BUSINESS MEETING

Tuesday, June 26, 2012

U.S. SENATE COMMITTEE ON FOREIGN RELATIONS

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COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, D.C.

1 The committee met, pursuant to notice, at 2:25 p.m., in Room S-116,
2 Capitol Building, Hon. John Kerry, chairman of the committee, presiding.
3 PRESENT. Senators Kerry [presiding], Menendez, Cardin, Casey, Shaheen,
4 Coons, Durbin, Udall, Lugar, Corker, Risch, DeMint, and Isakson.

OPENING STATEMENT OF HON. JOHN KERRY, U.S. SENATOR FROM MASSACHUSETTS

5 THE CHAIRMAN. This business meeting of the committee will come to
6 order.
7 Thank you all for being here.
8 We have one item on the agenda today, and that is the so-called
9 Magnitsky bill, Senate 1039. And the vehicle for consideration is a substitute
10 amendment from Senator Cardin.
11 Let me begin by commending Senator Cardin for just an incredible level of
12 perseverance and a lot of hard groundwork in working this process with fellow
13 committee members, with the administration, with the White House, State
14 Department, different parts and different views from different places.

And I know from his work as co-chair of the Helsinki Commission what a tireless and important advocate for human rights Senator Cardin is. So he has worked conscientiously with a lot of us here to get where we are.

Now for 20 years, an independent Russia has been working to reinvent itself really as a freer, more prosperous, market-oriented society, and there have been accomplishments and there have obviously been, in some people's observations, missteps and setbacks. And I say that very mindful of the need for the United States not to always be pointing fingers and lecturing and to be somewhat introspective as we think about these things.

In some ways, we can do better ourselves in a number of different things. But nevertheless, human rights are in our DNA, and we will always be a nation that stands up and fights for people's human rights.

I do think personally, just speaking personally — and I talked to Senator Cardin about this — I still have some issues about where we are in this. Not sufficient to say we shouldn't pass it out of the committee, but sufficient that I would want to work on those with Senator Cardin before we actually come to the floor for a vote on it.

And Senator Cardin has agreed with that and I think is in agreement with some of the thoughts that I have, and I am not going to go into them here today.

But certainly, to me, to this Senator as chairman, I don't view this as a completely finished product, and I don't want it judged as such.

So we need to continue to do some work. But nevertheless, it is a long time in the building to this moment, and it is an important one. So I salute Senator Cardin's tenacity and his fundamental commitment. And I think that in the end, when we do finish some of the tweaking and adjustments that I think are necessary, I think we can have a work product that everybody will feel confident about.

So, on that note, let me ask, Senator Lugar, do you want to make any opening comments?

STATEMENT OF HON. RICHARD G. LUGAR,
U.S. SENATOR FROM INDIANA

SENATOR LUGAR. I would just say, Mr. Chairman, that as someone who has encouraged Senator Cardin and proposed that we take action on this for some time, I am delighted that that moment has come.

I have also heard from many, and I just simply want to sort of try to lay this issue to rest, the question of why the Foreign Relations Committee is so involved with other committees on this activity. This might be a dilution of our jurisdiction.

I think as a practical matter, the PNTR issue, which is before the Finance Committee and clearly part of their jurisdiction, is at least a part of the thinking

1 of many of us that the human rights issue should be paired with this and that
2 these ought to occur as simultaneously as possible.
3 Now we cannot take that action here in this committee, nor should we
4 attempt to do that this afternoon. Senator Cardin and others on the committee
5 are members of the Finance Committee, and they will have opportunities to do
6 that melding at that point, which I am very hopeful will occur so that there is
7 from the standpoint of the Russians and the business community in our country
8 some sense of movement in terms of our trade relationships and a normalcy
9 which has not been the case for some time. At the same time, this process will
10 draw recognition to the outrageous activity, at least as we see it, in Russia with
11 regards to individuals who have been named.
12 So I look forward to this moment and am pleased the bill is before the
13 committee.
14 THE CHAIRMAN. Thank you, Senator Lugar.
15 Let me say as also a member of the Finance Committee that Senator
16 Baucus has been working with us very closely as we have gone along here, and I
17 think he is very much of a mind and committed to the notion that these two have
18 to move if not simultaneously, obviously very linked closely together. And I
19 think we are all of that view.
20 Senator Cardin?

SENATOR CARDIN. Well, Chairman Kerry, first, let me thank you for your leadership and your good advice as we have been moving through this process. We want to get this right. I know your commitment to human rights and your commitment to doing this in the right way from the point of view of U.S. foreign policy, and I thank you very much for your help.

Senator Lugar has been particularly helpful. I thank you. And we have always kept these issues as nonpartisan, not only bipartisan, but nonpartisan issues as the way it should be, and I thank you for your guidance.

Many members of the committee have helped in this regard. I do want to acknowledge Senator Durbin and his leadership on human rights issues. And he has been a true leader on having us focus on a lot of these issues.

Senator Shaheen serves with me on the Helsinki Commission and is also our chair on Europe and has been one of the leading voices on that. Senator Menendez has been a stronger champion of human rights issues, and I thank him very much for all of his help.

And I could go and mention all of the members of this committee as they have been helpful in this. I want to acknowledge Senator McCain, my lead Republican cosponsor and the person who has strategized with me as we have been trying to work ways to be constructive and moving forward on legislation.

1 And Senator Wicker, who is the ranking Republican on the Helsinki Commission,
2 have all been very much involved in getting this bill to where we are today.
3 Our principal purpose is not only to bring justice to Sergei Magnitsky, a
4 young lawyer who was tortured and killed by Russian authorities after he
5 whistleblew and told about corruption within Russia, but to have a legacy of
6 advancing international human rights that those who are involved in gross
7 human rights violations should not have the privilege to visit our country or use
8 our banking system, which, in many cases, is where they want to put their illegal
9 gains in our banking system and properties in our country.
10 So that is the purpose, but the main purpose is to have countries take
11 action on their own, that they should hold those who violate these standards
12 accountable under their own laws, and our greatest desire is to see the countries
13 of the world take that type of action, starting with Russia.
14 So I thank everybody for their cooperation. I think we are prepared to
15 move forward.
16 Mr. Chairman, I have one amendment that I will be offering that Senator
17 Kyl helped draft that furthers the oversight function of Congress that I think
18 would be helpful. And I do agree with you that I look forward to working with
19 you and the other cosponsors of the legislation in ways that we can improve this
20 to carry out its intentions.

1 I want to thank Senator Corker. We had a good discussion earlier today
2 on this issue. We don't agree on all points, but I think we do agree on the final
3 objective of what we are trying to accomplish, and that is to advance human
4 rights globally with U.S. leadership.
5 THE CHAIRMAN. Senator Corker?
6 SENATOR CORKER. First of all, I want to thank Senator Cardin for coming
7 over today and talking about some of the minor differences and, at the same
8 time, thank him for his leadership on this issue. I really do thank you for that.
9 I have got a couple of issues that I would like to talk further about. I am
10 not going to offer any amendments today.
11 One of the things when we pass legislation that I do like to see is a sunset
12 provision so at 5 years or at some point down the road, we actually relook at
13 what we have done and see how it works. And I know that that is not something
14 that is going to pass today, but I just want to say to you I look forward to
15 working with you and Senator Kerry and others over the course of the time
16 between now and going to the floor to work out a couple of issues.
17 I know in our hearing in December, this was a Russia-focused, more of a
18 Russia-focused hearing. It was not a globally focused hearing, and I look
19 forward to talking through a couple of issues there.

1 But again, I cannot thank you enough. I respect you for the tremendous
2 work you have done in human rights areas and certainly with the Helsinki
3 Commission. And out of respect for that, I am going to vote for this today and,
4 hopefully, cause some of the changes that we are talking about to occur before
5 the floor vote.
6 THE CHAIRMAN. Well, thank you, Senator Corker. I appreciate that very
7 much.
8 Senator Cardin, again, let me ask you on this amendment, I have a concern
9 about it. And my concern is that I think it is very legitimate to want to name and
10 shame. And I support what you are trying to do there.
11 But I have some concerns that the way this is — the extent that the — what
12 is the word I am looking for? — the scope that this tries to require in terms of this
13 additional information that you think has to be provided in the classified annex, I
14 am just wondering whether that is not putting at risk classified information in a
15 context where it may not be necessary, where it doesn't add that much more to
16 the outcome.
17 And I worry particularly just that it requires so much more detail in a
18 classified forum that is going to be available to a broader group of readers. And
19 therefore, given our recent experience with a lot of classified information, I am

1 just not that comfortable with that scope being required. And I am not sure, you
2 know, I see the value added completely in that.
3 Now maybe the thing for us to do is put this into the category of what you
4 and I want to work on and work through here. But I am worried about the
5 unintended consequences of requiring that kind of detailed reporting that
6 implicates a broader range of intelligence equities.
7 SENATOR CARDIN. Well, and I agree with you. We will absolutely revisit
8 this. But let me try to clarify it since I think there was some misconception as to
9 how the legislation as originally filed works and how the amended version
10 would work.
11 There is a national security waiver provisions that are in lots of bills like
12 this. It was in our original bill that the administration has to have the ability to
13 allow individuals to come to this country that are in our national security
14 interests, and there may have to be waivers that are issued. We understand that,
15 and that was in the original draft of the bill.
16 But it is our preference that those that are denied the opportunity to visit
17 because of gross human rights violations, that their names will be published
18 because of name and shame. It has worked well in human rights issues
19 historically, and we think that is the preferred route to go.

1 The administration raised some legitimate questions with this bill
2 originally as to how they would exercise a national security waiver if they felt the
3 release of the name caused a national security problem. We thought they could
4 issue the waiver as it was originally drafted, but there was some concern about
5 that.
6 So we went back to the cosponsors and we allowed them to — the
7 administration to file a classified annex because we thought that is the proper
8 way to protect the identity of a person who they believe should be banned from
9 coming to this country, but for national security reasons they cannot list the
10 name. It may be an informant issue. It could be a lot of different issues involved.
11 So they can't list the name itself.
12 So that is why those changes were made in order to accommodate what
13 we thought was the original intent of the bill. The sensitivity on the classified
14 document is sensitive. You are absolutely right. The name is sensitive. Just the
15 fact that that could get out could be damaging.
16 But we all take oaths that we will not violate classified information. I
17 think those who are going to be interested in seeing this information will want it
18 only for the purposes of oversight to make sure that the administration is
19 properly exercising its authority under the intent of the statute.

1 So the amendment that I am offering now only says that there will be —
2 the only difference is to say that they have to give the justification in the classified
3 annex, which is why they have the name on the list, which is why they are not
4 listing it publicly, which is something Congress needs to know. And that they
5 review it once a year, which we don't think is a hardship.
6 So I understand the chairman's concern, but I think when you look at how
7 this has been set up to work from a functioning point of view that we don't
8 expect there to be a lot of — we understand the risks of even submitting a
9 classified document. But this allows the administration to at least be able to list
10 the name, not list it publicly. If it becomes an issue where they are super
11 sensitive about it, they can exercise their national security waiver generally.
12 So I think there is adequate protection for the administration and adequate
13 protection for Congress to exercise its oversight function. But I am more than
14 happy to continue to work with the chairman and see if there is a better way that
15 we can satisfy everyone's concerns here.
16 THE CHAIRMAN. Well, I appreciate that. I wish I could be as sanguine that
17 everybody's oath was going to — you know, someone from some other motive
18 leaking it to somebody, and then it is out there because they don't think enough
19 is being done or they think too much is being done. There are all kinds of
20 parameters.

If you would, I would ask this courtesy, and I promise you, I am not going to — you know, we are not going to — we will work in good faith to try to get that nailed down. I would like to do it in the overall context of what you and I were talking about in terms of the general approach. And I think could we do that?

SENATOR CARDIN. I am not sure what you are asking.

THE CHAIRMAN. Well, I would rather hold off on the amendment. If we could just — we could put it in a manager's amendment when we put these pieces together, if you are willing to do that, just so I am —

SENATOR CARDIN. Really, I would ask the chairman's indulgence. I am more than happy to consider it at a later point. I give the chairman the commitment.

But I think that the reason why this language becomes important is the fact that we changed the language as it relates to the annex, and I think it is important that we have congressional oversight as part of it. So I think it would be incomplete unless we —

THE CHAIRMAN. Any further debate? Any further comment, discussion?

[No response.]

THE CHAIRMAN. If not, we will vote on the Senator's amendment.

All those in favor, say aye.

[A chorus of ayes.]

THE CHAIRMAN. Opposed, nay.

[A chorus of nays.]

THE CHAIRMAN. The ayes have it. The amendment is adopted.

Is there any further amendment? Any further debate?

[No response.]

THE CHAIRMAN. If not, then we will vote on whether or not to vote the bill, as amended, out of the committee.

All those in favor, say aye.

[A chorus of ayes.]

THE CHAIRMAN. Opposed, nay.

[No response.]

THE CHAIRMAN. The ayes have it unanimously, and the bill will be reported. And you and I will continue, Senator Cardin —

SENATOR CARDIN. Absolutely. Absolutely.

THE CHAIRMAN. — to work on this.

I thank everybody. We stand adjourned.

[Whereupon, at 2:40 p.m., the hearing was adjourned.]