out of the "on-budget" surplus. I ask, where is that? We don't even have a budget resolution, let alone a surplus. I think we should make sure that a surplus exists before deciding to spend it. The bottom line is this bill isn't paid for

and the money is simply going to come out of debt reduction, education, and out of Medicare reform dollars that are so needed in the country.

I have spoken with the truckers in my state and they have told me that they need help. And I want to help them in a way that is reasonable and will actually reach them. But the way this bill is structured no relief will make it to them. If we really want to help truckers and consumers effectively then we should have a package that helps them right now and through the end of the fiscal year.

In the very short term, we should consider a suspension of the heavy vehicle use tax that is due on every big rig. This tax break would go directly to the people in need, and it would have a very quick impact.

This tax is due on July 1, but it can be paid quarterly. Suspending the heavy vehicle use tax would equal about \$550.00 in relief for every truck on the road, and we wouldn't have to wait for the effects of market pricing to see relief at the consumer level.

Also, we should consider low-or no-interest loans to help small business men and women make it through this price spike. In the intermediate months, truckers, and producers who have been pushed to the edge could find help in load assistance until oil prices come down.

Finally, we should consider end-of-the-year formula tax credits that would go directly to the consumers and could be directly tied to oil prices which, as I speak, are dropping.

We are all aware of the recent announcements that have been made by the oil exporting countries. Prices are falling and the price spike is coming down. While we all want to ensure that the high prices we have had will not drive small business people into bankruptcy, our relief package should be flexible enough to take falling prices into account.

Beyond the rash and reckless way that we have come to consider this bill, and beyond the abomination that it is, there remains the underlying issue of our nation's energy policy. This knee-jerk bill is a reaction to a host of problems and just because oil prices are starting to come down we should not let this issue fall to the wayside.

There is no excuse for the lack of a comprehensive energy policy that we suffer from in this country. The roller coaster ups and downs of oil prices in 1999 and 2000 are evidence that we have been completely reactive to market forces and have not established stable, long-term energy policies.

It is obvious that no immediate, cost-effective government action could eliminate U.S. dependence on foreign oil entirely, but there are things that we should be doing to help reduce our dependence on oil as an energy source.

To help lessen the economic shocks that oil price spikes have created, we should couple short term relief provisions such as the ones I have spoken

about with smart, stable, long-term, energy policies.

Through the use of petroleum supply enhancements such as energy conservation, use of renewables, and expanded U.S. production we could lessen our dependence on foreign oil. We must provide incentives to try to bring ourselves away from dependence on oil in general. We must set out a course to promote oil production at home, to promote the use of renewable sources of energy, and to promote the more efficient and cleaner uses of the fossil fuels we are still using.

Mr. President, many of us in this body have been pushing for expanded uses of renewables for quite some time and we will continue to do so. This spike in fuel prices demonstrates that we need to shift our emphasis from research to the practical use and application of renewable sources of energy.

Simply put, Mr. President, this knee-jerk reaction to high oil prices represents a reckless abandonment of the priorities we brought to the Congress last year—Social Security, Medicare, paying down our national debt, and educating our children.

I want to do whatever I can to help my constituents who are dependent on diesel for their livelihoods, but if we adopt measures to eliminate, albeit temporarily, gas taxes, we will not get the help to those who need it.

When a core business segment of this nation is under duress we should address that segment directly. We must get the help to the ground where it is needed. In our present situation, we should be pursuing targeted assistance in the forms of loan assistance, grants, and reasonable tax measures that actually get to the level of the consumer who need it the most.

We can't afford to jeopardize funding for our roads, the stability of Social Security and Medicare, or the long-term goal of paying down our enormous debt. This bill would do just that, Mr. President, and I urge my colleagues to oppose the "fuel tax holiday" bill before the party gets out of hand, to ensure our roads will be funded and, more importantly, that we go about it in a reasonable way and get relief to the individuals who need it the most.

The PRESIDING OFFICER. The distinguished Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I thank the Senator from Arkansas, and I hope that other Senators pay close attention to her and her very persuasive remarks as to why legislation that will potentially come up in this body to repeal the 4.3-cent gasoline tax is a bad idea.

The long and short of it, as the Senator said, is that the reason for the high gasoline prices is basically OPEC. OPEC made an announcement which will have the effect of lowering gas prices. I think the 4.3-cent tax is a phantom reduction. There will not be lower prices as a consequence of the

proposal. I think the refineries will keep it and they won't pass it on. There are a whole host of reasons. The main point that is worth considering is that we labored mightily in this body and in the other body a couple years ago to pass a very significant highway program; we called it TEA 21. Was that significant? It said that for the first time all of the Federal gas taxes were going to the highway trust fund, and the highway trust fund would be used only for highways. It was a commitment: People who drive cars and trucks in our country and pay the Federal gas tax or diesel tax will know that tax is going to the highway trust fund and it should stay in the trust fund, with the trust fund dollars to be allocated among the States to build and repair our highways. That was it. It was that simple.

So if the bill that may come before this body, which the Senator was addressing, were to be enacted, it would break that trust, break that commitment. It would open up the highway trust fund to potentially any purpose. It would just be the camel's nose under the tent. It would be the first step down the slippery slope of taking trust fund money and using it for other purposes. Why do I say that? Because part of the amendment is to say, OK, let's replenish it with general revenue. We all know "general revenue" is a slippery slope around here. We don't know how much general revenue there is going to be; therefore, the solidarity of the dollars going into the trust fund and dollars coming out of the trust fund to pay for highway modernization and new highways has to be kept sacrosanct. I hope the Senate rejects the position to repeal the 4.3-cent gas tax. It is a bad idea.

LAUNCHING OUR COMMUNITIES' ACCESS TO LOCAL TELEVISION ACT OF 2000—Continued

Mr. BAUCUS. Mr. President, I will address the pending subject, local-into-local broadcasting. At the end of the last session of Congress, there was some talk that in this session of Congress, this year, we would take up financing to help guarantee local-into-local television coverage in rural areas. Frankly, I wasn't happy with the way we were about to leave the last session of Congress, so I stood up on the floor and tossed a little bit of obstruction around until we got a firmer commitment that by a certain date we would bring up legislation in this body directed toward financing satellites or other entities so that we could provide local-into-local coverage throughout our country. I am very happy now that this bill is before us. As a consequence of the deference of myself and others, we are now here.

Very simply, the need for this is extremely important. This chart shows markets that aren't now covered and will be covered under the basic bill to be passed. There aren't very many of

them. The red dots depict areas where people can get local-into-local coverage. There are 210 TV markets in our country. You can tell that the red dots don't number 210. In fact, they number something much less than that. I might say that number 210 happens to be right up here—Glasgow, MT. Butte, I think, is 167, and there is Billings. We have a bunch of TV markets in our State, but they are nowhere near where the red dots are.

With the passage of last year's bill, 67 markets will have coverage. Only 67 of the 210 markets will eventually get coverage and have local-into-local television coverage. Thirty-five percent of the homes in my State would receive video programming through satellite. Our State flower is the bitterroot, but we have a new State flower now, the satellite dish, because we in Montana have the highest per capita utilization of satellite dishes—more than any other State in the Nation. Montanans per capita have more satellite dishes. It is because Montana is so big. We are a rural State. There are only about 900,000 people in our State, with about 147,000 square miles. You can see why satellite dishes are so important. But because we are so rural and because so many other States are so rural, we are not getting local satellite coverage. It stands to reason because the satellite companies are going to give the coverage to the greatest markets where they will make the most money, as well they should. Companies are there to get the highest rate of return. So they are going to go where they can make the greater returns, and that is going to be the cities.

It is only fair that the rest of America also be wired in. That is why I think this bill is so important. It will take a few years to accomplish it, but at least we will get there.

What are the reasons for having it? One is to find out what your local team is doing.

Here is a chart. This is the University of Montana Grizzlies. Most folks like to know how the home team did. If you don't get local-to-local satellite coverage, it is pretty hard to know. You might be able to find out for New York, Denver, or Florida. But when you are from a smaller community and a smaller town, you only care about the local team. You can't get it now with satellite coverage in my State of Montana and in most places.

Maybe it is not the local team. Maybe it is weather conditions. Is a storm coming? What is the weather report? Our State sometimes has blizzards. Sometimes it snows—not very often. Most people think Montana is awfully cold; that we have a lot of snow. Montana is really not very cold. It doesn't snow that much. But every once in a while it snows. We kind of like to know every once in a while when it is going to happen. So we need local notice. Local-to-local is critical throughout our country.

The final point I will make is demonstrated by this chart. This shows

how well the Rural Utilities Service, a branch of USDA, is already serving America—the telephone cooperatives, and with the power cooperatives around the State. RUS is a loan guarantor. It guarantees loans for wastewater proposals, for electric distribution, transportation, telecommunications, telephone, and distance learning. It guarantees loans to finance operations to build these infrastructures all over the country.

The basic point is a very simple one. We have an organization in place. It is serving America well. Why not allow the Rural Utilities Service to, essentially, be the agency that provides the additional loan guarantees for satellites and to give assistance to rural areas?

The underlying bill before us sets up a board to do all of this. I submit that another board and another level of bureaucracy does not make sense. We already have an organization that is doing it. Also, this RUS organization has a very good record. In fact, in the last 50 years, the Rural Utilities Service has not had one loan loss in its telecommunications program—not one. That is indicated by the green dots scattered throughout the country.

When we finally pass this legislation, remember that we already have an agency doing a good job.

I also urge adoption of the pending amendment offered by Senator JOHNSON, which adds the National Rural Utilities Cooperative Finance Corporation as another lender in addition to FDIC-insured banks. I think it is helpful to have that availability. We are more likely to get the financing.

I must also say that I hope we include in the underlying legislation a provision which encourages the loan guarantors at the lending institutions to finance new satellite operations not only for local-to-local coverage but also to help in the availability of broader bandwidth and higher-speed Internet connections because we have the opportunity now while we are providing satellite service for local use to also say: OK, maybe we should also give some consideration to wireless, broad bandwidth, and higher-speed access to the Internet because clearly that is the way of the future. Many of the urban parts of our country have broad bandwidths. It is 10 times more expensive, but they have it.

In addition, many companies are competing vigorously to provide this service all across the country. They are doing it the good old American way—based on a profit motive. That is great. That is what built America. But a consequence is that rural America often doesn't get near the same coverage as urban America for the same reason, that satellite companies are not providing local-to-local to America; namely, because it doesn't pay nearly as well in rural America as it does in urban America.

I am saying that whoever makes the decision, I hope it is not the board. But