

111TH CONGRESS
1ST SESSION

S. RES. 189

Expressing the sense of the Senate that the trial by the Russian Government of businessmen Mikhail Khodorkovsky and Platon Lebedev constitutes a politically motivated case of selective arrest and prosecution that serves as a test of the rule of law and independence of the judicial system of Russia.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2009

Mr. WICKER (for himself and Mr. CARDIN) submitted the following resolution;
which was referred to the Committee on Foreign Relations

RESOLUTION

Expressing the sense of the Senate that the trial by the Russian Government of businessmen Mikhail Khodorkovsky and Platon Lebedev constitutes a politically motivated case of selective arrest and prosecution that serves as a test of the rule of law and independence of the judicial system of Russia.

Whereas, on April 1, 2009, President Barack Obama and President Dmitry Medvedev issued a joint statement affirming that “[i]n our relations with each other, we also seek to be guided by the rule of law, respect for fundamental freedoms and human rights, and tolerance for different views”;

Whereas the United States and Russia, in a spirit of cooperation, will continue the dialogue on the issues affirmed in such joint statement at an upcoming summit to be held in June 2009;

Whereas it has been the long-held position of the United States to support the development of democracy, rule of law, judicial independence, freedom, and respect for human rights in the Russian Federation;

Whereas Russian President Medvedev has called Russia a country of “legal nihilism” and issued a new foreign policy doctrine citing “the supremacy of law in international relations” as one of the top priorities of Russia;

Whereas 2 prominent cases involve the Yukos Oil Company and its president, Mikhail Khodorkovsky and his partner, Platon Lebedev, who were convicted and sentenced in May 2005 to serve 9 years in a remote penal camp;

Whereas Russian authorities confiscated Yukos assets and assigned ownership to a state company that is chaired by an official in the Kremlin; harassed, exiled, persecuted, and imprisoned many Yukos officers and legal representatives; and issued a series of court rulings against Mr. Khodorkovsky and Mr. Lebedev that violate international legal norms;

Whereas at a press conference in May 2005, President George Bush stated, “it appeared to . . . people in my Administration, that . . . [Mikhail Khodorkovsky] had been judged guilty prior to having a fair trial. In other words, he was put in prison, and then was tried”;

Whereas, on October 25, 2005, Congressmen Roger Wicker and Tom Lantos introduced H. Res. 525, which noted the actions that the Russian government had taken with

respect to Yukos, Mr. Khodorkovsky, and Mr. Lebedev, and called upon Russian authorities to prove that the cases were not politically motivated, that the Russian judicial system is truly independent and not simply an instrument of the Kremlin, and that the state was not engaged in a campaign to selectively reclaim or re-nationalize private enterprises;

Whereas, on November 18, 2005, Senators Joe Biden, Barack Obama, and John McCain introduced S. Res. 322, which called the cases against Mr. Khodorkovsky and Mr. Lebedev “politically motivated”, noted that Mr. Khodorkovsky and Mr. Lebedev had not been accorded fair, transparent, and impartial treatment, and deplored their transfer to remote prison camps;

Whereas Amnesty International, Freedom House, and other prominent international human rights organizations have cited the conviction and imprisonment of Mikhail Khodorkovsky as evidence of the arbitrary and political use of the legal system and the lack of a truly independent judiciary in the Russian Federation;

Whereas governments, courts, journalists, and human rights organizations around the world have expressed concern about the prosecution, trial, imprisonment, and treatment of the individuals in the Yukos case, and have called on President Medvedev to honor his pledge to end “legal nihilism” in Russia;

Whereas, on February 5, 2007, on the eve of their eligibility for parole, Russian prosecutors brought new charges against Mr. Khodorkovsky and Mr. Lebedev, accusing them of embezzling \$20,000,000,000 in Yukos oil revenues;

Whereas in May 2007, the Prosecutor General in Moscow attempted to disbar Karinna Moskalenko, one of Russia's most distinguished and renown human rights lawyers and defense counsel to Mikhail Khodorkovsky, in apparent reprisal for actions she had taken on behalf of her client;

Whereas in August 2007, the highest court of Switzerland denied Russian authorities access to Yukos documents on the basis that the case against Yukos and its principal executives and core shareholders, specifically Mikhail Khodorkovsky and Platon Lebedev, had a "political and discriminatory character . . . undermined by the infringement of human rights and the right to defense";

Whereas courts in Great Britain, the Netherlands, Cyprus, Liechtenstein, Lithuania, and Switzerland have described the Yukos proceeding as politically motivated and have rejected motions from Russian prosecutors seeking the extradition of Yukos officials or materials for use in trials in Russia;

Whereas, on October 25, 2007, the European Court of Human Rights ruled that Platon Lebedev's rights to liberty and security were violated during his arrest and subsequent pretrial detention;

Whereas the 2008 Department of State Human Rights Report stated: "The arrest and conviction of Khodorkovsky raised concerns about the right to due process and the rule of law, including the independence of courts and the lack of a predictable tax regime.";

Whereas, on March 13, 2008, the European Parliament issued a resolution calling on the Russian President to "review the treatment of imprisoned public figures (among them Mikhail Khodorkovsky and Platon

Lebedev), whose imprisonment has been assessed by most observers as having been politically motivated”;

Whereas in July 2008, President Dmitry Medvedev said it was essential that Russia “take all necessary means to strengthen the independence of judges” since “it goes without saying that pressure is applied, influence is exerted, and direct bribery is often used”;

Whereas, on August 22, 2008, Mikhail Khodorkovsky was denied parole on the grounds that he refused to take part in vocational training in sewing and that he allegedly failed to keep his hands behind his back during a jail walk;

Whereas, on October 25, 2008, the State Department issued a statement marking the fifth anniversary of Mikhail Khodorkovsky’s arrest, stating “the conduct of the cases against Khodorkovsky and his associates has eroded Russia’s reputation and public confidence in Russian legal and judicial institutions”;

Whereas, on December 22, 2008, the European Court of Human Rights ordered the release of the terminally ill former Yukos oil executive Vasily Aleksanyan, who had been held in detention since April 6, 2006, despite repeated orders by the European Court that Mr. Aleksanyan be treated in a humane fashion for cancer and AIDS;

Whereas in February 2009, Andrei Illarianov, former chief economic advisor to President Vladimir Putin, stated that “[o]ne of the best known political prisoners is Mikhail Khodorkovsky who has been sentenced to 9 years in the Siberian camp Krasnokamensk on the basis of purely fabricated case against him and his oil company Yukos”;

Whereas, on February 24, 2009, human rights lawyer Karinna Moskalenko, said that “[a]ll verdicts are possible in this country. But for people like Khodorkovsky, everything is already planned out and decided as long as the political will does not change”;

Whereas, on February 25, 2009, Olga Kudeshkina, former Moscow court judge who was dismissed from her duties in 2004, stated that Moscow City Court “has turned into an institution of settling political, commercial and other scores” and that “nobody can be sure that the case will be resolved in accordance with the law”;

Whereas, on April 2, 2009, Senator Ben Cardin, chair of the Helsinki Commission, issued a statement in the Senate in which he noted that “the Council of Europe, Freedom House and Amnesty International, among others, have concluded that Mr. Khodorkovsky was charged and imprisoned in a process that did not follow the rule of law and was politically influenced . . .” and that “the current charges . . . amount to legal hooliganism and highlight the petty meanness of the senior government officials behind this travesty of justice . . . should be dropped and the new trial should be abandoned”;

Whereas, on April 10, 2009, the New York Times published an editorial noting that the new charges and trial against Mikhail Khodorkovsky “are for show, intended only to keep [him] and his colleague in prison forever”;

Whereas, on April 11, 2009, the Washington Post wrote: “If Mr. Medvedev allows [the Khodorkovsky trial] to go forward to its scripted conclusion—a lengthy extension of Mr. Khodorkovsky’s sentence to a Siberian prison camp—the point will be proved that Russia still has no rule of law but only a ruler”;

Whereas, on April 21, 2009, Freedom House, Amnesty International, Human Rights First, Human Rights Watch, the International League for Human Rights, the Lantos Foundation for Human Rights and Justice, and the Jacob Blaustein Institute for the Advancement of Human Rights joined in a letter to President Medvedev in which they note “the serious human rights concerns raised by the case so far” and call on the Russian Government to “ensure that international observers are allowed unhindered access to the courtroom” to monitor the trial, to “ensure that the rule of law is upheld” and that it “meets the standards of the Russian Constitution and international law”;

Whereas the selective disregard for the rule of law by Russian officials undermines the standing and status of the Russian Federation among the democratic nations of the world; and

Whereas both Russia and the United States have recently elected new presidents that provide the opportunity to review past policies and pursue a new era of mutual cooperation: Now, therefore, be it

1 *Resolved*, That it is the sense of the Senate that—

2 (1) Mikhail Khodorkovsky and Platon Lebedev
3 are prisoners who have been denied basic due pro-
4 cess rights under international law for political rea-
5 sons;

6 (2) in light of the record of selective prosecu-
7 tion, politicization, and abuse of process involved in
8 their cases, and as a demonstration of Russia’s com-
9 mitment to democracy, human rights, and the rule

1 of law, the new criminal charges brought by Russian
2 authorities against Mr. Khodorkovsky and Mr.
3 Lebedev should be withdrawn;

4 (3) the standing of the Russian Federation as
5 a nation supporting democracy, freedom of expres-
6 sion, an independent judiciary, human rights, and
7 the rule of law would move closer to validation by
8 paroling Mr. Khodorkovsky and Mr. Lebedev, both
9 of whom have served more than half their sentences;
10 and

11 (4) the Russian Federation is encouraged to
12 take these actions to support democratic principles
13 and human rights in furtherance of a new and more
14 positive relationship between the United States and
15 Russia and a new era of mutual cooperation.

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