	Present law	Reduction of 1% effective December—		Reduction of 0.5% effective December—	
		1995	1996	1995	1996
Change in actuarial balance over next 75 years (percent)	.....	1.44	1.41	0.74	0.73
Actuarial balance (percent)	−2.17	−0.74	−0.76	−1.43	−1.44
Year of exhaustion	2030	2049	2048	2036	2036
First year in which outgo exceeds tax income	2013	2018	2018	2015	2015
Maximum trust fund ratio (percent)	269	408	397	332	327
Year Maximum ratio is reached	2011	2015	2015	2014	2014

HARRY C. BALLANTYNE,
Chief Actuary.

SOCIAL SECURITY TRUST FUNDS

Mr. CONRAD. Mr. President, earlier today Senator DOMENICI inserted in the RECORD a column by Charles Krauthammer that displays a fundamental misunderstanding of the operation of the Social Security trust funds and attacks my position on this issue. I ask unanimous consent that the response written by Senator DORGAN and me, which ran in the Washington Post on March 16, 1995, to correct the many factual and logical errors in Mr. Krauthammer's argument, also be published at an appropriate place in the RECORD.

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

[From the Washington Post, Mar. 16, 1995]

UNFAIR LOOTING

(By Byron L. Dorgan and Kent Conrad)

Charles Krauthammer's uninformed defense of an indefensible practice [''Social Security Trust Fund Whopper,'' oped, March 10] demonstrates that it is possible to be a celebrated pundit yet know nothing of the subject about which one is writing.

In attacking us for our position on the balanced-budget amendment, Krauthammer misses the mark by a country mile on two very important points. First, he insists incorrectly that ''Social Security is a pay-as-you-go system'' that ''produces a cash surplus'' because ''so many boomers are working today.'' Second, he ignores the fact that Social Security revenues were never meant to pay for expenses incurred in the federal operating budget. Missing both fundamental points undermines the credibility of Krauthammer's conclusions.

Here are the facts:

First, Social Security is not a pay-as-you-go system. If it were, Social Security benefits would exactly equal taxes, and there would be no surpluses. But there are. This year alone Social Security is running a $69 billion surplus.

Apparently, Krauthammer completely missed the 1983 Social Security Reform Act, which removed the system from a pay-as-you-go basis. In 1983 Congress recognized that in order to prepare for the future retirement needs of the baby boom generation, we should raise more money from payroll taxes now than is needed for current Social Security benefits. We did that because when the baby boomers retire, there will not be enough working Americans to cover Social Security benefits on a pay-as-you-go basis. We will need accumulated surpluses to pay these benefits.

Second, Social Security revenue is collected from the paychecks of working men and women in the form of a dedicated Social Security tax, deposited in a trust fund and invested in government securities. This regressive, burdensome tax (almost 73 percent of Americans who pay taxes pay more in social insurance taxes than in income taxes) isn't like other taxes. It has a specific use—retirement—as part of the contract this nation made 60 years ago with working Americans.

Because this tax is dedicated solely for working Americans' future retirement, it shouldn't be used either for balancing the operating budget or masking the size of the budget deficit. Krauthammer not only irresponsibly condones the use of the Social Security surpluses to do these things, he thinks we should enshrine this procedure in our Constitution.

He apparently does so because he doesn't understand the difference between balancing an operating budget and using dishonest accounting gimmicks to hide operating losses. To illustrate the difference and how it works to loot the Social Security trust funds, let's use an example a little closer to home for Krauthammer.

Assume that Krauthammer is paid a lucrative salary by The Washington Post, which puts part of the salary into a company retirement plan. Then let's assume The Washington Post comes upon hard times and starts losing money each year.

Here's where honesty matters. The Post has two choices. It could face up to its problems and move to balance its budget. Or it could follow Krauthammer's prescription and disguise its shortfall by raiding the employees' retirement fund to make it appear that the operating budget is balanced. Of course, the retirement fund would have nothing but IOUs in it when it comes time for Krauthammer to retire. At that point, even Krauthammer might recognize the fallacy of looting trust funds to pay operating expenses.

Absurd? Sure. But the flawed Republican balanced-budget amendment plan would in the same way keep on looting Social Security trust funds to balance the federal operating budget. Instead, we should take the honest course and begin the work now to bring our federal operating budget into balance without raiding the Social Security trust funds.

Contrary to Krauthammer's assertion, the only fraudulent point about this issue was his uninformed column.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The hour of 2 o'clock having arrived, morning business is now closed.

JERUSALEM EMBASSY RELOCATION IMPLEMENTATION ACT OF 1995

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Senate bill 1322, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1322) to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I am one of the original cosponsors of this legislation and would like to begin the discussion of the legislation until the majority leader and the chairman of the Senate Foreign Relations Committee have an opportunity to come to the floor and make their opening statements in support of S. 1322.

This is historic legislation. It is important legislation, for a variety of reasons that affect everyone in this body and, frankly, most of the people in this country. It is a strong statement of foreign policy implications. It is a strong statement in support of our longstanding relationship with the State of Israel.

I want to begin by describing briefly what the legislation would do and what the rationale for the legislation is. The bill begins by making a series of findings which report on the history of the status of Jerusalem, leading up to some conclusions of policy by the U.S. Government. Let me state those conclusions of policy first.

The bill provides that:

It is the policy of the United States that—

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

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

the United States Embassy in Israel should be relocated to Jerusalem no later than May 31, 1999.

The bill then goes on to provide a mechanism for the President to establish, to relocate the U.S. Embassy in Jerusalem, and that that process would be completed by May 31, 1999. The bill originally provided for a beginning date in 1996, but out of deference to concerns expressed by the State Department and the President and others, that particular provision was taken out of the bill, primarily because, of course, the key is the date that the Embassy is opened, not the date that we begin construction on a new Embassy or the conversion of the existing consulate into a new Embassy.

Let me now turn to the findings that are stated in this legislation and then discuss a little bit of the history of this particular matter:

Each sovereign nation, under international law and custom, may designate its own capital.

And that is the first finding that we make.

Since 1950, the city of Jerusalem has been the capital of the State of Israel.

The second finding.

[It is] the seat of Israel's President, Parliament, and Supreme Court, and the site of numerous government ministries and social and cultural institutions.

That is our third finding.

In No. 4 we make the point that:

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 [then] by Jordan.

The sixth finding of this legislation is that:

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

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.

We make a point in finding No. 8 that:

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.

We further find:

In 1990 the Congress unanimously adopted Senate Concurrent Resolution 106, which declares that the Congress, [and I am quoting from the resolution now] ''strongly believes that Jerusalem must remain an undivided city in which the rights of every ethnic religious group are protected.''

In finding No. 10 we make the point that:

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.

Finding No. 11 is that:

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.

No. 12 is that:

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.

And further, in point No. 13, that:

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

The United States maintains its embassy in the functioning capital of every country in the world except in the case of our democratic friend and strategic ally, the State of Israel.

That is the 14th finding of this legislation.

The 15th finding is to note that:

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.

Finally and importantly we note that:

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

And, therefore, as a result of these findings, as I say, we declare it to be the policy of the United States that:

Jerusalem should remain an undivided city,

[2] Jerusalem should be recognized as the capital of the State of Israel; and

[3] the United States Embassy in Israel should be relocated to Jerusalem no later than May 31, 1999.

As the mechanism for ensuring that this policy is adhered to, and that the Embassy is in fact opened on that date or before then, the Congress ensures that:

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 the Congress that the United States Embassy in Jerusalem has officially opened.

So, Mr. President, that is the essence of this legislation. As I said, I think it represents an important milestone in the relationship between the United States and Israel, one of the strongest friends of the United States, but a State which has its capital in the city of Jerusalem and the United States Embassy in Tel Aviv. This legislation remedies that and ensures that the new Embassy will open by May 31, 1999, in Jerusalem.

Let me go into a little bit more of the history of this, in order to, I think, assure everyone of the reasons why this is so important and why we need to do it now. The United States Government has refused official recognition of Israeli sovereignty in Jerusalem for various reasons since Israel's inception, at first in line with the never implemented 1947 U.N. General Assembly partition recommendation for western Palestine. U.S. policy supported a special international status, corpus separatum, as it was called, for the city of Jerusalem. The impractical notion actually appealed to neither the Jews nor the Arabs, and in 1948, the Arab Legion conquered east Jerusalem, including the old city, as part of the general Arab military offensive to prevent Israel from coming into being. Israel retained control over west Jerusalem.

When east Jerusalem was under Arab rule, many Jews were prohibited from visiting their holy places and the synagogues in the old city were razed and Jewish burial places were desecrated.

In 1967, as Egypt and Syria moved again toward war with Israel, the Israel Government urged King Hussein of Jordan to sit out the fighting and promised the territories he controlled would be left alone if he did so. The King failed to heed the warning. He attacked Israel and, as we all know, in the ensuing fighting he lost east Jerusalem and the West Bank.

Israel, under the Labor Party leadership at the time, declared that Jerusalem will remain undivided forever, as Israel's capital, and all people will have free access to their holy places.

Since 1967, the policy and practice of the U.S. Government regarding Jerusalem has, unfortunately, been somewhat inconsistent.

United States officials have often explained our Government's unwillingness to recognize Israeli sovereignty over any of Jerusalem on the grounds that the city status should be resolved through Arab-Israeli negotiations, or at that particular moment in time it was difficult, if not a good thing to do, in view of the relationships existing between the parties at those times.

On the other hand, our Government has repeatedly said that we do not favor redivision of the city. Yet, the State Department makes a point of prohibiting United States officials from visiting east Jerusalem under Israeli auspices. In other words, for purposes of official visits of Jerusalem, the United States Government distinguishes between east and west Jerusalem. But as proposals have been made over the years to move the United States Embassy to west Jersualem—I note west Jerusalem and not east Jerusalem—the State Department refused on the grounds that we do not distinguish between east and west Jerusalem, and do not recognize anyone's sovereign claims to any of Jerusalem.

The only thing consistent about United States policy on Jerusalem, unfortunately, is its antagonism to Israel's claim there. In my view, this policy is unprincipled, notwithstanding the fact that on many occasions it was urged in support of positions on which we were supporting the Government of Israel. But I still believe, and I think one of the reasons for this legislation is, that the policy has not been viewed as principled, but rather entirely too pragmatic depending upon the circumstances of the time, and that view, in my personal opinion, is unworthy of the United States, and, frankly, as I will explain later, I believe unhelpful to the cause of peace.

Notwithstanding the several peace agreements that Israel has signed with its neighbors, Arab enemies of the Jewish state continue to insist that Israel is not legitimate, that it has no right to exist on what they deem to be Arab land. The international community, acting through the League of Nations and in the United Nations, based its acknowledgement of Jewish people's national rights in Palestine on the historical connection of the Jewish people with Palestine.

Though the long war against Zionism and Israel is now checked on the military level, it continues on the battlefield of ideas. That is why the actions of the United States with regard to a very tangible matter, the location of our Embassy, is so very, very important. It matters what position the United States takes in this battleground of ideas. And in this particular war, Israel's enemies have worked to not legitimize Israel, to deny the significance of the historical connection that I referred to before between the Jews and Zion, and to foster hope that someday Israel, perhaps then abandoned by its friends and exhausted by the unremitting hostility and violence of its foes, can be made to disappear, first as the Christian Crusaders of the Middle Ages wore worn down and ultimately expelled from the Holy Land.

The belief that Israel's friends are unreliable and Israel's resolve is weak is a major impediment to true Arab-Israeli peace. Unrealistic expectations on the part of Arab parties about Jerusalem make peace harder to achieve.

The Jerusalem Embassy relocation bill aims to close the question of United States support for Israel's rights in its own capital. I want to restate the point, Mr. President, because it is the critical reason why this legislation is brought before the U.S. Senate and the House of Representatives at this time. This bill, the Jerusalem Embassy relocation bill, aims to close the question of United States support for Israel's rights in its own capital. It aims at the heart of the legitimacy issue, for Jerusalem is the essence of the historical connection of the Jewish people with Palestine. The interest of peace, in my view, is not served by anyone thinking that Israel can be divided from the United States over the Jerusalem issue. It is an error to suppose the United States is more effective diplomatically when we pose as a neutral, honest broker between the Israelis and the Arabs seeking peace in the region.

U.S. influence does not derive from any claim of neutrality on our part in this particular conflict, although it is important that Arabs interested in peace understand the important bona fides of the United States in this question of peace. Rather, U.S. influence, I submit, derives from our status as a great power, the intensity of our worthy convictions, and our loyalty to our friends. And, if all three of those circumstances are well understood by all of the parties, it will be much easier for a true and lasting peace to be achieved, a peace which is so fragile that it can be jeopardized by the question of whether the United States should relocate its Embassy to west Jerusalem, a peace which is bound to fail on other grounds and, therefore, a peace not worth having. We want a lasting peace. The Israelis want a lasting peace. And I know that Arabs of good will want a lasting peace. And a lasting peace is based upon a bedrock of good faith and principles that are not inconsistent between the peacemaking parties.

If there are fundamental—fundamental—differences between the peacemaking parties, then the peace becomes too fragile to be sustained. And after thousands of years of conflict in this region, Mr. President, the people of this region deserve to have the opportunity to live in peace with each other as friends and under circumstances in which there is not always the cloud of uncertainty and even war and when there is not the cloud of danger in the streets which exists as it does today.

The many, many people of this body and the House of Representatives which support this legislation do so because we believe it will send a principled and constructive signal to all of the parties in the Arab-Israeli negotiations and establish the United States position in support of the State of Israel in clear and unmistakable terms.

Mr. President, before I turn the podium over, I want to acknowledge a couple of other points of view and some people who have been very instrumental in bringing this legislation forward.

The majority leader, Senator DOLE, has made stirring speeches in support of this legislation and believes in his heart that it is the best way to proceed in order to make the kind of statement that I spoke of a moment ago. And he is joined by all of the original cosponsors with that idea in mind.

There are other Members of this body who have worked very hard to develop the language that would be most satisfactory to the Members of this body as well as to the President and to his Cabinet. Senator LIEBERMAN from Connecticut is one of the people who has worked very long and hard to bring these ideas together and to try to achieve a very broad consensus so that when this legislation passes, it is with a broad bipartisan degree of support and, hopefully, the support of the administration as well.

Senator DIANNE FEINSTEIN, who is here, the Senator from California, and Senator LAUTENBERG from New Jersey have been engaged in meetings. They have to some degree a somewhat different point of view as to how this legislation will work out in terms of the negotiations that are currently pending between the Israelis and the Arabs in the region. But it is their desire, no less than mine and the other cosponsors, that we work toward the day when we can achieve the situation that this bill would achieve—namely, the relocation of the Embassy in Jerusalem.

So let there be no doubt that, though some Members of this body may have somewhat different views as to how best to achieve this objective, we are united in the objective, and we are determined to reach a point where the legislation can move forward with a strong bipartisan degree of consensus and eventually the support of the administration.

Mr. President, with that opening statement and with the desire that when Senator DOLE or Senator HELMS are able to come to the floor to make their opening statements in support of the bill, I would be happy to relinquish the floor at this time to someone on the other side who would wish to make a statement.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, first, let me stand and say that I support this legislation and intend to vote for it. I think it is very worthy legislation. I recognize the role that has been played by the Senator from Arizona, by Senator DOLE, by Senator FEINSTEIN, by Senator LIEBERMAN, by Senator LAUTENBERG, and some others. I think this is the right thing to do, and I will be voting for it.

Mr. President, two additional items. The comments made previously by the Senator from Arizona discussed votes that had been cast by Senator CONRAD any myself in previous budget issues. I shall not respond to them in this discussion. I will at some point later. But they are not at all related to the issue which we are discussing on the floor of the Senate. To change the subject of the debate, when it is the equivalent of getting lost and then claiming where you ended up was where you intended to be, is interesting but not, in my judgment, very useful.

So I will discuss that at some later point this afternoon when I take the floor.

I would want to say this, however. I intend to submit an amendment to the desk in a moment. It is a sense-of-the-Senate amendment on a subject unrelated to the central part of this bill, and I do it because it is the only opportunity I have to offer it prior to the reconciliation bill coming to the floor. I will agree to a very short time limit, 10 minutes, 5 on each side, or 10 on each side. I do want to get a vote. But it is my intention to offer it. It can be set aside as far as I am concerned and I will agree to a very brief time limit.

So, Mr. President, again, because circumstances prevented me in recent days from offering this sense-of-the-Senate amendment and because this is the only circumstance in which one can be offered, I would say to those who are worried about this holding up the bill, I do not intend to do that at all. I will agree to 5 minutes on each side, and we will no doubt have some votes at some point and I hope the Senate would express itself on this.

As the Presiding Officer and other Members know, we are very limited in our ability to address a number of issues that are very important in this Chamber. Often we are required to do so in this manner, a sense-of-the-Senate resolution on a piece of legislation that is unrelated. But I do not intend in any way to hold this piece of legislation up. I will agree to the shortest of all time agreements if the majority wishes, 5 or 10 minutes on each side.

AMENDMENT NO. 2940

(Purpose: To express the sense of the Senate on tax cuts and Medicare)

Mr. DORGAN. Mr. President, I send the amendment to the desk and ask it be read.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 2940.

Mr. DORGAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, add the following new section:

SEC. . SENSE OF THE SENATE ON BUDGET PRIORITIES.

(a) FINDINGS.—The Senate finds that—

(1) the concurrent resolution on the budget for fiscal year 1996 (H. Con. Res. 67) calls for $245 billion in tax reductions and $270 billion in rejected spending reductions from Medicare;

(2) reducing projected Medicare spending by $270 billion could substantially increase out-of-pocket health care costs for senior citizens, reduce the quality of care available to Medicare beneficiaries and threaten the financial health of some health care providers, especially in rural areas;

(3) seventy-five percent of Medicare beneficiaries have annual incomes of less than $25,000;

(4) most of the tax cuts in the tax bill passed by the House of Representatives (H.R. 1215) go to families making over $100,000 per year, according to the Office of Tax Analysis of the United States Department of the Treasury.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Senate should approve no tax legislation which reduces taxes for those making over $250,000 per year; and

(2) the savings from limiting any tax reductions in this way should be used to reduce any cuts in projected Medicare spending.

Mr. KYL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. KYL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The clerk continued with the call of the roll.

Mrs. FEINSTEIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. FEINSTEIN. I ask unanimous consent that I be permitted to speak only on S. 1322.

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

Mr. KYL. Excuse me, Mr. President, reserving the right to object, under the terms the Senator from California has outlined, namely that she will speak only on the Jerusalem resolution, after which another quorum call would be called for.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California.

Mrs. FEINSTEIN. I thank the Senator. I thank the Chair.

Mr. President, I rise to speak about the legislation before the Senate, S. 1322, a bill that essentially expresses the sense-of-Congress that Jerusalem should remain undivided and be the capital of Israel, and that it should be the site of the location of the United States Embassy at a date certain, namely May 1999.

Mr. President, many people have participated in this discussion. And I know Senator LAUTENBERG, with whom I have been working, wishes to speak. I want to thank the majority leader for working with those of us that have concerns on this legislation. I know that there are discussions ongoing.

Senators LAUTENBERG, LIEBERMAN, LEVIN, and I just had a discussion. And I believe Senator LIEBERMAN is going to talk with Senator KYL and Senator DOLE on what our conclusions are.

For the purposes of these comments, I would like to make some general comments about the intentions of this legislation. Let me state what I believe some basic truths to be.

The first basic truth is that the United States of America has an absolute right to place its Embassy in a capital city, any capital city. Clearly, Jerusalem is the capital of Israel. We need no one's permission to do so, and we need no piece of legislation to do so. This issue has been one that has percolated for a long, long time with a great deal of impatience on the part of many people who say, ''Why hasn't the Embassy been relocated to Jerusalem prior to this time?''

Having said that, we have another basic truth, and that is that Israel can survive long-term as a Jewish democratic state only if there is peace, if that peace is recognized and bought into by Israel's neighbors, and that there are safe and secure borders. Therefore, the peace process now ongoing is key and critical to the long-term survival of the State of Israel.

Jerusalem is many things to many people. All one has to do is spend some time there to see the Mount of Olives, the concept of the promised land, the Garden of Gethsemane, the home of more than 40 Christian denominations, the home of the Moslem religion, the home of the Armenian Patriarch, the Western Wall, a magical and mystical place, a source of religion throughout the world.

The only democracy in the Middle East rests within the State of Israel; and yet it has been the site of hatred, war, and conflict dating from the Crusades and even back before that time. So it is a difficult and complicated subject. However, I want to say this, that I, like most Americans, believe that the U.S. Embassy should be located in Jerusalem. But as this bill was originally presented, there were concerns about the bill.

Originally, the bill that was introduced had 62 Senators on it. This bill has 69 Senators. So there is a very strong bulwark of support for the bill.

Some concerns remain even about the new text of the bill. Chief among these concerns for all of us is what the Chief Executive of this Nation will do. Many of us believe that whatever the politics surrounding this bill, we can all agree that to have a divisive vote on an issue around which there has always been consensus and to go through the unpleasantness of a veto confrontation, even with a successful override vote, would not be to anyone's benefit. Most of all, going through that process would be to the detriment of Jerusalem and Israel, as doubts about the U.S. commitment on this issue would certainly emerge.

So for all those for whom Jerusalem is important and vital, I cannot imagine a more devastating outcome to the first legislation ever sent to a President mandating moving the U.S. Embassy to Jerusalem than to have this legislation vetoed. For that reason, I think it is imperative that we try to address the concerns that exist about the bill. And we have tried to do that in conversations that have taken place on Friday and taken place today as well.

One of the administration's concerns is that the bill in its current form does not provide a degree of flexibility in the end date by which an Embassy must be established in Jerusalem. We are hopeful that waiver language can be agreed upon by all the parties concerned that would allow the President under certain key conditions, best defined as national security interests, to suspend any necessary provisions of this bill related to the timetable if there was a determination that it was in the national security interest to do so.

I suspect we can all agree that the President should, whenever possible, be granted this kind of flexibility. As a matter of fact, it is within his own constitutional responsibility to be able to do so.

One of my concerns, for example, is that the move of our Embassy could overlap with key events unfolding in the Middle East peace process. In the opinion of this Senator, and perhaps some others would agree, the conclusion of a comprehensive peace between Israel and its neighbors is in the national security interests of the United States.

The bill, in its current form, would require the new Embassy to be opened by May 31, 1999, regardless of what is happening in the peace process. May 1999 is, of course, also the deadline Israel and the Palestinians have set for themselves to complete final status talks and also the transition period. But we all know that despite good will on both sides and a series of important agreements, Israel and the Palestinians have missed virtually every deadline they have set during the course of the peace process.

First, the agreement on withdrawal from Gaza and Jericho, scheduled to be signed in December 1993 and implemented by April 1994, was signed and implemented in May 1994.

Second, Palestinian elections were supposed to take place in July 1994. They have not. Now the commitment is that they would take place prior to Ramadan, hopefully in January 1996, a year and a half later.

Third, for weeks leading up to the recent agreement on Israeli redeployment in the West Bank, the negotiators set numerous deadlines for themselves that went unmet.

With all of this background, can we accurately predict that a peace process will definitely conclude on May 4, 1999, as scheduled? Of course not. It is a difficult, fluid process, but it is working. The President should have the ability and the flexibility to postpone actions

that might have an impact on the negotiations if they were taken at a sensitive moment in the talks. The waiver, we hope, will be forthcoming as a product of these discussions and would provide, we believe, that kind of flexibility.

Another purpose of a waiver amendment is to address the administration's constitutional concerns about this bill. The State Department has made it clear that they will recommend against the signature of a bill that they deem interferes with the constitutional prerogatives to conduct foreign policy. They have also indicated their strong objection to a specific date for location or establishment of the Embassy in Jerusalem.

Specifically, the President interprets this bill to infringe upon his constitutional prerogatives by forcing him to establish an Embassy by a specific date, at a specific location. But by providing a sufficient waiver, renewable, if need be, the President has the opportunity to temporarily delay implementation of section 3(b), the timetable under this bill, should he find that it harms the peace process, to the extent of violating what we hope will be in the waiver, national security interests.

There is no question that Congress and the executive branch frequently have differing interpretations of the constitutionality of particular statutes. I do not expect all of my colleagues to agree with every aspect of the President's interpretation. Indeed, there are aspects of his interpretation with which I disagree.

But, in the interest of allowing the administration's views to speak for themselves, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a legal analysis of the earlier version, S. 770, prepared by the Justice Department, and a June 20, 1995 letter from the Secretary of State to the majority leader.

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

(See exhibit 1.)

Mrs. FEINSTEIN. I thank the Chair. Nevertheless, despite our differing interpretations, we must face facts, and the fact is that the State Department has determined that the President should veto the bill in its current form.

As I said before, the damage that would result to Jerusalem, first and foremost, and to our common cause of moving the Embassy there from passing a bill that could get vetoed cold be irreparable. So I am hopeful that this bill will not be vetoed.

Mr. President, with a sufficient waiver, we can pass a bill that mandates the moving of the United States Embassy to Jerusalem, but allows the President to waive the timing of the establishment of the Embassy in Jerusalem if national security interests are involved.

This would be first-time legislation, the first time a bill on this issue has been passed, and I think that is extraordinarily important.

I must say, I have never conceived of this issue as a litmus test of one's support for Israel. I find deeply committed friends of Israel holding a wide variety of views on the question of when and how to move the United States Embassy to Jerusalem, and on these bills.

As for the debate in Congress, let us establish a basic understanding that all participants in this debate agree on one fundamental truth: that united Jerusalem is and will remain as the capital of Israel.

So Jerusalem's status as Israel's capital has never been in question here. The debate is, instead, focused on a side debate to the central issue, the placement of the Embassy, and I, like my colleagues, believe there is basic agreement in this body, and I share the view of my colleagues, that the United States Embassy in Israel does, indeed, belong in Jerusalem. It is elementary that a sovereign nation, as I have pointed out, has that right to place an Embassy at the site of a nation's capital with whom it enjoys diplomatic relations.

So this should not in all logic, in all reason, in all sovereign power be privy to negotiations having to do with peace and security between the Palestine Liberation Organization and the State of Israel, or between the State of Jordan and the State of Israel, or between any of the Arab neighbors and the State of Israel. However, there is one important point, and I think this is where we need to be very careful that we are not provocative.

There was a letter sent to Secretary of State Christopher sponsored by the two distinguished Senators from New York, Senator MOYNIHAN and Senator D'AMATO, last March. I joined with 92 of my colleagues in signing this letter in which we said, and I quote:

> We believe that the United States embassy belongs in Jerusalem. It would be most 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 is ended which, according to the Declaration of Principles, is scheduled for May 1999.

This letter, I believe, reflected a true consensus on this issue in the Senate and, to a great extent, in the community affected. In a letter to the Jewish Press on April 7, 1995, Senator MOYNIHAN explained why the letter was written, and I quote:

> Senator D'Amato and I chose to write a letter rather than to introduce legislation because we wanted to secure maximum public support for the proposition that united Jerusalem is the capital of Israel and the appropriate home of our embassy.

So when legislation was introduced on this issue in May, however, the consensus cracked and then, as we know, with the earlier bill, 62 Senators signed on.

There was one point in that earlier bill that very deeply concerned me, and that was the provision that the commencement of construction on the Embassy site in West Jerusalem would begin in 1996, and I felt that that could truly be provocative, be disturbing to the peace process at this very difficult time, particularly in view of the fact that Palestinian elections for the first time have not yet taken place and are about to take place. And we now know that the date agreed to is prior to Ramadan or in January of next year. Therefore, to mandate the beginning of construction in 1996 could be, I think, unintentionally, but very realistically, provocative and something that we would not want to do.

The leader, in his wisdom, and I am grateful and thankful for this, and Senator KYL agreed, did remove that section and, hence, that laid the basis for the new legislation which is before us today, entitled Senate bill 1322. So my major concern has really been addressed, and I am very pleased and grateful for that. The concern expressed then that the original bill might precipitate a difficult situation I think has been remedied.

There was also a lack of consensus at that time in statements that were issued by a number of major American Jewish organizations who felt that the objectives of the legislation were good but hoped that everybody would come together and agree on a piece of legislation that would not be provocative to the peace process but could establish the intent with the clarity of law, in this body and the House, for the first time in the history of debate over this issue.

I believe that if we can agree on waiver language that does not limit the constitutional authority of the President, that we will have given the bill the necessary features to meet a variety of needs. For the first time, we will have mandated in law the move of the U.S. Embassy to Jerusalem, an important achievement, and a variety of preparations for that move spelled out in the timing of report language.

We will have also provided the President with the flexibility to postpone the actual move if events in the Middle East peace process or other U.S. National security interests warrant it, and I believe this is a responsible way for the Congress to legislate in this area.

I think that, as we vote on this bill, we should be aware that some of the leading Middle East experts in the administration do worry, still, about its impact on the peace process—not in 1999, but today. I think this Government is so privileged to have one of the most skillful and determined young negotiators I have met, in the person of Dennis Ross. His perspicacity, his energy, his undying commitment to this process has really been helpful in America playing the role of the honest broker, in sitting down with the two sides, and in being responsible for bringing the chairman of the Palestine Liberation Organization, the Prime Minister and Foreign Minister of the State of Israel, the President of Egypt, the King of Jordan, and a host of other dignitaries from the European Union,

together recently at the White House to witness what was an unbelievable signing. I, for one, during many times in the past decades thought we would never see that day. But, Mr. President, we did see that day, and a lot of it is due to the skill and dedication of Dennis Ross. I think that has to be said.

Mr. Ross has warned that passing this legislation could now complicate the already-difficult implementation of the recent agreement on redeployment in the West Bank. He is also concerned that Jerusalem could become a central issue in the upcoming Palestinian election now scheduled for January, which would likely play to the radical faction and put Chairman Arafat in a very difficult position. Martin Indyk, our Ambassador to Israel, at his confirmation hearing in the Foreign Relations Committee, at which I was present, has echoed many of these concerns.

Mr. President, I raise these issues simply because I believe we should be aware of what people in the administration—in an administration that has been extremely supportive of Israel—are thinking about this legislation. This administration has achieved something that has never in the history of the area been achieved, and that is an agreement which may guarantee safe and secure borders and peace between the small, tiny State of Israel and the Arab nations that surround it. And its importance cannot be overlooked in that regard.

So I am looking for a way that we can indicate the rights of the sovereign nation by saying that we should place our Embassy in Jerusalem, that it should be the policy of the Congress that Jerusalem is the capital and that Jerusalem should remain undivided, without presenting a provocation in what I think is the most important process for peace ongoing, certainly, in the history of the Middle East.

I am hopeful that the negotiations now ongoing will be able to provide that form of waiver. I think it is vital—a waiver that does not in any way compromise the President's constitutional authority. So at this time I would like to yield the floor, and I will have more to say when those negotiations are completed.

At this time, I yield the floor.

EXHIBIT 1

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGAL COUNSEL,
Washington, DC, May 16, 1995.

Memorandum for Abner J. Mikva, Counsel to the President.

From: Walter Dellinger, Assistant Attorney General.

Re Bill to relocate United States Embassy from Tel Aviv to Jerusalem.

This is to provide you with our views on S. 770, a bill introduced by Senator Dole and others, ''[t]o provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.'' The provisions of this bill that render the Executive Branch's ability to obligate appropriated funds conditional upon the construction and opening of the United States Embassy to Israel in Jerusalem invade exclusive Presidential authorities in the field of foreign affairs and are unconstitutional.

The bill states that

[i]t is the policy of the United States that—

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

(2) groundbreaking for construction of the United States Embassy in Jerusalem should begin no later than December 31, 1996; and

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

Section 3(a).

The bill requires that not more than 50% of the funds appropriated to the State Department for FY 1997 for ''Acquisition and Maintenance of Building Abroad'' may be obligated until the Secretary of State determines and reports to Congress that construction has begun on the site of the United States Embassy in Jerusalem. Section 3(b). Further, not more than 50% of the funds appropriated to the State Department for FY 1999 for ''Acquisition and Maintenance of Buildings Abroad'' may be obligated until the Secretary determines and reports to Congress that the United States Embassy in Jerusalem has officially opened. Section 3(c).

Of the funds appropriated for FY 1995 for the State Department 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 to Jerusalem. Section 4. Of the funds authorized to be appropriated in FY 1996 and FY 1997 for the State Department for ''Acquisition and Maintenance of Buildings Abroad, ''not less than $25,000,000 (in FY 1996) and $75,000,000 (in FY 1997) ''shall be made available until expended'' for costs associated with, respectively, the relocation of the United States Embassy to Jerusalem, and the construction and relocation of the Embassy. Section 5.

The Secretary is required to report to Congress not later than 30 days after enactment ''detailing the Department of State's plan to implement this Act.'' Section 6. Beginning on January 1, 1996, and every six months thereafter, the Secretary is to report to Congress ''on the progress made toward opening the United States Embassy in Jerusalem.'' Section 7.

It is well settled that the Constitution vests the President with the exclusive authority to conduct the Nation's diplomatic relations with other States. This authority flows, in large part, from the President's position as Chief Executive, U.S. Const. art, II, §1, cl. 1, and as Commander in Chief, *id.* art. II, §2, cl. 1. It also derives from the President's more specific powers to ''make Treaties,'' *id.* art. II, §2, cl. 2; to ''appoint Ambassadors . . . and Consuls,'' *id.*; and to ''receive Ambassadors and other public Ministers,'' *id.*, art. II, §3. The Supreme Court has repeatedly recognized the President's authority with respect to the conduct of diplomatic relations. *See, e.g., Department of Navy* v. *Egan* 484 U.S. 518, 529 (1988) (the Supreme Court has ''recognized 'the generally accepted view that foreign policy was the province and responsibility of the Executive' '') (quoting *Haig* v. *Agee*, 453 U.S. 280, 293–94 (1981)), *Alfred Dunhill of London, Inc.* v. *Republic of Cuba*, 425 U.S. 682, 705–06 n. 18 (1976) (''the conduct of [foreign policy] is committed primarily to the Executive Branch''); *United States* v. *Louisiana*, 363 U.S. 1, 35 (1960) (President is ''the constitutional representative of the United States in its dealings with foreign nations''). *See also Ward* v. *Shannon*, 943 F.2d 157, 160 (1st Cir. 1991) (Breyer, J.) (''the Constitution makes the Executive Branch . . . primarily responsible'' for the exercise of ''the foreign affairs power''), *cert. denied*, 112 S. Ct. 1558 (1992); *Sanchez-Espinoza* v. *Reagan*, 770 F.2d 202, 210 (D.C. Cir. 1985) (Scalia, J.) (''broad leeway'' is ''traditionally accorded the Executive in matters of foreign affairs''). Accordingly, we have affirmed that the Constitution ''authorize[s] the President to determine the form and manner in which the United States will maintain relations with foreign nations.'' *Issues Raised by Section 129 of Pub. L. No. 102–138 and Section 503 of Pub. L. No. 102–140*, 16 Op. O.L.C. 18, 21 (1992) (preliminary print).

Furthermore, the President's recognition power is exclusive. *See Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 410 (1964) (''[p]olitical recognition is exclusively a function of the Executive''); *see also Restatement (Third) of the Foreign Relations Law of the United States* §204 (1987) (''the President has exclusive authority to recognize or not to recognize a foreign state or government, and to maintain or not to maintain diplomatic relations with a foreign government''). It is well established, furthermore, that this power is not limited to the bare act of according diplomatic recognition to a particular government, but encompasses as well the authority to take such actions as are necessary to make the power of recognition an effective tool of United States foreign policy. *United States* v. *Pink*, 315 U.S. 203, 229 (1942) (The 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.'').

The proposed bill would severely impair the President's constitutional authority to determine the form and manner of the Nation's diplomatic relations. The bill seeks to effectuate the policy objectives that ''Jerusalem should be recognized as the capital of the State of Israel'' and that ''the United States Embassy should be officially open in Jerusalem no later than May 31, 1999.'' ''To those ends, it would prohibit the Executive Branch from obligating more than a fixed percentage of the funds appropriated to the State Department for ''Acquisition and Maintenance of Buildings Abroad'' in FY 1997 until the Secretary determines and reports to Congress that construction has begun on the site of the United States Embassy in Jerusalem. It would also prohibit the Executive Branch from obligating more than a fixed percentage of the funds appropriated for the same purpose for FY 1999 until the Secretary determines and reports to Congress that the United States Embassy in Jerusalem has ''officially opened.''

By thus conditioning the Executive Branch's ability to obligate appropriated funds, the bill seeks to compel the President to build and to open a United States Embassy to Israel at a site of extraordinary international concern and sensitivity. We believe that Congress cannot constitutionally constrain the President in such a manner.

In general, because the venue at which diplomatic relations occur is itself often diplomatically significant, 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. More specifically, Congress cannot trammel the President's constitutional authority to conduct the Nation's foreign affairs and to recognize foreign governments by directing the relocation of an embassy. This is particularly true where, as here, the location of the embassy is not only of great significance in establishing the United States' relationship with a single country, but may well also determine our relations with an entire region of the world. Finally, to the extent that S. 770 is intended to affect recognition policy with respect to Jerusalem, it is inconsistent with the exclusivity of the President's recognition power.

Our conclusions are not novel. With respect to the Foreign Relations Authorization Act, FY 1994 & 1995, which included provisions purporting to require the establishment of an office in Lhasa, Tibet, the President stated that he would ''implement them to the extent consistent with [his] constitutional responsibilities.'' Statement by the President at 2 (Apr. 30, 1994). The Reagan Administration objected in 1984 to a bill to compel the relocation of the United States Embassy from Tel Aviv to Jerusalem, on the grounds that the decision was ''so closely connected with the President's exclusive constitutional power in responsibility to recognize, and to conduct ongoing relations with, foreign governments as to, in our view, be beyond the proper scope of legislative action.'' Letter to Dante B. Fascell, Chairman, Committee on Foreign Affairs, United States House of Representatives, from George P. Shultz, Secretary of State, at 2 (Feb. 13, 1984). Again, in 1987, President Reagan stated that he would construe certain provisions of the Foreign Relations Authorization Act, FY 1988 & 1989, including those that forbade ''the closing of any consulates,'' in a manner that would avoid unconstitutional interference with the President's authority with respect to diplomacy. *Pub. Papers of the Presidents: Ronald Reagan* 1542 (1987). Indeed, as long ago as 1876, President Grant declared in a signing statement that he would construe legislation in such a way as to avoid ''implying a right in the legislative branch to direct the closing or discontinuing of any of the diplomatic or consular offices of the Government,'' because if Congress sought to do so, it would ''invade the constitutional rights of the Executive.'' 7 James D. Richardson (ed.) *Messages and Papers of the Presidents* 377–78 (1898).

Finally, it does not matter in this instance that Congress has sought to achieve its objectives through the exercise of its spending power, because the condition it would impose on obligating appropriations is unconstitutional. *See United States* v. *Butler*, 297 U.S. 1, 74 (1936); *Issues Raised by Section 129 of Pub. L. No. 102–138 and Section 503 of Pub. L. No. 102–140*, 16 Op. O.L.C. AT 30–31 (''As we have said on several prior occasions, Congress may not use its power over appropriation of public funds 'to attach conditions to Executive Branch appropriations requiring the President to relinquish his constitutional discretion in foreign affairs.' '') (citation omitted).

For the above reasons, we believe that the bill's provisions conditioning appropriated funds on the building and opening of a United States Embassy in Jerusalem are unconstitutional.

THE SECRETARY OF STATE,
Washington, DC, June 20, 1995.

Hon. ROBERT DOLE,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR MR. LEADER: I am writing to express my opposition to S. 770, which would compel the Administration to move its Embassy to Jerusalem. Given the sensitivity of the subject, it is important that there be no misunderstanding on where we stand.

There is no issue related to the Arab-Israeli negotiations that is more sensitive than Jerusalem. It is precisely for this reason that any effort by Congress to bring it to the forefront is ill-advised and potentially very damaging to the success of the peace process.

I do not say this lightly. Nor do I say it without recognizing the depth of feeling that exists in the Congress about moving the U.S. Embassy to Jerusalem. Both the President and I am very much aware of this sentiment and the reasons for it. The President expressed himself on this issue during the 1992 campaign and he stands by that position. But he also said at that time, and on a number of occasions since then, that he would not take any step that would disrupt the negotiating process and the promotion of Middle East peace. And S. 770 would unmistakably have that consequence.

The President's commitment to promoting peace in the Middle East has been one of his key priorities in foreign policy. It is a commitment all of his predecessors have had since the time of Israel's founding. The President and I know how important the achievement of peace with security is to Israel and to our national interests. We have worked very closely with Israel's leaders to pursue our common interests. The U.S.-Israeli bilateral relationship has never been stronger and the President and I are particularly proud of that fact.

Our support for Israel will remain strong and steadfast, and we will work actively to help Israel achieve peace with her neighbors. Given the extraordinary progress of the last two years, that objective appears, for perhaps the first time in history, to be within reach. Having just returned from the Middle East, I am even more persuaded of the opportunities for progress which can ultimately produce a real peace. We must not take steps that make it more difficult to achieve that historic end.

Yet, there are few other issues that are more likely to undermine negotiations and complicate the chances for peace than premature focus on Jerusalem. The issues on the table are complex enough without pushing to the fore perhaps the most sensitive and emotional issue for Arabs and Israelis, Muslims and Christians alike. The enemies of peace would use the Jerusalem issue to inflame passions further and attack those who want to see the negotiations succeed. Jerusalem is a powerful symbol of the hopes and aspirations of all sides. As such it has the potential to divide, to polarize, and to divert attention from the critical issues now being negotiated.

Palestinians and Israelis both understood this reality when they agreed in the Declaration of Principles that Jerusalem would be covered in the permanent status negotiations. They recognized that deferring this highly sensitive issue as essential if progress were to be made. The negotiations on permanent status are slated to begin as early as May 1996.

Safeguarding the negotiations is more vital than ever. This process is now entering an especially delicate period. Israelis and Palestinians have set a July 1 date for an agreement on the second phase of the Oslo accords, including an agreement on elections for a Palestinian Council. Israeli and Syrian Chiefs of Staff are scheduled to begin discussion on security issues on June 27. Few actions would be more explosive and harmful to these efforts than for the United States—as the key sponsor of this process—to be pushing the Jerusalem issue forward. In fact, we recently vetoed a Resolution in the United Nations Security Council which pushed Jerusalem to the fore precisely for this reason. Israeli Prime Minister Rabin recently suspended land expropriations in Jerusalem, effectively reducing the focus on the Jerusalem issue. The last thing we should want is for the U.S. at this very moment to put the focus back on Jerusalem.

My opposition to this legislation is also strongly rooted on constitutional grounds. The Justice Department's Office of Legal Counsel has issued an opinion to the White House Counsel concluding that the bill would unconstitutionally invade exclusive Presidential authorities in the field of foreign affairs. Because the bill would seek to compel the President to build and open an embassy at a particular site for foreign policy reasons, it is incompatible with the separation of powers under the Constitution. This is the same position taken by this and previous Administrations on comparable legislative efforts to dictate the location of diplomatic and consular facilities. Accordingly, I would be remiss if I did not counsel the President to protect against the unconstitutional infringement on the prerogatives of his office.

In light of this, unless the policy and constitutional concerns noted above are satisfactorily addressed, I will recommend that the President veto S. 770 if it is presented to him. I wish it were otherwise, but for the sake of Middle East peace and the President's constitutional responsibility in foreign policy, I will have no choice but to do so.

Sincerely,

WARREN CHRISTOPHER.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I, too, would like to ask unanimous consent to have printed in the RECORD at the conclusion of my remarks an editorial from the New York Times of May 29, 1995, along with a brief with respect to the constitutional prerogatives of the President and the Congress, relating to matters of this kind.

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

(See exhibit 1.)

Mr. KYL. Mr. President, let me make a couple of very brief comments before I take my place in the chair. I respect the views presented by the Senator from California. I will make additional comments with respect to the issue of the waiver as follows:

One of the problems that we have had with this issue, generally, and one of the reasons why Senator MOYNIHAN brought his letter to the Senate, and why all of us have been pursuing legislation now to actually bring a close to the issue and make it clear that we will move our Embassy to Jerusalem, is that the United States has always found a reason not to do it. At the time, those seemed like valid positions. Obviously, we would not want a waiver to provide a mechanism for continued lip service to the concept without actually moving toward the actual relocation of the Embassy. That is why there has been some question about how waiver language should be inserted into the bill.

Also, there is some oddity, I think, in the matter that locating our Embassy in a country's capital would actually be deemed to be contrary to the national security interest of the United States. It seems to me that one has to stretch it a little bit to find that to be the case. Yet, I know there are those who believe that, even at this point in time, that is exactly the case. I think it is important that if there is to be some kind of waiver, it not be a waiver that the President can exercise because he has a policy dispute with the Congress on when and under what circumstances the Embassy should be moved. Such a waiver should be exercised by the President only because he finds that the national security interests of the United States require that.

And the security of the United States is not necessarily the same as peace in the Middle East, which is not necessarily the same as a controversy between Arabs and Israelis over the status of peace discussions. So simply because it makes some Arabs anxious or angry, or gives them a political issue, is not, I think, a reason why such a waiver would ever be exercised.

I also think it is important that the whole world understand one point very clearly—and I think, on this, we are united—that when we talk about the final status of Jerusalem, which is subject to negotiation between the parties there, no one should suffer under any illusion that the United States feels itself bound not to locate our Embassy in West Jerusalem pending the outcome of those negotiations. The State of Israel's rights with respect to west Jerusalem, and our obligations and entitlements to put our Embassy in west Jerusalem, are in no way dependent on those final negotiations which do not go to the political status of west Jerusalem insofar as the Israelis are concerned.

To the point of the constitutional concerns alluded to by the Senator from California, there are differing opinions on this. I am a very strong advocate of the power of the President in this regard. I do not come lightly to the point of view that Congress has a prerogative in this case to require the relocation of the Embassy. I think it is good that the RECORD contain both the arguments in support of the Presidential and congressional power in that regard. I am delighted to see them both included in the RECORD at the conclusion of this debate.

I think it is important that the understanding be with all parties that whatever kind of waiver language may or may not be included in this bill, it is a temporary waiver only. We are not talking about the ability of the President to simply continue year after year after year, saying, gee, I am really with you on this, but I think I find a reason why we do not want to do it right now. That is the intent of any waiver. I know that is not what the Senator from California was saying.

Should there by any waiver language included, I want it to be crystal clear on the record that nobody is talking about a waiver which, however open-ended it may or may not be, would allow a President, every 6 months, to simply say that because he has a different point of view than Congress on this, he is going to refuse to implement what the Congress has directed him to do, finding that there is somehow a national security interest of the United States involved.

Mr. President, I conclude by making this point. I think the importance of this issue is illustrated by the fact that we have had difficulty in arriving at the exact language because everybody is concerned about what the impact of it will be. Those are very legitimate concerns. I am going to conclude by addressing myself to those concerns. This is not a tangential issue. It is symbolic in one respect, but sometimes symbolism is extraordinarily important. In this case it is, regardless of how you come down on this issue. If you are an Arab, for example, one can argue that this would make you very anxious and concerned. Therefore, the symbolism of it is very important. There are those, in fact, who believe that it would be so distressing to certain Arabs if the United States exercises its legitimate right to put our Embassy where we want to, particularly since it is the capital of the host country, and that should not be considered to be a policy matter with respect to our position in these negotiations. But the fact of the matter is that some people will see it as that. Nobody should be allowed to use—in a political campaign or in the conduct of terrorism, or in negotiations—the fact that a country like the United States exercises its right to put its Embassy in the capital of the host country. That is not a legitimate concern.

So while I understand the politics of it, that is different from the legitimacy of the issue.

The final point is this: Some people have said, well, even though it is an irrational and illegitimate argument, people will make it. As a result, it could bring a halt to the peace negotiations even. People might stop talking peace. There may be more demonstrations over this, even though it is not a legitimate position to be taken.

I will respond to that in this fashion because it goes to the heart of the debate. No one knows for sure. That is a very legitimate concern among those of us who are very, very supportive of the peace process and want it to succeed. Certainly, the people in the region feel that much more even than any of us in this body can.

I think it is also important to reflect upon the history of U.S. foreign policy and to note that every time the United States has been firm, fair, resolute, principled, consistent in its investigation of friendships and positions in the world, the world has been better off for that firm, principled expression.

It did not always suit nervous nellies during the cold war, that Presidents like President Reagan made firm statements about our commitments, calling the Soviet Union what at that time it was and many Russians since have confirmed. Sure, in many respects it was an evil empire. It made people very nervous when President Reagan said it. Many people say had the United States not taken firm positions, had President Reagan not spoken so clearly, that evil empire would still exist today.

Had we not made it crystal clear to the Chinese that they could not invade Quemoy and Matsu Islands back in the 1960's, they might have done so. Had we made it clearer to Hitler that he would not get away with an attack on Poland, perhaps he would not have done so.

Mr. President, our history is replete with examples of situations in which history has shown that the world frequently was thrown into conflict in which great human suffering and loss resulted because leaders at the time were not firm enough and clear enough in the expression of the principles that stood behind their country's positions.

In this case, I think a firm, clear statement of something as simple as the United States exercising its right to put its Embassy in the capital of a country as we have with every other country in the world except Jerusalem, I think to the extent that the United States makes that statement very clearly, we advance the ultimate cause of fundamental peace, a peace that is lasting. To that extent, I think it is important that we do that prior to the time that those negotiations are to be concluded.

I think that deals generally with the waiver issue however that issue is ultimately resolved.

I see that Senator LEVIN is here, who I know has a very strong interest in the matter, as well as Senator HELMS, the chairman of the Senate Foreign Affairs Committee.

I relinquish the majority position to Senator HELMS and Senator LEVIN, if he would like to speak, although I want to make a point, if I may, that the unanimous consent to lift the preceding quorum call by the Senator from California was premised upon the point that it was limited to the discussion of this issue and that it could not be used to relate to an amendment offered by the Senator from North Dakota, Senator DORGAN.

Subject to that agreement, I am happy to yield the floor.

EXHIBIT 1

[From the New York Times, May 29, 1995]

TO PROMOTE PEACE, MOVE THE EMBASSY

(By Douglas J. Feith)

WASHINGTON.—There is something more than Presidential politics behind the bills in Congress to relocate the United States Embassy in Israel from Tel Aviv to Jerusalem. It is sensible policy.

If American support for Israel's sovereignty in Jerusalem remains an open question, will this help promote peace? No. Alternatively, are Israel's Arab interlocutors likelier to make the philosophical adjustments and political concessions necessary for peace if they know that America's support for Israel on Jerusalem is a closed question?

This view—endorsed by the key Republican sponsors of the bills, Senators Bob Dole and Jon Kyl and the Speaker of the House Newt Gingrich—has logic, though not the Clinton Administration, on its side.

Since the beginning of the 20th century, the Arab-Jewish conflict over Palestine has been a fight over legitimacy. The Zionists have asserted that the Jews have the right to a state in at least part of Palestine. Arab anti-Zionists have argued that all of Palestine on both sides of the Jordan River is Arab land and that the Jews have no right to a state there.

In the conflict, periods of violence have alternated with periods of quiet, though hostility has persisted throughout. Quiet is a type of peace, but in recent years diplomacy

has aimed at a higher type—peace that is formal and de jure.

But Israel's experiences with Egypt and the Palestine Liberation Organization demonstrate that formal accords do not necessarily reflect or produce the highest form of peace—that is, peace based on an absence of hostility.

True peace is possible only if Israel's Arab neighbors change their hearts and minds on the fundamental issue of Israel's legitimacy. What might facilitate that change? When Israel appeared vulnerable, it did not achieve peace, or even peace talks.

Only after being forced to acknowledge the strength of Israel's position—its military power, its enduring ties to the United States, and, since the end of the cold war, our unchallenged global predominance—did some Arab powers abandon rejectionist positions and start negotiating.

If Israel's antagonists bow to unpleasant realities and lower unrealistic expectations, the peace process may produce not merely signing ceremonies but real peace.

Inasmuch as the essence of the Arab-Israeli conflict is legitimacy, the essence of the legitimacy issue is Israel's right to sovereignty in Jerusalem. If Israelis do not have the right to sovereignty there, they can hardly justify sovereignty anywhere.

Jerusalem has been central to Jewish nationhood for 3,000 years. The Jews' national movement, after all, is Zionism, Zion being Jerusalem. The Arabs understand this, too, which is why the importance of Jerusalem in Arab politics, diplomacy, philosophy and literature increased as the struggle against Zionism intensified.

By relocating our embassy to Jerusalem, we would end our anomalous policy of refusing to recognize Israel's sovereignty in its own capital. We would proclaim that Israel's legitimacy in Zion is not an open question for us. This would signal that we expect all parties to the conflict—not just Israel—to pursue peace on the basis of realism.

In the ongoing Arab-Israeli negotiations, moving the embassy would not prejudice any issue that is actually open. This is why even dovish voices, like that of Deputy Foreign Minister Yossi Beilin, have categorically endorsed the bill. The Government of Prime Minister Yitzhak Rabin says it will in time negotiate Jerusalem issues, but not Israeli sovereignty. In this it deserves our support.

Across the political spectrum in Israel and among Jews worldwide, there is a profound commitment to retaining Jerusalem forever as the undivided capital. The cause of peace will be served by whatever helps persuade Yasir Arafat that he will not get American support or Israeli consent to divide Jerusalem and establish part of it as the capital of a new Arab state.

The necessary adjustment in expectations on the Arab side would be difficult and even painful. Passionate cries—and worse—would ensue, but in the end the process would be constructive.

Like all American pro-Israel initiatives, the bill to move the embassy is being deprecated in certain quarters as a cynical play for political points with American Jews. Such criticism is itself deeply cynical.

Every Congressional initiative pleases some constituencies and displeases others. Each is supported by some politicians for substantive by some politicians for substantive reasons, some for political reasons and many for both types of reasons.

But support for Israel as a fellow democracy and strategic ally has been sustained by a long line of Democratic and Republican administrations and Congresses. It reflects the nation's strong sympathy for Israel as evinced in public opinion polls decade after decade since 1948.

The automatic assumption that a pro-Israel initiative is nothing more than pandering is unfair and at odds with America's national interest as most Americans see it.

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.''[1]

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,[2] 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.[3] The issue has never been resolved judicially.[4] 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)

[1] Footnotes at end of letter.

(''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. . . .'').

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 withold 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 virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system,''[5] 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.[6]

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 Nationale was ''inapplicable to the issue presented by this case.'' *MWAA*, 1111 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.[7] 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

[1] 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.

[2] 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.''); *Unites 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.'').

[3] 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. . . .'').

[4] 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.

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

[6] 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 ''relatively 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).

[7] 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.

Mr. LEVIN. Mr. President, I rise in support of the bill which I have cosponsored which will relocate the American Embassy to Israel's capital of Jerusalem by a date certain.

For nearly 50 years now, Jerusalem has served as the capital of the State of Israel. Israel is the only place in the world that I know of where the United States has established its Embassy in a city other than that identified by the host nation as its capital. Jerusalem is the seat of Israel's Government and there should be little question of where our Embassy should be.

Now, some have suggested that establishing the American Embassy in Jerusalem during the ongoing peace negotiations might adversely affect the peace process. For reasons just stated by Senator KYL, I think it actually could have the opposite effect, that our clear determination to place our Embassy in Jerusalem by a date certain will avoid any misunderstanding, and it is that misunderstanding or lack of clarity which could harm the peace process, because surely no one seriously suggests that Israel would ever agree to change the status of Jerusalem as Israel's capital.

I do not think anyone has made that suggestion. I do not think anyone in the world would make that suggestion.

It is now Israel's capital. It is clearly going to remain Israel's capital. We, as Israel's ally, should make it very clear that we recognize that fact and that we act to assure the movement of our Embassy to the capital of the State of Israel by a fixed date.

Mr. President, there will be and has been some discussion about a possible Presidential waiver. We had such a waiver with the Jackson-Vanik legislation, for instance—very important legislation which focused some very significant pressure on the then Soviet Union.

That legislation had an impact. It worked well to focus pressure on the Soviet Union. It made a very important statement about our feelings about human rights in the Soviet Union and its relationship to trade. But it also had a waiver.

The question is, what kind of a waiver would be appropriate for the President in this instance? It is clear to me that the waiver should be narrowly drawn so as not to undermine or detract from the point of this legislation.

This is historic legislation. This is action which is long overdue. It is cosponsored by 67 Senators, which will, hopefully, assure its overwhelming passage today. I cosponsor it in the hope that it will receive the overwhelming bipartisan support of the Senate that it deserves.

I yield the floor.

Mr. HELMS. Mr. President, I am among those who have long supported the concept embodied in the Jerusalem Embassy Relocation Implementation Act of 1995. Since Senator DOLE introduced this legislation, there has been great gnashing of teeth and wringing of hands that have trivialized a fundamental and significant fact: Jerusalem is the capital of Israel, and the capital is where the United States Embassy should always be regardless of the country involved.

The Government of Israel has asserted that Jerusalem is and will remain the capital of Israel. The dire warnings being heard that the peace process will be endangered are, in fact, threats. The peace process will be dismantled only if and when Yasser Arafat wants to dismantle it.

I commend Senator DOLE for his efforts, for his conviction, and for accomplishing what I feel should have been done years ago. I am pleased to be a cosponsor, and I will be pleased to visit the United States Embassy in Jerusalem, capital of the State of Israel.

Mr. WARNER. Mr. President, I am honored to rise today as an original cosponsor of S. 1322, the Jerusalem Embassy Relocation Implementation Act of 1995. I would like to commend Majority Leader DOLE and Senators D'AMATO and MOYNIHAN for the leadership they have shown on this important issue.

I think it is only fitting—and long overdue—that the Senate act on this resolution this week, prior to Wednesday's ceremony in the Capitol rotunda celebrating the 3,000th anniversary of the Jewish presence in Jerusalem.

The resolution before us today would put the Senate clearly on record as supporting a unified Jerusalem as the permanent capital of the State of Israel. Some have argued that Senate passage of this resolution would somehow harm the peace process—in particular, the upcoming negotiations on the final status of Jerusalem. I would point out to my colleagues that this resolution has been carefully drafted so that it is compatible with the timetable established by the peace process. Under the terms of this resolution, the

Senate would state that it is the policy of the United States that ''the United States Embassy in Israel should be relocated to Jerusalem no later than May 31, 1999.'' That is the date established in the Oslo Agreement of 1993 for the completion of final status negotiations for Jerusalem. I think it is appropriate that we send a clear signal of congressional support for our Israeli allies as they enter these difficult negotiations.

Mr. President, Jerusalem has been the declared capital of the State of Israel since January 23, 1950. And yet, over 45 years later, the United States has not recognized Jerusalem as the capital of our friend and ally, the State of Israel. Israel is the only nation in the world where the United States Embassy is not located in the host nation's capital.

Like many of my colleagues, I have had the privilege of visiting Jerusalem on many occasions. I have seen the many holy sites which make Jerusalem the cradle of three of the world's largest religons—Judaism, Christianity, and Islam—and an inspiration to us all.

I have also seen the bombed out buildings in West Jerusalem that stand just outside the wall of the Old City—buildings which were shelled during the time of the Jordanian occupation of East Jerusalem. Those buildings serve as a constant reminder of the sacrifices endured by the Jewish people from 1947 to 1967 when Jews were denied access to the holy sites in East Jerusalem; and a reminder that the world must never allow the citizens of Israel—and indeed Jews around the world—to be subjected to such suffering again.

Mr. President, Israel is our strong friend and ally in the Middle East. As the only democracy in the region, this brave nation stands as a symbol of hope for millions. The people of Israel claim Jerusalem as their capital. This is their right. Their choice should be honored. America should recognize that Jerusalem is, and will remain, the undivided and permanent capital of the State of Israel.

I thank the Chair.

Ms. SNOWE. Mr. President, I support this legislation, and would like to congratulate the distinguished majority Leader for his consistent leadership on this very important issue. This bill states the simple fact that Jerusalem is Israel's national capital. It puts in place a series of careful, measured steps to eventually locate our Embassy in Israel's capital city, but in any case no later than May 31, 1999.

I am a cosponsor of both S. 770, the original Jerusalem Embassy Relocation Implementation Act, as well as the slightly modified bill that we are considering today, S. 1322. S. 770 was introduced on May 9 by the gentleman from Kansas, Senator DOLE, and I am proud to have joined with 62 of my colleagues as a cosponsor of both S. 770 and S. 1322.

I was also pleased to join 92 of my colleagues in our March 20 letter to Secretary of State Christopher calling for the relocation of our Embassy to Jerusalem no later than May 1999, the time when both the Israelis and Palestinians have agreed that the final status of Jerusalem would be settled.

Some may argue that now is not the time for us to establish a firm policy on the eventual location of the U.S. Embassy in Jerusalem. The irony, of course, is that it appears that for 47 straight years the State Department has never yet found precisely the right moment to take this commonsense action. All we are saying in this legislation is that we are giving State 4 years in which they certainly can find an appropriate time.

As a cosponsor of the original House Lantos bill to take this action over a decade ago, I have consistently supported this position throughout my congressional career.

Only in the sometimes fantastic politics of the Middle East could this issue even be considered remarkable. It is a simple fact that Jerusalem—or at least some part of Jerusalem—has been Israel's capital city ever since Israel's 1948 war for independence. Observing this fact is no different than observing that the sun rises in the east. And trying to deny the act does not make it any less true.

This takes us to a potentially troubling aspect of the State Department's consistent refusal to recognize Jerusalem as Israel's capital. This policy originated from the days of the U.N. partition plan ending Britain's colonial mandate over the region. That plan envisioned the establishment of Jerusalem as an international city not under the sovereignty of any nation.

The U.N. partition plan of 1947, however, was never implemented due to its total rejection by the Arab countries because it would have split the British protectorate into a Jewish and Arab state. Thus, the State Department continues to cling to a formal position refusing to acknowledge Israel's sovereignty over any part of Jerusalem.

The only, and I repeat only possible justification for such a position would be if the State Department believed that Israeli sovereignty over even west Jerusalem was illegitimate, and that Israel must cede the entire city to an Arab state or to international control.

If our country does not take this position, we have no more right maintaining our Embassy in Tel Aviv than we do insisting on maintaining our Embassy in Alexandria, Egypt, which was that country's capital until the military overthrow of its monarchy by Col. Gamel Abdel Nassar in 1952.

Mr. President, I believe it is long past time for our country to begin treating our closest ally in the Middle East—Israel—in the same way that we treat every Arab country, and indeed, every other country in the world with whom we maintain diplomatic relations. It is time for us to locate our Embassy in Israel's capital city, and stop making excuses why any particular moment never seems to be exactly the right moment. Sometime in the next 4 years that moment will arrive, and that is all this bill is saying.

I urge overwhelming bipartisan support for this important bill, and I again congratulate the Senator from Kansas for his leadership on this issue.

Mr. FRIST. Mr. President, I rise today in support of S. 1322, a bill to relocate the United States Embassy in Israel to Jerusalem from Tel Aviv. I am honored to be a cosponsor of this legislation and to have joined the overwhelming majority of my colleagues in writing a letter to Secretary Christopher this past March regarding this issue.

Mr. President, for nearly 50 years, the United States and Israel have shared a unique and historic relationship. Israel has been our strongest, most loyal ally in the Middle East, and the location of our Embassy in Tel-Aviv is inconsistent with this relationship.

Israel is the only country in the world where the United States Embassy is not located in the capital city, and I believe this policy must change. It is important to note that Israel's Parliament, supreme court, central bank, and all other state institutions and headquarters are located in Jerusalem, including the Foreign Ministry. Beyond just the important symbolism, the location of our embassy in Jerusalem, rather than in Tel Aviv, an hour away from the seat of government, makes practical sense.

Mr. President, I believe that since this year marks the 3,000th anniversary of King David establishing Jerusalem as the capital city of the Jewish nation, there is no better time for the United States to recognize this historic seat of government. The site for the Embassy is not located in disputed territory, the status of Jerusalem as Israel's capital is not disputed, and we ought to support this valuable friend and ally.

Thank you, Mr. President. I yield the floor.

Mr. GRAMM. Mr. President, the Arab-Israel peace process must be judged by one question, and one question only: Will Israel be stronger and more secure at the end of the process than it was at the beginning? To achieve that end, I support this legislation to move the U.S. Embassy to Jerusalem.

Our Embassy should be located in Jerusalem. Jerusalem is Israel's chosen seat of government, where its Parliament, prime ministry, Supreme Court, and most government ministries are located. The United States has diplomatic relations with 184 countries, and in every country—except Israel—our embassy is located in the capital designated by the host nation.

The Clinton administration argues that moving the Embassy will destroy the peace process. I believe that the peace process can continue only if Israelis believe that their nation's vital

interests will not be compromised. Moving our Embassy to Jerusalem will strengthen that conviction, and it will be a clear demonstration of the fact that no wedge will be driven between Israel and the United States over the status of Jerusalem.

This week, we will begin a celebration of Jerusalem and its 3,000 years of playing a critical, central role in world history. As we begin this celebration, I am pleased to support this bill in the conviction that moving the American Embassy would send an unmistakable signal that the unity of Jerusalem is irreversible, and it will remain, now and forever, the capital of Israel.

Mr. D'AMATO. Mr. President, I rise in support of S. 1322, as an original cosponsor, an author, along with my colleague Senator MOYNIHAN of a letter to the Secretary of State along with 91 of our colleagues proposing this very idea, and finally as a true believer in the principle of this legislation. I want to make it very clear: Jerusalem is and shall remain the undivided capital of the State of Israel. Jerusalem belongs to Israel and our Embassy belongs in Jerusalem.

Relocation of our Embassy from Tel Aviv to Jerusalem should begin as soon as possible. Under this bill, it will.

It is outrageous that we have diplomatic relations with 184 countries throughout the world and in every one, except Israel, our Embassy is in the functioning capital.

Israel has endured much throughout her history and for her to have to suffer the indignity of her main ally refusing to place its embassy in her capital is an insult.

We would never allow another country to tell us where to locate our capital. Why are we dictating this to Israel?

In a time when the Palestinians are placing more and more demands on Israel and when the United States is providing $500 million to the PLO, only to find Yasir Arafat unable to deliver on his end of the peace agreement, we must make it clear that some things are not negotiable. Jerusalem for one is not a topic for negotiation. Jerusalem belongs to Israel.

If we delay moving our Embassy any longer, we will be raising unrealistic hopes about the future of this holy city.

It was for this reason that I along with Senator MOYNIHAN and 91 other Senators sent a letter to Secretary of State Warren Christopher urging him to begin planning now for the relocation of the Embassy to Jerusalem by no later than May 1999. At this time, I ask unanimous consent that the text of this letter be printed in the RECORD.

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

UNITED STATES SENATE,
Washington, DC, March 20, 1995.

Hon., Warren Christopher,
Department of State, Washington, DC.

DEAR MR. SECRETARY: We believe that Jerusalem is and shall remain the undivided capital of the State of Israel. It is now over eleven years since 50 United States Senators and 227 members of the House of Representatives joined in endorsing the transfer of the United States embassy In Israel from Tel Aviv to Jerusalem.

In the subsequent decade both Houses of Congress have passed, by near-unanimous margins, a total of four resolutions calling on the United States government to acknowledge United Jerusalem as the capital of the State of Israel. A fifth resolution adopted last year called on the administration to veto language in United Nations Security Council Resolutions that states or implies that Jerusalem is occupied territory.

This administration has been open, direct and specific with regard to its position concerning an undivided Jerusalem. In this light, we are particularly pleased to note that the most recent edition of ''Key Officers of Foreign Service Posts: Guide for Business Representatives,'' published by the Department of State lists Jerusalem under Israel for the first time in 46 years, albeit with a disclaimer. This is not enough.

There can be little doubt that Jerusalem is a sensitive issue in the current peace process. While the Declaration of Principles stipulates that Jerusalem is a ''final status'' issue to be negotiated between the parties, we share Prime Minister Rabin's view which he expressed to the Knesset that:

''On Jerusalem, we said: 'This Government, like all of its predecessors, believes that is no disagreement in this House concerning Jerusalem as the eternal capital of Israel. 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.''

United States policy should be equally clear and unequivocal. The search for peace 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.

The United States enjoys diplomatic relations with 184 countries. Of these, Israel is the only nation in which our embassy is not located in the functioning capital. This is an inappropriate message to friends in Israel and, more importantly, a dangerous message to Israel's enemies.

We believe that the United States Embassy belongs in Jerusalem. It would be most 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. We would appreciate hearing from you as to what steps are being taken to make such a relocation possible.

Sincerely,

Daniel Patrick Moynihan, Alfonse M. D'Amato, Paul S. Sarbanes, Bob Packwood, Russell D. Feingold, Jess Helms, Barbara Boxer, Connie Mack, Frank R. Lautenberg, Don Nickles.

Joseph I. Lieberman, Mitch McConnell, Bob Graham, Christopher S. Bond, John D. Rockefeller IV, Olympia J. Snowe, Richard H. Bryan, James M. Inhofe.

Charles S. Robb, Dirk Kempthorne, Howell Heflin, Jon Kyl, Carl Levin, Phil Gramm, Carol Moseley-Braun, Larry E. Craig.

Patty Murray, Robert Dole, Paul Wellstone, Slade Gorton, Dianne Feinstein, Hank Brown, Joseph R. Biden, Jr., Mike DeWine.

Tom Harkin, Charles E. Grassley, Daniel K. Inouye, Thad Cochran, John Glenn, Arlen Specter, Wendell H. Ford, Richard C. Shelby.

Claiborne Pell, Trent Lott, Paul Simon, Dan Coats, Ben Nighthorse Campbell, Conrad Burns, Max Baucus, William S. Cohen.

Daniel K. Akaka, Kay Bailey Hutchison, Christopher J. Dodd, John Ashcroft, John F. Kerry, Robert F. Bennett, Thomas A. Daschle, Larry Pressler.

Barbara A. Mikulski, Bill Frist, Herb Kohl, Paul Coverdell, Bill Bradley, Rod Grams, Harry Reid, Lauch Faircloth.

J. Bennett Johnston, John McCain, J. James Exon, Bob Smith, Robert J. Kerrey, Richard G. Lugar, John B. Breaux, Rick Santorum.

Edward M. Kennedy, Orrin G. Hatch, Kent Conrad, Strom Thurmond, Ernest F. Hollings, Craig Thomas, Byron L. Dorgan, John W. Warner, Jeff Bingaman, Alan K. Simpson.

Sam Nunn, Nancy Landon Kassebaum, Patrick J. Leahy, Pete V. Domenici, William V. Roth, Jr., Judd Gregg, Frank H. Murkowski, Fred Thompson, Ted Stevens.

Mr. D'AMATO. The bill calls for completion of the Embassy in May 1999, to ensure that such a move occurs no later than when the agreements on permanent status take effect and the transition period has ended, according to the Declaration of Principles signed by Israel and the Palestinians in September 1993.

Jerusalem is and will remain the permanent and undivided capital of Israel. I am not going to let the State Department bureaucrats forget that.

The Clinton administration must recognize this and begin the process of moving the U.S. Embassy to Jerusalem. It is shameful that the United States continues to bend to pressure to keep its Embassy outside of Jerusalem.

While I understand that the present Middle East peace negotiations are both complicated and delicate, I do not want this administration to be under the impression that Jerusalem will belong to anyone other than Israel.

Further delay in moving the U.S. Embassy to Jerusalem will only embolden the Palestinians who believe that they have a justified claim to the city.

While some worry that such a move will damage the peace process, delay can only hurt it. If the future of Jerusalem remains unclear in the minds of the Palestinians then they will increase their demands and this will further complicate the already tense negotiations.

Let the message be clear: A united Jerusalem is off limits to negotiation. Jerusalem belongs to Israel and our Embassy belongs in Jerusalem.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LIEBERMAN. Mr. President, I rise to speak on behalf of the legislation before us, which would compel the movement of the United States Embassy in Israel to Jerusalem.

Jerusalem, city of peace, the holy city, was entered almost 3,000 years ago by King David. Mr. President, 47 years ago, in 1948, the modern State of Israel was established. The Prime Minister at that time, David Ben-Gurion, declared Israel a state and declared also that its capital would be Jerusalem, although at that time, after the war for independence, Jerusalem was a divided city: the western part Israeli; the old city and the eastern part, Jordanian.

In the normal course of diplomatic relations, every nation in the world would have established their embassy in the city, Jerusalem, designated as the capital by the new state of Israel, the state having been recognized by the United States, having been accepted as a member of the United Nations. But, for reasons that need not be spelled out in detail here, because of controversy that surrounded the State of Israel and its creation, the modern state, the United States did not move its Embassy to the capital of the State of Israel.

When you think about it, it is nothing short of outrageous. We have gone through 47 years of the history of this country, 47 years of extraordinary friendship between the United States and Israel based on common values, common history, our common commitment to what is appropriately described as the Judeo-Christian tradition, our common commitment to democratic values. Through most of that time, the 47 years, Israel was the only country in the Middle East that was a democracy. It was 47 years in which our strategic relationships have grown ever closer, with joint military exercises and joint work on research and development, even, in this time, as we in the Senate have recently considered the priority threat that ballistic missiles represent to our country, the United States and Israel have been working jointly on a ballistic missile defense.

I remember once years ago hearing the then Prime Minister of Israel, Golda Meir, say, and I believe it is true today, that there is one country in the Middle East where the United States will always know—not just today, not just 10 years from now or 50 years from now or 100 years from now—as long as Israel exists, because the ties between these countries are so deep and so strong—there is one country in the Middle East where the United States will always know that in a time of need, in a time of conflict, in a time of danger, the United States can always land its planes, can always keep its equipment, can always bring its ships into Israeli docks. As she said, hopefully there will be a time—and, of course, we echo that here in this Chamber, and there is such a time now—where there are other countries in the Middle East where that is so, where U.S. troops, U.S. personnel, are welcome. But it will always be so in Israel.

Yet, in spite of all these points of common value, common interest, common strategic purpose, shared strategic developments, nonetheless the United States continued to be frozen into this inconsistent, illogical and in some senses insulting position of not moving its Embassy to the city of Jerusalem, which Israel has designated as its capital. There have been succeeding generations of American politicians—of both parties—who somehow manage to be committed to the movement of the embassy to Jerusalem during campaigns, but then when it comes time that they hold office, it does not happen.

I think we are about to change all that, and I think we are about to change it in a truly bipartisan way. It is, though a long overdue moment, nonetheless a critically important moment when we are in reach of a strong, bipartisan majority in this Chamber and in the other body in support of this legislation.

Would that the legislation were not necessary. But, it is. In some senses it may be unfortunate that it is, but in other senses it is fortunate that we bring this legislation to the Senate because the effect will be to show the world, to show the people of Israel, to show all concerned parties in the Middle East, that the representatives here in the Senate and in the House, both parties, from every section of the country, agree that this is a matter of principle, a matter of common sense, a matter in which the United States, a strong nation—the strongest nation in the world—acts like a strong nation and does what is consistent with its principles.

Mr. President, I congratulate those who have brought this legislation forward: the distinguished majority leader, Senator DOLE, Senator INOUYE, Senator KYL, Senator MOYNIHAN, and the countless others who have fought this battle for so many years now, standing together shoulder to shoulder behind this piece of legislation. I am privileged to join them as a cosponsor.

Mr. President, the details of the legislation have been spelled out. But the heart of it is that by this legislation, Congress will have stated a clear message. The Embassy of the United States in Israel will be relocated to Jerusalem, recognizing Israel's choice of that city as its capital.

That relocation will occur no later than May 31, 1999. Why that day? Obviously, if you believe that the Embassy ought to be moved to Jerusalem, it should be moved as soon as possible, but that date was inserted by the sponsors—and I think wisely so—as an expression of deference, or respect, if you will, for the peace process embodied in the Declaration of Principles signed by the parties, Israel, the Palestinian Liberation Organization, the United States, and Russia on September 13, 1993, here in Washington. May 1999 is the termination of the process begun by this Declaration of Principles, the so-called Middle East peace process. But let us set that definite date. Let us leave no uncertainty about it, that by that date the Embassy of the United States will be located in Jerusalem.

Mr. President, there are those who are concerned about what impact this movement now will have on the peace process. Of course, every time in the past—I heard Senator INOUYE speak in a meeting about this—any time he has begun to move forward moving the Embassy to Jerusalem, there is always something going on in the Middle East that makes it less than the perfect time.

So there are those who will say they are worried about what effect this movement will have on the peace process. But I say that this is the perfect time, though long overdue, to move the Embassy to Jerusalem because of the peace process, because we have a growing level of trust, because we have a growing level of mutual interest, and of common purpose among the parties in the Middle East. The United States has played a leadership role in bringing those changes about. But at the heart of those changes, at the heart of the peace process, must be an honest relationship between the parties involved.

I do not think the United States should be at all unclear about this. We are committed to doing in Israel what we do in every other country that we know about in the world—putting the Embassy in its capital. Let this not be an act of delusion of the Palestinians or any of the other parties to this process. Let us be honest about it and, in a sense, let us get the question of where the American Embassy is in Israel off the table in the peace process. Let us get it over with. There is a lot to negotiate.

Some have suggested that somehow moving the Embassy was contrary to the Declaration of Principles. Mr. President, I read from article V of the Declaration of Principles signed here in Washington on September 13, 1993. It says in section 3 of article V that it is understood that these negotiations—which is to say, the permanent statis negotiations that begin next year—shall cover the remaining issues, including Jerusalem; presumably final status of Jerusalem, and certainly not the question of where the United States locates its Embassy in this country. We are a great nation. How could we, as a great nation, yield that sovereign determination of ourselves to a process in which third parties are negotiating?

So I think we ought to be honest with the Palestinians here and indicate that this Embassy of ours will move to Jerusalem. That kind of honesty will lead to trust as we go forward in the peace process.

Second, Mr. President, I need not go on at length but would simply say I

have supported the peace process. I think the status quo before the peace process was going nowhere good, nowhere good for Israel, nowhere good for the Arab world, nowhere good for the Palestinians, and nowhere good for the Israeli security. There were no viable options to the attempt to make peace between the parties in conflict, understanding that peace would not come overnight. It would be built step by step and with each step outlined in the Declaration of Principles, hopefully enough trust would have been built to go on to the next step.

There are enemies of peace all around, and the worst enemies of peace are committing acts of terrorism still. Those acts of terrorism, directed particularly against citizens of Israel, have an effect on the body politic in Israel and shake confidence in the peace process, shake support for the peace process.

So I want to say, Mr. President, is that as the Israel people wonder and ask themselves whether the peace process really will provide more security; as they express diminishing support for the peace process in polls that are taken; and as the Rabin government finds that in taking Oslo 2 or Oslo B, the most recent agreement between Israel and the Palestinian authority, to the Israeli parliament—in the Knesset, the vote on ratification was 61 to 59; it is that close—the people of Israel look to the United States, the foremost, most steadfast supporter of the state, and ask where security will come from. Are there limits to what Israel will be asked to do?

I think this is the perfect moment for the Congress of the United States to say there are some limits here. There are some matters that are off the table. We understand the critical importance of the city of Jerusalem to the people of Israel. And as a sign of that, this is the appropriate moment—long overdue, as I have said, but nonetheless a constructive moment—to say by this act we are ready to move our Embassy to Jerusalem.

So I hope, though I know there are questions raised, we will find a way, and perhaps before too long here today, to build a strong, overwhelming bipartisan vote for this measure.

I know there are concerns about constitutional questions. I know there is a discussion of a possible waiver going on; that is to say, to give the President the authority under some circumstances to waive the ultimate penalties associated with not moving the Embassy by May 31, 1999. I understand those questions, and I am involved in the discussions of those questions.

But it seems to me, as my friend and colleague from Michigan, Senator LEVIN, said, it is critically important that any waiver be narrowly drawn in that it not be a waiver that will go on forever, but that if the President determines—first, the President must be required to find a genuine threat to America's national security to stop the forward movement of the Embassy to Jerusalem, a threat to our national security. Second, that the waiver ought to be limited in time to perhaps 6-month periods so that the President will have to make that decision each time those 6 months are over.

Mr. President, I am confident at this moment that we share—all of us in this Chamber—a goal; that is, to do what is right, to move the Embassy to Jerusalem. The question now really is over legislative wording, the appropriate relationship between the branches. I am optimistic that we can do that because I think we all share in this goal, and we are all committed to strengthening both our relationship with our cherished ally, Israel, but also in bringing peace both to the Israelis and the Palestinians, and to the Arab nations throughout the Middle East.

So I urge my colleagues to do what I know they want to do, which is to vote for this proposal.

I thank the Chair, and I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I also rise to speak in favor of S. 1322, which is the Israel Embassy Relocation Act. I have long supported moving the United States Embassy in Israel to Jerusalem, and I firmly believe that Jerusalem should remain as the undivided capital of Israel.

Earlier this year, I joined 92 of my Senate colleagues in sending a letter to Secretary of State Warren Christopher endorsing the transfer of the United States Embassy from Tel Aviv to Jerusalem, and as an original cosponsor of S. 1322, I commend the majority leader and Senator KYL of Arizona for their constant and persistent leadership on this issue.

Of the 184 United States Embassies around the world, our Embassy in Israel is the only one that is not located in the chosen capital of the host country. Israel has been mentioned many times on the floor today as a key strategic ally for America and the only true democratic nation in the Middle East. It makes good sense that the United States Embassy should be located in the same city where the business of government is conducted. The Israeli people will not abandon the rightful claim to Jerusalem as the eternal and undivided capital, and the United States will not force them to relinquish that claim. This simply is not a negotiable matter.

As the peace process continues, moving the United States Embassy to Jerusalem again will send a clear message that America supports Israel's claim to Jerusalem. It is far better that all parties in the Middle East peace process understand America's position and know that it is a clear position. By allowing our position to remain ambiguous throughout the peace talks, we would risk creating false and unrealistic expectations about the status and the destiny of Jerusalem.

Critics out there, including some in the administration, try to dismiss this bill as political pandering, but during his 1992 campaign it was President Clinton who deplored the fact that ''George Bush has repeatedly challenged Israel's sovereignty over the united Jerusalem and groups Jerusalem with the West Bank and Gaza as up for negotiation. Bill Clinton and Al Gore will . . . support Jerusalem as the capital of the State of Israel.''

S. 1322 has strong bipartisan support with 67 cosponsors. This bill has already been modified to provide the administration with more flexibility in trying to determine the construction timetable for a new Embassy in Jerusalem, and as a member of the Foreign Relations Committee, I hope the administration will drop any of its remaining opposition to this important symbolic legislation.

Mr. President, S. 1322 would rectify a half-century-old wrong, contribute to the ongoing peace process, implement the wishes of the American people, and it would fulfill the hopes of the Israeli people. I close by urging my colleagues to show that Congress overwhelmingly supports this effort.

I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LAUTENBERG. Mr. President, we have before us an issue that I think commands attention all around the world. It is an issue about whether or not we acknowledge what is a fact of life—that the Embassy, our Embassy, embassies of countries with diplomatic relations with Israel, belong in Israel's capital. There is no doubt that Jerusalem will remain the undivided capital of Israel. What we are discussing today, frankly, is not whether or not the United States Embassy belongs in Jerusalem, our Ambassador to Israel should be stationed there; we are talking about something that is, frankly, I believe, a matter of timing more than a matter of principle.

The question of timing raises many arguments and many views. I am only able to stand in the Chamber a few minutes now because I have a Budget Committee meeting, which is kind of at the crux of lots of things at the moment—reconciliation, how we develop our revenues and what our expenses are and how we get to a balanced budget.

That is certainly critical when we talk about foreign relations generally because we continue to reduce America's ability to communicate its views and ideas and implement its policies around the world as we limit the funds available for the operation of the State Department and our ability to grant aid.

Just by way of quick example, in 1986 we gave 21 billion dollars' worth of foreign aid, and in 1996 we are going to provide around $12 billion. And when you consider inflation, it is probably more like 30 billion dollars' worth of aid or more at present values. But we will be giving less than half of that, kind of saying that America is withdrawing; America is stepping back; we are returning to a period, not a very pleasant one in history, where we isolated ourselves from the rest of the world. We continue to fund friendly nations like Egypt and Israel so that we can help maintain stability and an honest relationship with these countries. And so part of what we want to do is respect the sovereign view of where the capital lies and functions, and, as a responsible ally, place our Embassy there, within the normal reach of their Government. I think there are few in this Chamber who do not want it to happen.

I ask unanimous consent that an article in today's Washington Post on page A9, entitled ''He Felt What I Felt,'' be printed in the RECORD.

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

[From the Washington Post, Oct. 23, 1995]

''HE FELT WHAT I FELT''—JEW, PALESTINIAN REACH OUT AFTER SONS' DEATHS

(By Barton Gellman)

JERUSALEM, Oct. 22.—Almost exactly a year ago, Abed Karim Bader pinned on a skullcap to pass for a Jew and stopped his rented car for a hitchhiking Israeli soldier.

With three confederates from Hamas, the Islamic Resistance Movement, Bader overpowered Cpl. Nachshon Waxman and abducted him to the West Bank. Israeli commandos staged a rescue raid, and the kidnappers shot their bound captive to death in his chair. Bader died in the gunfight moments later.

This is a conflict that trains even bystanders for their roles. Loss calls for vengeance, hate for hate. Most of the time those calls are answered. But not always.

Tonight two grieving fathers, Bader's and Waxman's sat together behind a table and spoke of treading a new path of peace. They each wore a gray beard and a skullcap—Yehuda Waxman the knitted kippah of a religious Zionist, Yassin Bader the white linen takiyah of a Muslim sheik.

They told a gathering of Israeli and Palestinian youths that things had to change—that, as Waxman said, ''we have no choice but to live together.''

''We are two peoples who live in this land,'' Bader said. ''We have each suffered. We have paid a heavy price with our sons. Mr. Waxman is a religious man. He felt what I felt, and I felt what he felt. I hope no one here will ever feel what we have felt or suffer what we have suffered.''

There was no political program in the words, just a heart-heavy hope good might somehow come of their loss. Waxman is tortured by the time he did not make for his son, the conversations he was always too busy to have. Bader asks himself how he could have missed the signs that his son had turned to Hamas. Both want to be teachers of tolerance, and they started here.

The result were mixed. All the teenagers gathered at East Jerusalem's American Colony Hotel were inclined to listen. The Israelis were from Peace Now Youth, the Palestinians from an informal peace group in Ramallah. Even so, there was anger in the room, and strong distrust.

Ori Dirdikman, 17, an Israeli, stood up and said she wanted to ask how Bader ''responded to all his son's expressions of extremism, since I assume it didn't suddenly happen and he must have had an opportunity to respond.''

Bader, a dignified man who runs a grocery in the Beit Hanina section of East Jerusalem, composed his face. ''It is hard,'' he said. ''I didn't know what was inside my son.''

Afterward, the Israeli teenager shook her head. ''I want to believe him,'' she said, ''but no. I'm sorry, but I don't think it is possible. If he was really for peace, he was obliged to do something.

Fayez Othman, 17, a Palestinian, asked Waxman why Jews who kill Arabs seem to get off lightly, while Arabs who dare cast a stone are imprisoned for years.

Waxman tried to deflect the question at first, saying such matters are for the government. But Othman pressed again. ''What do you call this government? Is this a just government?'' he asked.

''You're a young man and you're looking for justice,'' Waxman replied. ''I'm not looking for justice any more. There are no just governments. There is only the best that people can do. . . . It's better for a man to look for justice near his home, with his brothers, with his friends. There you can make a difference. Absolute justice? There's no such thing.''

Othman liked the second answer better, but only a little.

''I didn't want to hear, 'This is not my responsibility,' '' the Palestinian said. ''I wanted to hear that this is wrong.''

Even so, Othman said, he respected a man who could respond to his son's death with a gesture of tolerance. ''This will encourage us,'' he said.

Nachshon Waxman's kidnapping transfixed Israel last year. His kidnappers released a videotape of the young man pleading for his life. Yehuda Waxman, who said he could not stand to watch, must be one of the few Israelis who did not see it. His son, who held American and Israeli passports, died the same day that the Nobel Peace Prize committee announced the award would be shared among Palestinian leader Yasser Arafat, Israeli Prime Minister Yitzhak Rabin and Israeli Foreign Minister Shimon Peres.

At first, the two families, Waxman and Bader, shared no link save trauma. Yehuda Waxman prayed and spoke of punishment for Hamas. At the Bader home—just a mile away—the funeral tent featured slogans painted by Hamas declaring Yassin Bader's son a martyr righteous cause.

The idea for reconciliation came as something of a journalistic stunt. A weekly newspaper called Jerusalem worked tirelessly to bring the two men together, negotiating every detail for months.

Israeli soldiers had sealed the Bader home in retribution, and Yassin Bader wanted nothing to do with Israelis. Yehuda Waxman feared being used. Before he would meet Bader, he insisted on a letter dissociating the sheik from his son's acts.

Gradually Bader became convinced. He sat down and wrote out longhand the requested note. ''I had no control over my son,'' he wrote. ''I did not know of his plans. Had I known, I would have opposed them. For who would want his son to risk his life? Who would want his son to do such deeds?''

When the two men finally met, they said, they were struck by how alike they were. Devout and serious, they decided to work together.

Did it help? ''To tell the truth,'' said Naomi Cohen, 17, ''with all the pain and for all the fact that I've grown up on the left, I couldn't help hating [Bader] since he is the father of a murderer, and he was sitting beside the total opposite. They symbolize different things. Waxman is an example to me. He is able to be more forgiving than I am, and it was his son.''

Nihaya Harhash, also 17, said she felt ''anger and tension on both sides.''

Waxman, interviewed afterward, said he was not discouraged or surprised. ''This is our purpose, to see this anger melt off,'' he said. ''It will take a long time. It will take years and years. But we will do it.''

Mr. LAUTENBERG. The article talks about the pain of two fathers, one whose son was kidnapped by the other's son and put on television when this young man was held by Hamas, pleading for his life. His father heard the pleas of the young man as they held a gun to his head.

When the rescue attempt took place, just a little later on, not only was the victim killed, but the perpetrator was killed. And now the fathers are meeting a year later and discussing their feelings. Nothing can restore their children, but they can describe how they felt, their anger, their pain, the call for revenge, the call for healing, still unsure about what to do.

Mr. President, what we are witnessing now is almost a modern miracle. I have traveled many times to Israel and Jerusalem. I know people there. I have visited the entire breadth of the country. And I know how important Jerusalem is to all faiths and that Israel has promised that its responsibility is to make sure that all faiths have access. There is not a lot of debate about what the capital of the country is. But more than anything else, people want peace. They want to stop the killing.

What we have seen in the last couple of years has been astonishing. President Clinton and the United States have help make peace between these long-term enemies. It is something that, to me, resembled a modern miracle. Everyone knows Yasser Arafat. They know his costume. They know his manner. They know he was at the United Nations some years ago with a gun on his hip; and he was there this time, 2 days ago, yesterday, talking about peace and moving the process along.

It was noted on this same page of the Washington Post, ''Joint Jordanian-Israeli Flight Marks Anniversary of Treaty.'' Two air forces, Israel and Jordan, flying side by side in joint maneuvers over both countries. And I am sure the sirens in Israel did not go off when the Jordanian airplanes flew over, and vice versa.

Peace in the making, but violence continues. Fathers and mothers still anguish to understand what it is that takes their young son's lives. A few days ago six Israelis died on their northern border with Lebanon. This killing has to stop.

Yesterday in New Jersey I spoke on behalf of a newly opened school. It was a religious day school. And I met a man who I had only known by telephone. His name is Stephen Flatow. I

spoke to him on the phone while I was touring Israel and Egypt in April of this year, 6 months ago. The day I arrived in Israel from Egypt, an attack took place on a bus in which a number of people, innocent people, died.

At that time the newly appointed Ambassador to Israel, Martin Indyk, was presenting his credentials in Israel. And he said to me, ''Frank, I have terrible news. A young woman, 20 years of age, was on that bus and is on life support at the moment. She comes from New Jersey. She comes from West Orange, NJ. Her family has been just notified.''

I tried to find out more about her condition. It was precarious, at best. And within 2 days she died. Twenty years old. She was in Israel studying, on a learning experience. Murdered. For what reason? No explanation. Terrorism. People angry at one another, so angry that reason was obliterated. The father flew to Israel immediately and saw his daughter before she took her last breath.

I spoke to him on the phone after the funeral was held in New Jersey. I expressed my sympathy and he said one thing to me that, frankly, I found almost so overpowering that it was hard to understand. He told me that his 16-year-old daughter, his other child who was studying in Israel also, was being asked by her father and mother, who just lost a 20-year-old daughter, to continue her studies in Israel and to continue to fight for peace. Their daughter was killed in a senseless act of terrorism, and they continued to search for peace.

I saw him yesterday, as I said, and we talked about the peace initiatives that are taking shape. I said, ''I may quote you. I want you to know that I am going to mention our conversation. Do you want to see the search for peace continued there, raising all kinds of questions at the same time? Can Chairman Arafat keep law and order in the Palestine community? Will there be disruptions from Hamas and other mad organizations, angry, supported by mad men with lots of money, by mad nations with lots of money? Is it worth the pursuit?''

And he said, ''Yes,'' it was worth the pursuit. ''And they should continue to search for peace.''

And the relevance of this, Mr. President, goes to the discussion underway about whether or not the Embassy should be moved immediately, after 47 years of being established in Tel Aviv, whether it should move immediately or whether the move takes place in the context of general discussions of peace.

Now, I, for one, have advocated the establishment of the American Embassy in Jerusalem from the day that Israel was declared a State, a country. I have said so as well in my many visits there—the first one being 1969 after the city had been united, when I saw what happened to holy Jerusalem during the years of occupation when there was total disregard for artifacts, for archeological treasures, for custom, for religion, for culture. I was stunned and glad to see the city undivided, and declared then, in 1969, that as long as I live and could do anything about it, that city would never be divided again, that it was essential that the world recognize that Jerusalem is the capital of Israel.

And I do not like being in a discussion, Mr. President, where there are those saying, ''Well, perhaps it ought to take a little more time.'' I do not want it to take more time. But I want it to be consistent with the discussions that are taking place.

I could not believe that a couple weeks ago I stood with Chairman Arafat, shook his hand. I have been very angry with Arafat in the past. And I am sure he felt the same way about me. But there we were, shaking hands and taking pictures because he was here in Washington on a peace mission.

We do not have to like the people we do business with, but if they are on the same wavelength, if they are on the same track, share the same goals and principles, then one would have to be a fool not to respect it.

And so, Mr. President, I fully support the establishment of the American Embassy in Jerusalem, the undivided capital of the State of Israel, but I will continue to debate the process as to exactly when and how we move. That is the only thing I ask, an open discussion.

The people who I know, the people I talk to feel similarly about whether or not Jerusalem is the place that embassies belong. It is the capital of the country. It does not belong anyplace else. We do not go to France and say we are going to locate our Embassy in Marseilles. We do not go to Russia and say we will locate it outside of Moscow. It is up to them to decide where their capital is, and it is up to us, as full diplomatic partners, to locate our Embassy where their capital is.

So I hope that as this debate unfolds, Mr. President, that we will keep in mind that peace is the objective, a noble objective. I hope we will try to understand the many sides of this peace discussion, because there is now Jordan, a full diplomatic partner with Israel, there is Egypt, and there is hope that other countries will come along.

I hope the situation with the Palestinians can be resolved into a full understanding. I hope we will see a more structured community and assistance to help the Palestinians establish themselves to have jobs, to have schools, to have a structured life, to have a chance to live peacefully.

So while I respect and appreciate Senator DOLE's willingness to have this move take place as well as the willingness of our colleague from Arizona, who has been fully supportive of the establishment of the Embassy in the capital of Israel, I hope that we have a chance to work out an understanding that we do not take away the President's initiative to conduct foreign policy, and I hope that he will help us to help them conclude the peace discussions and get the Embassy moved as part of a total understanding.

I yield the floor.

Mr. KYL. Mr. President, I would like to pass on that the majority leader, with whom I was meeting, asked me to make the point that he is enormously gratified at the support over the years and, in particular, the support of the Senator from New York for the bill on which he is about to speak and without the support of the Senator from New York, obviously we would not be nearly as far along in this process as we are. The majority leader appreciates that very much.

UNANIMOUS-CONSENT AGREEMENTS

Mr. KYL. Mr. President, I ask unanimous consent that at the hour of 6 p.m. today, the majority leader, or his designee, be recognized in order to move to table the pending Dorgan amendment No. 2940.

The PRESIDING OFFICER (Mr. JEFFORDS). Without objection, it is so ordered.

Mr. KYL. I further ask unanimous consent that at the hour of 5:40 p.m., the Senate resume amendment No. 2940 and that there shall be 20 minutes equally divided in the usual form prior to the motion to table.

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

Mr. KYL. All Senators should therefore be informed, Mr. President, that there will be a rollcall vote on the motion to table the Dorgan amendment at 6 o'clock this evening.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I would like to carry on the manner and the thoughtfulness of my colleague and friend from New Jersey as we begin this debate, which will shortly, I think, conclude for today.

The Senate stands ready to correct an absurdity which has endured for nearly half a century. We propose to respect Israel's sovereign right to choose her capital. We do this by providing for the relocation of our embassy to the city which contains the Parliament of that State.

The bill which the distinguished majority leader has proposed will ensure that the United States Embassy in Israel is moved to Jerusalem, the undivided capital of that State, no later than May 31, 1999.

I have been involved with this particular issue in some measure since my tenure as Permanent Representative to the United Nations in 1975. By the early 1970's, the United States was faced with a General Assembly where a Soviet-led coalition wielded enormous power and used it in an assault against the democracies of the world. In that regard, I cite an editorial in the New Republic which recently said of the United Nations in that time that ''During the cold war, the U.N. became a

chamber of hypocrisy and proxy aggression.''

Proxy aggression, Mr. President, and in particular directed to the State of Israel, which became a metaphor for democracy under virtual siege at the United Nations.

Those who had failed to destroy Israel on the field of battle joined those who wished to discredit all Western democratic governments in an unprecedented, sustained attack on the very right of a U.N. member state to exist within the family of nations.

The efforts in the 1970's to delegitimize Israel came in many forms, none more insidious than the twin campaigns to declare Zionism to be a form of racism and to deny Israel's ties to Jerusalem. Those who ranted against the ''racist Tel Aviv regime'' were spewing two ugly lies. Both had at their heart a denial of Israel's right to exist.

The first lie, the infamous Resolution 3379, was finally repealed on December 16, 1991, after the cold war had ended and the Soviet Union dissolved.

Today, we take an important step to refute the second lie, the absurd suggestion that Israel did not have a right to select its own capital city.

Israel expects attempts by her enemies to undermine her, but it is more difficult to fathom our own refusal to recognize Israel's chosen capital and to locate our Embassy in Jerusalem. In so doing, we have given and continue to give unintended encouragement to those enemies of Israel who hope one day to be able to divide the United States and that nation, the only democratic state in the Middle East. For as long as Israel's most important friend in the world refuses to acknowledge that Israel's capital city is not its own, we lend credibility and dangerous strength to the lie that Israel is somehow a misbegotten, an illegitimate, or transient state.

This suggestion is all the more untenable when you consider that no other people on this planet have been identified as closely with any city as the people of Israel are with Jerusalem —a city which this year celebrates the 3000th anniversary of King David declaring it his capital. No Jewish religious ceremony is complete without mention of the Holy City. And twice a year, at the conclusion of the Passover Seder and the Day of Atonement services, all assembled repeat one of mankind's shortest and oldest prayers ''Next year in Jerusalem.''

Throughout the centuries Jews kept this pledge, often sacrificing their very lives to travel to, and live in, their holiest city. It should be noted that the first authoritative Turkish census of 1839 reported that Jews were by far the largest ethnic group in Jerusalem—and this long before there was a West Jerusalem, or even any settlements outside the ancient walled city.

When the modern State of Israel declared independence on May 14, 1948, Jerusalem was the only logical choice for the new nation's capital —even if it was only a portion of Jerusalem, the Jordanian Arab Legion having occupied the eastern half of the city and expelled the Jewish population of the Old City—Jerusalem was sundered by barbed wire and cinder block and Israelis of all faiths and Jews of all citizenship were barred from even visiting the section under Jordanian occupation.

The world was silent while the historic Jewish Quarter of the city was sacked and razed to the ground, 127 synagogues were destroyed, and 3,000 years of history were denied. This bizarre anomaly only ended on June 5, 1967, when Israel faced renewed aggression from Egypt and Syria, both then close friends of, and dependents of the Soviet Union. As hostilities commenced, Israeli Prime Minister Levi Eshkol sent a message to King Hussein of Jordan promising that, if Jordan refrained from entering the war, Israel would not take action against it. Jordan, however, attacked Israel that same day. Within the week, Israeli forces had captured all of Jerusalem, as well as other territories west of the Jordan River. The City of David was once again united, and has been since 1967. Under Israeli rule Jerusalem has flourished as it did not under Jordanian occupation, and the religious shrines of all faiths have been meticulously protected.

Israel has found itself repeatedly attacked, boycotted, and spurned by its neighbors. But slowly Israel has worked to secure a less hostile environment. First, the historic Camp David Accords brought peace between Israel and Egypt. All Senators are aware of the unprecedented accomplishments of the last 2 years. Jordan is at peace with Israel and a peace process is well underway with the Palestinians. In fact, Mr. Arafat gave voice at the United Nations just yesterday.

The United Nations is celebrating its 50th anniversary. Even Yasir Arafat, who 21 years ago addressed the General Assembly wearing a gun holster, spoke yesterday of the tremendous achievements in Israeli-Palestinian relations. The New York Times characterizes Mr. Arafat's remarks as ''a far more conciliatory tone than during his last visit.'' And contrasts his earlier calls for the destruction of Israel with yesterday's General Assembly pledge to ''turn over the leaf of killing and destruction once and for all so that the Palestinian people and Israeli people may live side by side.''

There are those who might criticize our proposal, saying that we have no business taking such action while the peace process continues. On the contrary—or such is my view. This is our Embassy and congressional sentiment should be made known. In this I am reminded of a message from Prime Minister Yitzhak Rabin to the American-Israel Friendship League on November 28, 1993 in which he wrote:

> In 1990, Senator Moynihan sponsored Senate Resolution 106, which recognized Jerusalem as Israel's united Capital, never to be divided again, and called upon Israel and the Palestinians to undertake negotiations to resolve their differences. The resolution, which passed both houses of Congress, expressed the sentiments of the United States toward Israel, and, I believe, helped our neighbors reach the negotiating table.

The negotiators will soon turn to final status issues, as defined by the Declaration of Principles signed on September 13, 1993, by Israel and the Palestinians. The status of Jerusalem is one of the agenda items to be settled during this final stage of the peace process. It is inconceivable that Israel would agree to any proposal in which Jerusalem did not remain the capital of Israel. Since Jerusalem will continue to be the capital of Israel, it is time to begin planning to move the United States Embassy to ensure that at the end of the process it will be where it belongs.

Our Embassy should have been moved long ago, but we recognize the momentous achievements taking place in the Middle East and they temper our actions. Our intentions are clear. When the peace process is completed, which according to the Declaration of Principles is scheduled for May 1999, our Embassy will be located in Jerusalem.

On March 20th of this year, Senator D'AMATO and I sent a letter to Secretary Christopher with the support of 91 other Senators. That letter made it clear that the overwhelming majority of Senators agree with the proposition that ''Jerusalem is and shall remain the undivided capital of the State of Israel.'' We also wrote that our embassy belongs in Jerusalem and we asked the Secretary to inform us of the steps being taken to make a relocation of our Embassy to Jerusalem possible.

Today we have before us legislation that reflects the spirit of our letter to Secretary Christopher. I am hopeful that the President will be able to sign this legislation. Prime Minister Begin once advised me that the ''battle for Jerusalem should never be fought in the halls of Congress.'' I agree and am pleased that the majority leader worked with those of us on our side of the aisle to produce a draft that reflects the bipartisan consensus of the Senate. I would also like to commend my friend, the Senator from Connecticut, Senator LIEBERMAN, for his considerable contribution to the formulation of this bill.

This administration has been effective in the Middle East peace process. Secretary Christopher has personally flown to the region numerous times and has clearly committed himself to active participation in the peace process. On the issue of our Embassy, I would respectfully suggest that the administration direct its attention to the comments of Prime Minister Rabin, as our letter to the Secretary of State noted:

> There can be little doubt that Jerusalem is a sensitive issue in the current peace process. While the Declaration of Principles stipulates that Jerusalem is a ''final status''

issue to be negotiated between the parties, we share Prime Minister Rabin's view which be expressed to the Knesset that:

On Jerusalem, we said: ''This Government, like all its predecessors, believes there is no disagreement in this House concerning Jerusalem as the eternal capital of Israel. 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 dream and longing of every Jew.''

It continues:

United States policy should be equally 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.

Charles Krauthammer adopted a similar line of argument in a column in the Washington Post on May 19, 1995, when he wrote:

True, the embassy move does endorse the proposition that Jerusalem is the capital of Israel. What possibly could be wrong with that? Is it the PLO position that even after a final peace, Jerusalem may not be the capital of Israel?

That is the simple proposition for the Senate today, Mr. President. This bill would provide for the relocation of our Embassy to Jerusalem where it has always belonged. It does not interfere with the peace process, because there is no scenario in which Israel would agree to relinquish Jerusalem as its capital.

The Senate's involvement in this particular issue could be traced in some degree to the seventh conference of heads of state of government of nonaligned countries, which convened in New Delhi, India, March 7 through 11, in 1983. This summit devoted several lengthy passages of its final declaration as it is called—final declaration—to excoriating Israel and its ally the United States. Special attention was devoted to the question of Jerusalem's status. And not just east Jerusalem as had become the practice of such forums.

I happened to be in New Delhi in the days before the summit began and was shown a draft of the final declaration. The draft passage on Israel read: ''Jerusalem is part of the occupied Palestinian territory and Israel should withdraw completely and unconditionally from it and restore it to Arab sovereignty.''

While surely this can be read as a provocative statement that all of Jerusalem is occupied Palestinian territory, when pressed on the point, my Indian hosts assured me that by Jerusalem they really only meant east Jerusalem, which is to say the old city, or perhaps the Arab section. Hence, the significance of the revised final text of the declaration of some 101 nations. This is what nonaligned declared in that session in 1983:

West Jerusalem is part of the occupied Palestinian territory and Israel should withdraw completely and unconditionally from it and restore it to Arab sovereignty.

West Jerusalem, Mr. President.

The 101 nations of the nonaligned movement declared that the Israeli Parliament and government buildings, Yad Vashem, the Holocaust memorial, the whole of the new city, did not belong to Israel. The State of Israel is not a nation. It has no capital, or so said the nonaligned.

What was the response from Washington to such polemics? Not a word. In effect, our silence could have been interpreted as implying that we had no quarrel with those who state that Israel has no capital. And thus, that Israel is less than a sovereign nation.

It was at this point that I brought the issue to the Senate floor. On September 22, 1983, during consideration of the State Department authorization bill, I offered an amendment to articulate the clearest and most emphatic demonstration of a policy of fairness toward Israel. The amendment was only one sentence long: ''The United States shall maintain no embassy in Israel that is not located in the city of Jerusalem.''

I withdrew the amendment after Senator Percy, the distinguished chairman of the Foreign Affairs Committee at the time, gave his assurance that a hearing would be held on the matter. On October 31, 1983, I introduced S. 2031 which also required the relocation of our Embassy from Tel Aviv to Jerusalem.

Senator Percy, always true to his word, convened a hearing of the Senate Foreign Affairs Committee on February 23, 1984, to consider that bill. Lawrence Eagleburger, then Under Secretary of State for Political Affairs testified on behalf of the administration.

I stated in my testimony to the committee:

I begin with the simple proposition that Jerusalem is the capital of the state of Israel and our embassy in that State should be in its capital.

This would seem to be an unexceptional statement, Mr. Chairman. That it is not is the result of actions the United States has taken and actions not taken.

In the first category is the unprecedented and bewildering practice of the United States Government in its official publications to record that there is a ''country'' named Israel in which our Embassy is located at a ''post'' named Tel Aviv; and another ''country'' named Jerusalem in which we are represented at a ''post'' named Jerusalem.

Secretary Eagleburger suggested they might at least be able to correct the State Department phone book, but nothing was done.

Offical documents published by the United States Government at the time, such as the State Department's ''Key Officers of Foreign Service Posts: Guide for Business Representatives,'' listed Jerusalem separate from Israel. The guide listed countries alphabetically, under each of which in subscript was enumerated the various diplomatic posts the United States Government maintained in that country.

There was Ireland, with the one post in Dublin; then came Israel, with one diplomatic office listed, its address in Tel Aviv; then curiously several pages later, after Japan, there was listed a Consulate General in a country called Jerusalem. Then came Jordan and Kenya.

That was how the Key Officers of Foreign Service Posts was organized until the end of 1994, when Secretary Christopher published the document with Jerusalem listed under the Israel heading. This is a welcome change. That simple refusal by the United States Government to associate our consulate in Jerusalem with the State of Israel carried much greater weight with the nonaligned countries than we realized.

They would not have acted as they had done in 1983 if they did not think at some measure we were not in disagreement. Our documents have so implied.

No doubt, we wounded the Israelis more than we intended as well, while sending a dangerous message to Israeli enemies.

Clarifying the status of Jerusalem began to gain momentum in the Senate in 1990 when I submitted S. Con. Res. 106, which States simply: ''Jerusalem is and should remain the capital of the State of Israel.'' A simple declarative sentence which gained 85 cosponsors and was adopted unanimously by the Senate and by an overwhelming majority in the House.

Two years later, Senator Packwood and I submitted Senate Concurrent Resolution 113 to commemorate the 25th anniversary of the reunification of Jerusalem.

The measure stated that, ''Congress strongly believes that Israel must remain an undivided city.'' That, too, was agreed to unanimously, both in the Senate and the House.

Last year, in the wake of the massacre in Hebron, the United Nations Security Council adopted a measure which referred to Jerusalem as ''occupied territory.'' Senator MACK and I sent a letter to the President, with the signature of 81 other Senators, calling on the administration to veto any U.N. Security Council resolution which states or implies that Jerusalem is occupied territory.

To his credit, President Clinton responded with a forceful promise to veto any future U.N. resolution which raised questions about the status of Jerusalem. A promise that he kept on May 17, 1995, when Ambassador Albright cast such a long overdue veto in the Security Council.

In the winter of 1981, I wrote an article in Commentary entitled ''Joining The Jackals'' in response to the Carter administration's disastrous support for a resolution challenging Israel's rights in Jerusalem. Almost 15 years later, we find that the jackals are in retreat. Israelis and Palestinians are negotiating the details of their future. And today we have an opportunity to make a simple but important contribution to this process by unequivocally recognizing Israel's chosen capital.

Mr. President, I see my friend from Connecticut has risen. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I rise to thank my friend and colleague from New York for his statement, which is not only characteristically learned—which is to say characteristic of him, not necessarily of all of us—but also characteristically principled.

The history of our Government's policy on this question of the location of the American Embassy in Israel is a tawdry history. It is not the history of a great and principled nation. It is a history of a nation that has, I think, in the words of a musical, ''bowed and kowtowed'' too often and too low, when it was not necessary, on a matter as fundamental as respecting a country—not just any country but a country that is a dear and cherished, valued ally—in its own decision about where its capital is. It is a sovereign nation, a member of the United Nations.

There has been a way in which our whole history here—harking to my earlier incarnation as Attorney General enforcing consumer protection laws—unfortunately, has been one of bait and switch. The political process has engaged in kind of alluring promises during campaigns and then switched to an entirely less principled, more pragmatic—in the worst sense of pragmatic—position once in office.

But I really rise to recite that unhappy history just to say that, throughout all of that, as long as he has been in public office, the Senator from New York has been a steadfast beacon of principle on this—and of course other questions—but on this, unwavering, speaking out of the best of our traditions and the best traditions of international law. Hopefully, the Chamber will catch up with him in the vote on the measure before us.

But I do not know that I have adequate words, not only to express my admiration, but to do the historical record justice here as to the really pioneering and principled and consistent position that the Senator from New York has taken. I thank him for his statement, but, really, more than that, I thank him for all he has done over the years to bring the Chamber to the point where we may finally be about to direct the movement of the Embassy to Jerusalem by a date certain.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, may I express my profound gratitude for the remarks of my friend from Connecticut. If he is only partially correct, I am wholly complimented and deeply honored.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I rise to express my strong support for relocating the U.S. Embassy in Israel to Jerusalem. I want to share with my colleagues my reasons for holding this view.

First, locating the Embassy in Jerusalem is practical and will streamline our diplomatic operations. For decades, the offices of Israel's President and Prime Minister, the Knesset, and most government ministries have been located in Jerusalem. Moving our Embassy there will make it easier to conduct diplomatic business. So it is common sense to move the Embassy to Jerusalem.

Second, it is consistent with our policies for other nations. Israel is the only nation in the world where our Embassy is not located in the host nation's chosen capital. Let me repeat that. Israel is the only nation in the world where our Embassy is not located in the host nation's chosen capital.

A number of concerns have been expressed about the wisdom of moving the Embassy at this time. I want to address each of these concerns specifically.

Opponents have said that this bill could trigger anger and terrorism on the part of Israel's opponents. Indeed, when the bill was first being circulated, opponents said the peace process would fall apart. They said the peace process would fall apart if we even introduced this bill. But the peace process did not fall apart. As a matter of fact, the peace process moved forward. That is because this bill is not directly related to the peace process. As a matter of fact, this bill, as recently modified—and I support the modifications—shows great deference to the peace process. By removing the requirement for an early construction start date, this bill shows complete respect for the peace process. Opponents of this bill have also argued we should wait to move our Embassy until the so-called final status negotiations are complete. I would argue that, although the final status of Jerusalem may be an issue in the peace talks, the location of our Embassy is not. The location of an American Embassy is entirely an American decision.

In any case, our Embassy will be located within the pre-1967 West Jerusalem border, not in the more controversial eastern section. It is this fact that leads me to conclude that moving our Embassy would in no way prejudice the outcome of the final status negotiations. It is not as if we are breaking new ground in a new area that has not been under Israeli control.

Finally, and perhaps the most important point I wish to make for my colleagues today, is that when I was in Israel in November, I sensed an undeniable fear and concern about the future. Terrorist attacks were escalating. Support for peace was falling. As a matter of fact, there was not one person, whether it was a cab driver or a student, that I met who did not indicate to me the fears that they had.

Israel, of course, is taking a risk for peace, and, therefore, the people are taking a risk for peace. As a matter of fact, all the good people who come to the table, whatever side they are on, are taking a risk for peace. So, when I left Israel, I thought, we need to do something here to just show that we support the peace process, and that we support our close ally, Israel. I think this is something we can do that demonstrates a high level of respect for the good people of the State of Israel, and for the peace process as a whole.

I have a very balanced view of this issue. I believe that Yasser Arafat must have what he needs to build confidence among Palestinians for the peace process so that extremist groups like Hamas renounce violence and go to the ballot box as their way. I think this is very important. And that is why I supported the Middle East Peace Facilitation Act, which authorized continuing aid to the Palestinian authority so long as they continued to meet their commitments to work for peace.

So, Mr. President, I support the Palestinians who are working for peace, and I support the Israelis who are working for peace. Just as we show support for the Palestinians through the Peace Facilitation Act, we must also show support for the people of Israel who have taken some very serious risks for peace. I think that this bill sends a very important message.

I want to say again that I understand that there are those in the Senate who want changes to this bill. And we may have a couple of amendments. I will look them over very carefully.

But the point that I want to make today is that I hope we are going to pass this bill with a united front—all of us together, regardless of political party or ideology. To pass this important legislation with a unified voice would send a strong message. Yes, we support the peace process, and yes, we support moving our Embassy to Jerusalem. Surely, we should do no less for our friend and ally Israel.

Thank you very much.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DORGAN. Mr. President, as I indicated when I previously rose to speak on this bill, I intend to support the bill. I think this underlying bill makes a great deal of sense. I offered a sense-of-the-Senate amendment to this bill, which I understand is now going to be voted on at 6 o'clock this evening, and just prior to that vote there will be 10 minutes of debate on each side. I wanted to rise briefly to describe what the sense-of-the-Senate amendment is.

I indicated when I offered it that I have no intention of holding up this legislation. I support this legislation. I want this legislation to move. But I was constrained last week from offering this sense-of-the-Senate amendment, and it is the only way I have to

express myself—and hopefully, express the sentiments of the Members of the Senate—on this issue. So this device is an attempt in the sense-of-the-Senate resolution to once again weigh in on this question of priorities.

My sense-of-the-Senate resolution expresses the following: It is the sense of the Senate that any tax cut provided by the Congress this year shall be limited to those whose income is under $250,000 a year, and the savings, by limiting the tax cut to those who earn less than $250,000 a year, shall be used to reduce the cut that is being proposed for Medicare.

Again, my suggestion is very simple. This is always a debate about priorities. It is really nothing more than that. It is not a debate about whether there should be a balanced budget. Of course, there should be a balanced budget. It is a debate about how we get there. Some say give very large tax cuts to some very affluent people, and let us give very large budget cuts in Medicare that will affect some very low-income elderly people. I think that the proper priority would be to say, let us think about this more clearly.

I offered an amendment a couple of weeks ago saying, let us at least limit the tax cut to those whose incomes are below $100,000 a year and use the savings from that to reduce the amount of cuts in the Medicare Program. That was voted down by the Senate.

I say, all right. I indicated then I am going to offer another resolution. How about limiting the tax cut to those whose incomes are below a quarter of a million dollars a year? Gosh, there are not a lot of Americans who make more than a quarter of a million dollars a year. Those who do I do not think at this point need a tax cut. Their top tax rate has gone down from 70 percent in 1980, down to 39 percent low. Let us at least decide that we will limit the tax cut to those whose incomes are below a quarter of a million dollars a year. Then whatever we save from that limitation, let us use that to offset the cuts that are now being proposed for Medicare, to see if we can soften that blow a bit.

That is the purpose of my sense-of-the-Senate resolution. And we will have a vote on that at 6 o'clock. I hope the Senate will approve that. Then I hope following approval of that, it will express itself to those who are writing this reconciliation bill, and maybe we will have a reconciliation bill to come to the floor that does just that.

I would be happy to yield to the Senator from California.

Mrs. BOXER. Thank you very much for yielding.

I want to commend my friend for giving us an opportunity to express ourselves on a very basic point. To me, it is extraordinary that the Republican Congress with very few exceptions—maybe one or two—are going to cut $270 billion out of Medicare and use about $245 billion for a tax cut that mostly benefits the very wealthy.

What my friend is saying is, look—to the Republicans—we want to give a tax cut, but at least come along with us and say that the people who earn over a quarter of a million dollars a year do not really need that tax cut as much as our seniors need Medicare.

In California, the average woman who is on Social Security earns $8,500 a year. I say to my friend from North Dakota that the numbers are probably even lower in his State—$8,500 a year for the average woman on Social Security.

I daresay that if you talk to any decent human being, a gentleman who earns $350,000 or a woman who earns $500,000 a year, and you ask them, ''Do you really need to have this tax cut, or would you rather that our senior citizens live in dignity,'' I daresay the reasonable, thoughtful, decent American in that highest 1 percent income bracket would say, ''You know something? Sure. It would be nice to have another trip to Europe, but I think that is not the American way. I do not think that is really family values.''

I want to say to my friend. I wonder if he has heard some of Kevin Phillips' quotes on this issue. Kevin Phillips is a Republican commentator, and on the 19th of September he made a number of quotes. I wonder if I could read them to my friend and ask him to comment on them.

First of all, this is Kevin Phillips. This is not Senator BOXER from California, a Democrat from California, speaking. This is a Republican commentator. On September 19, he said:

If the Republican Medicare reform proposal was a movie, its most appropriate title would be ''Health Fraud II.''

Then he says, ''Today's Republicans see Federal Medicare outlays to old people as a treasure chest of gold for partial redirection in their favorite direction towards tax cuts for corporations. Furthermore,'' he says, ''the revolutionary ideology driving the new Republican Medicare proposal is cut middle-class programs as much as possible and give the money back to business and high-income taxpayers.'' And finally he says, ''In part, the Republicans' Medicare shell game is a redistribution towards America's small 1 or 2 percent elite.''

So my friend is giving us a chance here, in a bipartisan way, to be I think humane, reasonable, sensible, and smart. I wonder if he would comment on these quotations from Kevin Phillips, because I think it is rather extraordinary that even a Republican says they have gone too far with their budget proposal. Will my friend comment on that?

Mr. DORGAN. This discussion has often been called class warfare; it is just more politics, just partisan.

I really do not see it so much as Republican versus Democrat. It really is choices. In the case of the reconciliation bill heading our way, the choice is to decide that one-half of the American families will pay higher taxes. That is the choice. And that is not for me. That is from the Treasury Department and others who have analyzed it.

Mrs. BOXER. Will my friend yield? Is it not true it is those who earn under $30,000 a year who will pay more taxes under the Republican plan?

Mr. DORGAN. I was just going to give a multiple choice question, and the multiple choice question would be A or B.

Mrs. BOXER. I am sorry.

Mr. DORGAN. If you learned that the reconciliation bill coming to the floor of the Senate from the majority party provides that one-half of the American families will end up paying higher taxes, do you think it would be, A, the bottom 50 percent of income earners or B, the top 50 percent of income earners?

I will bet you that most Americans would say, well, given what we have read so far, they probably say that the lower half of the income folks ought to pay higher taxes. And you know, that is exactly what is coming our way. But for the top 5 or 6 or 1 percent of the American people it is not higher taxes. It is an enormous amount of benefits in form of lower taxes. That is the purpose of this amendment. It is not anti-Republican or anticonservative. It is to say this is about a series of choices we are going to make and let us express ourselves.

Is the choice of cutting Medicare funding that is needed for senior citizens to the depths that they are talking about, $270 billion, is that a choice that ought to take precedence over a tax cut for the wealthy? That is what I want people to express themselves on.

My sense is that if this Congress could sit down without all the lights and without a lot of fanfare and thoughtful people discuss what really are the priorities, just in a room without microphones, I do not have any question that this Congress would say those 55,000 kids, those little 2-, 3-, 4-, and 5-year-olds, all of them who have names—every one of them has a name—those little kids on the Head Start Program who are disadvantaged, come from low-income households, those that are going to get kicked off the Head Start Program because we have decided there is not enough money for those 55,000, I do not have any doubt that a group of thoughtful people would say you know something in our judgment, Head Start investment for 55,000 4-year-olds and 5-year-olds is a better investment and a more important investment than building the second $1 billion amphibious assault ship.

I do not think there is any question at all that is the case. This Congress was provided with a choice during the defense bill—lots of choices: star wars, yes. B–2 bombers yes—20 of them, $30 billion, and then the choice was which of the two amphibious assault ships shall we build, the $900 million one or the $1.3 billion one. You know what the

Congress decided? ''Let's build both of them. Why should we have to choose?''

My point is the choice is to say yes, let us build a second amphibious assault ship for $1 billion and then let us take 55,000 kids out of the Head Start Program. It is just that simple because it is always about choices. You choose to spend the resources and what represents an investment in the future of the country.

Mrs. BOXER. Will my friend yield just one last time?

Mr. DORGAN. I would be happy to yield.

Mrs. BOXER. Because I am going to head back to the Budget Committee so I can vote against the Republican budget and proudly do it. I again thank my friend for pointing these things out. He is so right about the defense number. The admirals and generals came to us and said we need *x* billions of dollars to do our job, and this Republican Congress gave them $30 billion-plus, more than they asked for over the next 7 years. To me, it is extraordinary how far those dollars could go, whether it is in the Senator's home State, my home State, the Chair's home State. And just cavalierly not wanting to make any choice, we are going back to the days of the $400 hammers and the $600 toilet seats and the $7,600 coffee pot. The wasteful spending kind of gets lost in the debate.

I wish to make one final point in support of my friend. The reconciliation bill that is headed here clearly is really a funnel plan. It is a funnel from the senior citizens in our country through the Medicare Program, from the poor, the disabled in our country through the Medicaid plan—and by the way two-thirds of our seniors in nursing homes are on Medicaid, so it is a funnel from those people, it is a funnel from those working people who the Senator described who earn $30,000 or less, it is a funnel from all of those groups, the middle-class right into this tax cut for the wealthy.

What my friend is giving us a chance to do later on this evening is to say enough is enough. Enough is enough. We are hurting too many people in this country. For all the talk about family values, we are hurting families. Buried in this bill, we are repealing nursing home standards. It is extraordinary. And I vowed that in my mother's name I would fight that—seniors who are scalded in bathtubs in nursing homes, seniors who are sexually molested, seniors who wander out of nursing homes onto the streets and freeze to death. That is why we have national standards.

But in the Republican budget, what is more important than nursing home standards is giving a tax break for the wealthiest. What my friend is saying is that enough is enough. Defer that tax break, if you earn over a quarter of a million dollars, and let us not hurt the kids, the families, the middle class, the working poor, the grandmas and grandpas in nursing homes. I will be proud to stand with my friend and I hope we can win this vote.

I yield back to my friend.

Mr. DORGAN. I thank the Senator from California. We will have a vote on this at 6 o'clock. And again I do not intend to pursue it further. I will come back for 10 minutes of debate prior to that time. But it is very simple. It simply says let us limit the tax cut, if there is a tax cut coming in this legislation—there apparently is; I would prefer there not be but there is—let us limit that to families earning at least $250,000 a year and then let us use the savings by that limitation to reduce the cuts in Medicare. It is a very simple sense-of-the-Senate resolution.

Mr. President, let me mention one additional item. I did not respond earlier today. following the presentation by Senator CONRAD and myself, the Senator from New Mexico came to the floor and the Senator from Arizona, and there was some discussion about balanced budgets and the Congressional Budget Office and a whole range of other things. So let me respond briefly. In effect, the Senator from Arizona was generous enough to bring to the floor the voting records and described what Senator CONRAD and I had voted for.

It always amazes me some to find someone changing the subject. That is the equivalent of getting lost and then claiming that where you found yourself is where you intended to be.

Well, I guess that is an interesting way to describe what the debate is about. But the debate was not about whether Senator CONRAD or I voted for budget resolutions in the past. Yes, we did.

We voted for the one in 1993. We voted for previous ones. We never claimed those budget resolutions, which, incidentally, reduces the deficit, which is why we voted for them, we never claimed what the Republicans are claiming. They are claiming that they now have a balanced budget. I never claimed that the 1993 proposal balanced the budget.

I have felt since 1983 that those who use, in whatever circumstances, under whatever conditions, the Social Security trust funds, are misusing the trust funds, and it does not matter whether it is the President's budget, President Clinton or President Bush or the Congressional Budget Office. When trust funds are included in the operating revenues—Social Security trust funds especially—it is not being honest.

Now, the point we made earlier was on October 18 the majority party came over to the floor and held up this letter from the Congressional Budget Office. The letter says, we estimated, based on your submission to the CBO, that your plan will produce a small budget surplus in the year 2002. And I came to the floor and said that obviously is not true.

I wrote to the CBO and said, ''Give us your estimate of the Republican plan if you do not take the Social Security trust funds and use them as operating revenues.'' And the next day the director sent us another letter and said, ''Well, we estimate, if that is the case, that the deficit in the year 2002 will be $98 billion.'' So it went from a small surplus to a $98 billion deficit.

On the third day, October 20, they sent us another letter and said the deficit is not $98 billion: ''We recalculated, and the deficit would be really $105 billion.'' And so that is what we have learned from the Congressional Budget Office. And our point was to say, if you take the Social Security trust funds and use them over on the operating budget, it is dishonest budgeting, and dishonest budgeting for Democrats to do it and dishonest budgeting for Republicans to do it.

This is business as usual. It has been going on way too long. I introduced a half dozen proposals to stop it. The Senator from South Carolina has. In 1983, I began to try to stop this process. But when the Senator came today with his big chart, and he had a gold medallion on the chart or a gold certificate of some type, certified with a big gold thing, certified balanced budget, that is baloney. There is no certification of a balanced budget. October 20 says that this is a budget with a $105 billion deficit in the year 2002.

Why is that important? It is important because if you do not have a balanced budget, you cannot trigger the tax cuts presumably.

What is that gold certificate about that they paraded on the floor? That is their certificate so they can go ahead and proceed to make the tax cuts. But it is a fraudulent certificate. It does not have any seal on it, so I assume it was just printed up for their purposes.

I mean, that is just gamesmanship. It is not a certificate of anything. The only thing that matters is the October 20 letter that said, ''CBO says in the year 2002 there will be a $105 billion deficit.'' That is the official number. The only way you can say that is not true is if you believe you should take the money out of the Social Security trust fund and use it as an operating budget revenue.

I would guarantee you, you run a business and do that, you take your employees' trust fund, pension funds and pull them over to your P&L statement and say, ''This is my business income,'' you will be on a fast track to a penitentiary of someplace. You cannot do it in business; you ought not be able to do it in Government. It is not honest budgeting.

So when the folks came to the floor today—it is amusing to have this debate, I suppose, about past budgets, but no one claimed what the Republicans are claiming, that they have this balanced budget. This is not in balance. The Congressional Budget Office says it is not in balance. They ought to stop pretending it is in balance. If it is not in balance, they cannot trigger a tax cut, 50 percent of which, incidentally,

goes to taxpayers with incomes or families whose incomes are over $100,000 a year.

Mr. BIDEN. Mr. President, I rise to speak in favor of the amendment offered by the Senator from North Dakota. We are fast approaching the culmination of this session—the culmination of a year of significant debate on the course of the Federal budget.

This amendment goes to the heart of that debate—how should we bring the budget into balance, and how should the burdens of that process be shared among the people of this country?

As one who voted for a balanced budget amendment, and as a cosponsor of a balanced budget plan, I share the conviction that deficit reduction should be among the top priorities of this Congress. But we should not let the urgency of that task blind us to our fundamental principles, or to the other, equally important responsibilities we face.

As I have explained here before, Mr. President, balancing the budget is essential, not as an end in itself, but a means of restoring healthier growth to our economy, and as a means of promoting the basic principles that first led me to the Senate.

I won't revisit here the clear and convincing reasons for fundamental change in our Federal budget. But while I am encouraged by the powerful consensus behind balancing the budget, Mr. President, I am concerned about the shortsighted priorities and the lack of fundamental fairness that characterize the budget plan that is now taking shape in this Congress. We will debate that budget plan on the floor of the Senate this week.

The amendment of the distinguished Senator from North Dakota represents what should be simply common sense. But unfortunately, Mr. President, common sense seems to be in short supply these days.

The amendment says simply that we should limit any tax cuts to families with incomes under $250,000, and use the savings to reduce the cuts that are planned for Medicare.

I believe that there is a real need for tax relief—in a perfect world, perhaps we could spread tax cuts around a little more. But there can be no argument that families with middle incomes have seen their paychecks stuck for years—with no reward from the substantial gains in productivity that our national economy has made.

Those working families spend more of their waking hours running faster just to stay in place. Mothers and fathers strain for a few minutes with their kids, with each other—never mind a moment for themselves. Because their wages haven't gone up, they have to spend more hours working every day just to keep up with growing expenses.

Chief among the costs that are growing faster than the average family's income are health care and education. For most middle Americans, Mr. President, those are not luxuries to be deferred or cut back—they are costs that must be met by cuts in family time, in savings, in things that we used to consider essential and that increasingly are beyond reach.

So we should do what we can to cut the costs of health care and education for Americans. Incredibly, the budget that is shaping up now does exactly the opposite. In their search for the funds to give tax cuts to people with incomes over $250,000, the Republican majority is increasing the costs of health care and education for the average American family.

And, by itself, the tax bill just reported by the Finance Committee would actually increase the tax burden on the majority of Americans, Mr. President, those with incomes of $30,000 or less. Can't we at least put a cap on the unfairness in that plan?

And, as the Republicans' own Congressional Budget Office has certified, Mr. President, their plan does not balance the budget. It continues to borrow from the Social Security surplus in the year 2002 to cover up a glaring $98 billion deficit.

This is unconscionable, Mr. President, and it is unnecessary. We can reach the goal of a balanced budget, provide tax relief for the middle class, and restore some of the excessive cuts in Medicare that are part of the Republican budget plan.

With Senator BRADLEY, I cosponsored earlier this year a budget plan that would have permitted up to $100 billion in tax relief for the middle class, including help with higher education expenses. That plan would have balanced the budget by 2002, without borrowing against the future obligations of the Social Security system. I also supported Senator CONRAD's plan, that would have balanced the budget without raiding the Social Security system.

We apparently cannot pass a budget this year that will not continue the charade of using Social Security surpluses—needed to meet its future legal and moral obligations—to cover up annual deficits in our operating budget.

But, by supporting the amendment now before us, we can still restore some fairness to tax relief, and we can reduce some of the damage that will be caused by the exorbitant increases in Medicare costs in the Republican plan.

This amendment simply expresses the sense of the Senate—a statement of our priorities—that we should limit any tax cuts to those who really need it, and that we should use those savings to reduce the hit on Medicare that the Republicans have planned—a hit that will be used to pay for tax cuts for those who don't really need it.

I think those are the real priorities of almost all Americans—even those who may not directly benefit from the tax cuts. Most Americans share the goals of deficit reduction—because it will help all Americans. Deficit reduction will free up more of our scarce saving for private investments by homeowners, entrepreneurs, and corporations—investments that will create jobs and sustain a growing economy.

For those who are now well off, who will share in the benefits of a growing economy at least as much as anyone else, a tax brake now to sustain those whose incomes have been stuck for years is scarcely grounds for resentment.

This amendment recognizes that we must use common sense and fairness as we search for ways to reduce the deficit and restore balance to our country's finances.

So I urge my colleagues to join me in supporting this amendment, that will put the Senate on record sharing the priorities of most Americans—doing what is right and what is fair while we do what is necessary.

Mr. DORGAN. I notice, Mr. President, Senator PELL is waiting to speak.

I will, because of that, relinquish the floor.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

MEDICARE BY THE NUMBERS

Mr. PELL. Mr. President, the national debate over the future of the Medicare and Medicaid programs is not so much about objectives as it is about means. But it is the means that make all the difference.

There clearly is widespread agreement that steps must be taken to restrain growth in Government spending for medical programs. But there is considerable disagreement about how to achieve this objective, how to distribute the impact of change, and about the timeframe in which all of this is to occur. In that connection, I join in expressing my distress about the course the congressional majority would have us take.

I should say at the outset that I believe it is unfortunate that we are allowing arbitrary dollar limits to drive our consideration of essential social policy. We are seeking to evaluate fundamental human needs through the green eye shades of accountants.

As I have stated on previous occasions, while I do share the view that Government spending should be curtailed where appropriate and that the deficit should be substantially reduced, I do not believe that this automatically translates into a cast-iron doctrine that the national budget must be in absolute balance by a time certain.

In the case of the medical programs, it would have been far preferable, in my view, to have devised first a rational strategy for curtailing unreasonable growth in spending for these programs—while preserving their essential services—and then see how much savings could be dedicated to deficit reduction.

But since the majority has committed us to a dollar-driven course of action, let's consider the figures.