

October 12, 2011

## **Questions for Michael McFaul, Nominee to be U.S. Ambassador to Russia**

### *Executive Summary*

- On September 16, 2011, President Obama nominated Michael McFaul to be U.S. Ambassador to Russia, with a nomination hearing on October 12, 2011.
- The evaluation of McFaul's nomination will provide Senators an opportunity to explore many aspects of the one-sided Russia reset policy.
- The reset policy was supposed to bring about Russian cooperation on matters of interest to the United States. Why did Russia just veto a Security Council resolution pertaining to Syria that Russia had already watered-down?
- Why should Russia be rewarded with membership in the World Trade Organization after its 2008 invasion of Georgia? Has there been any sanction for Russia's continued occupation?
- Mr. McFaul served on the National Security Council staff at the time Russian intelligence officers were alleged to have been involved in a bomb attack targeting the U.S. Embassy in Georgia in September 2010. When did he first learn of potential Russian involvement in this attack, and what has the United States learned to date in investigating this matter?
- Russia continues to seek legally binding limitations on the deployment of U.S. missile defense systems like it achieved in New START. Can Mr. McFaul assure Congress the Obama Administration will make no further capitulations to Russia on missile defense?
- Answers to these questions will demonstrate the Russia reset policy to be more a change in tone than in substance.

## Introduction

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President Obama has nominated Michael McFaul, the current National Security Council Senior Director for Russian Affairs, to be the U.S. Ambassador to Russia. The hearing on his nomination before the Senate Foreign Relations Committee will be on October 12, 2011. Evaluating his nomination provides Senators an opportunity to explore many aspects of the one-sided Russia reset policy.<sup>1</sup>

## Questions for the Nominee

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### *Russian Occupation of Georgia*

Three years after its invasion, Russia is still occupying parts of Georgia. This is a blatant violation of the independence, sovereignty, and territorial integrity of a country with aspirations of joining NATO.<sup>2</sup>

1. On staff of the National Security Council, what role did you play in the declaration by President Obama that Russia's continuing occupation of Georgia "need no longer be considered an obstacle" to U.S. cooperation with Russia on civil nuclear cooperation?<sup>3</sup>
2. Since Congressional action will be a part of Russian accession to the World Trade Organization (WTO), would you support a legislative provision requiring the President to certify that Russia is not militarily occupying territory of another WTO member prior to allowing Russia to join the WTO?
3. Can you point to one concrete action or sanction Russia has suffered from the United States due to its continued occupation of Georgia other than a stern lecture from time to time?

### *Alleged Russian Complicity in Bombing of U.S. Embassy in Georgia*

This past summer, very disturbing media reports began to surface about potential Russian complicity in a bomb attack targeting the U.S. Embassy in Georgia in September 2010.<sup>4</sup>

4. You were serving on the National Security Council staff at the time, when did you first learn of potential Russian involvement in this attack?

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<sup>1</sup> RPC National Security Facts, What Exactly Has Been "Reset" in the Relationship with Russia, June 23, 2010, [http://rpc.senate.gov/public/?a=Files.Serve&File\\_id=bb666692-2226-467f-92d1-4c0710ccf1a1](http://rpc.senate.gov/public/?a=Files.Serve&File_id=bb666692-2226-467f-92d1-4c0710ccf1a1)

<sup>2</sup> Final Declaration of the NATO Heads of State Summit ¶ 23, Apr. 3, 2008, [http://www.nato.int/cps/en/natolive/official\\_texts\\_8443.htm](http://www.nato.int/cps/en/natolive/official_texts_8443.htm) (reaffirming NATO's aim to prepare for the eventual membership of Georgia in the alliance).

<sup>3</sup> Barack Obama, Message from the President Regarding a Peaceful Nuclear Cooperation Agreement with Russia, May 10, 2010, <http://www.whitehouse.gov/the-press-office/message-president-regarding-a-peaceful-nuclear-agreement-with-russia>.

<sup>4</sup> Ellen Barry and Mark Mazzetti, U.S. Ties a Russian to Bombings in Georgia, N.Y. Times, July 28, 2011, <http://www.nytimes.com/2011/07/29/world/europe/29georgia.html>.

5. What has the United States learned to date in investigating this matter?
6. What discussions have taken place with the Russian government in the course of investigating this matter?

### *Other Milestones in the Russia Reset*

#### Russian Protection of Syria

During her March 2010 trip to Russia, Secretary of State Clinton claimed, “We believe that this reset of the relationship has led to much greater cooperation, coordination, and a constructive ongoing consultation on numerous issues that are important to our bilateral relationship and to the global issues that we both are facing.”<sup>5</sup> Last week, an Assistant Secretary of State asserted that the completion of New START “contributes positively to the U.S.-Russian relationship.”<sup>6</sup>

On that same day, Russia vetoed a tepid Security Council Resolution expressing some displeasure with Syria’s forcible repression of its citizens’ universal rights. As the U.S. Ambassador to the United Nations Susan Rice said, Russia had already “vastly watered-down” the Resolution to not “even mention sanctions,”<sup>7</sup> but then vetoed it anyway.

7. Now that Russia has demonstrated it will serve as Syria’s protector in international fora, in addition to protecting Iran, where is the Russian cooperation on Syria that was supposed to be forthcoming from the Russia reset?

#### Russian Nuclear Cooperation with Iran

Secretary of State Clinton asserted to the Senate Armed Services Committee on June 17, 2010, “our close cooperation with Russia on negotiating this New START treaty added significantly to our ability to work with them regarding Iran.”<sup>8</sup> However, the New York Times reported last year during Senate consideration of New START that Russia was helping Iran load nuclear fuel at Iran’s nuclear reactor at Bushehr.<sup>9</sup> Just last month, Russia and Iran signed a protocol for continued cooperation at the reactor.<sup>10</sup>

8. When can Congress expect Russia to halt its nuclear assistance to Iran at Bushehr?

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<sup>5</sup> Hillary Clinton, Remarks of the Secretary of State with Russian Foreign Minister Sergey Lavrov, March 18, 2010, <http://www.state.gov/secretary/rm/2010/03/138531.htm>.

<sup>6</sup> Rose Gottemoeller, Remarks of the Assistant Secretary of State for the Bureau of Arms Control, Verification and Compliance to the United Nations First Committee (Disarmament and International Security), Oct. 4, 2011, <http://www.state.gov/t/avc/rls/175000.htm>.

<sup>7</sup> Susan Rice, Explanation of the Vote by the U.S. Ambassador to the United Nations on the Security Council Resolution on Syria, Oct. 4, 2011, <http://usun.state.gov/briefing/statements/2011/175027.htm>.

<sup>8</sup> Hillary Clinton, Testimony of the Secretary of State at the Senate Armed Services Committee Hearing on The New START and the Implications for National Security, <http://armed-services.senate.gov/Transcripts/2010/06%20June/10-54%20-%206-17-10.pdf>.

<sup>9</sup> William Yong & Alan Cowell, Iran Begins Loading Fuel at Nuclear Reactor, N.Y. Times, Oct. 26, 2011, <http://www.nytimes.com/2010/10/27/world/middleeast/27nuke.html>.

<sup>10</sup> Bloomberg, Iran, Russia Sign Nuclear Protocol to Ensure Safety, Assistance, Sept. 13, 2011.

## *U.S-Russian Missile Defense Cooperation*

It is no secret that a priority of the Obama Administration is to cooperate on missile defense matters with Russia.<sup>11</sup> It is similarly no secret Russia seeks a legally binding agreement limiting our missile defense deployments, like it achieved in New START (despite Obama Administration protestations to the contrary).<sup>12</sup>

9. Would agreements on missile cooperation between the United States and Russia require Senate consent, as Senator Clinton believed was necessary for security cooperation agreements between the United States and Iraq?<sup>13</sup>
10. During the negotiation period of New START, the Senate unanimously expressed its view that the President should maintain the position that “the follow-on treaty to the START Treaty not include any limitations on [U.S.] ballistic missile defense systems.”<sup>14</sup> Yet, New START has a legally binding limitation on U.S. missile defense deployments, ignoring the Senate’s clear admonition not to include any limitations on missile defense in the treaty. What can the Obama Administration, and you in particular, do to assure Congress that the missile defense cooperation the Obama Administration is pursuing with Russia will not result in further capitulations and limitations on U.S. missile defense deployments?

## *Russian Accession to the World Trade Organization*

President Obama has said he supports Russia joining the World Trade Organization.<sup>15</sup> In practice, Russian accession to the WTO would require U.S. Congressional action, namely the repeal of the Jackson-Vanik amendment. Otherwise, the United States would not obtain all of the benefits and protections that would accrue to its trade relationship with Russia on account of Russian WTO membership.<sup>16</sup>

WTO members are required to enforce the Organization’s intellectual property rules. Each year the U.S. Trade Representative prepares a report on the global state of intellectual property rights, known as the Special 301 Report. Russia remains on the USTR Priority Watch List due to “ongoing concerns, particularly with respect to piracy over the Internet and enforcement

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<sup>11</sup> State Department Media Note Providing Readout of Meeting on Missile Defense Cooperation, July 22, 2011, <http://www.state.gov/r/pa/prs/ps/2011/07/168982.htm> (noting discussion between U.S. and Russian officials on the topic).

<sup>12</sup> New START, art. V, sec. 3 (prohibiting either party from converting ICBM or SLBM launchers to use missile defense interceptors therein); Steven Pifer, Obama, Medvedev and Missile Defense, May 20, 2011, [http://www.brookings.edu/opinions/2011/0521\\_arms\\_control\\_pifer.aspx](http://www.brookings.edu/opinions/2011/0521_arms_control_pifer.aspx) (noting the “legally binding guarantees” limiting U.S. missile defense deployments Russia is seeking in the course of a United States-Russia missile defense cooperation agreement).

<sup>13</sup> Congressional Oversight of Iraq Agreements Act, S. 2426, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (introduced by Senator Clinton on Dec. 6, 2007).

<sup>14</sup> 155 Cong. Rec. S8003 (July 23, 2009) (emphasis added).

<sup>15</sup> Barack Obama, Remarks of the President with Russian President Medvedev at the U.S-Russian Business Summit, June 24, 2010, <http://www.whitehouse.gov/the-press-office/remarks-president-obama-and-president-medvedev-russia-us-russia-business-summit>.

<sup>16</sup> See The Jackson-Vanik Amendment and Candidate Countries for WTO Accession, CRS Rpt. RS22398 (Jan. 5, 2011).

generally.”<sup>17</sup> The most recent report expressed particular concern that “hard goods counterfeiting and piracy continue to be widespread” in Russia, “particularly for the motion picture, television and entertainment software industries.” It further took note of industry reports that “warehouses storing pirated CDs and DVDs remain on several government-controlled military-industrial sites.”<sup>18</sup>

11. Should Russian WTO accession be conditioned on USTR removal of Russia from the Priority Watch List?
12. Given that the WTO is focused on organizing a rules-based global trading system, does Russia really have sufficient respect for the rule of law to be a productive member of a rules-based trading regime?
13. Does Russia’s continuing occupation of Georgia “need no longer be considered an obstacle” to Russian WTO accession?<sup>19</sup>

### *Russian Human Rights Record*

In his speech accepting the Nobel Peace Prize, President Obama said support for human rights was critical to peace and emphasized that America’s interests are not served “by the denial of human aspirations.”<sup>20</sup>

14. Are the following statements from the most recent State Department Country Report on Human Rights Practices in Russia still accurate?<sup>21</sup>
  - a. “The restrictions on political competition and interference in local and regional elections in ways that restricted citizens’ right to change their government continued”?
  - b. “Arbitrary detention and politically motivated imprisonments were problems”?
  - c. “The government controlled many media outlets and infringed on freedoms of speech and expression, pressured major independent media outlets to abstain from critical coverage, and harassed and intimidated some journalists into practicing self-censorship”?
  - d. “The government limited freedom of assembly, and police at times used violence to prevent groups from engaging in peaceful protest”?
  - e. “Rule of law and due process violations remained a problem”?
  - f. “Corruption was widespread throughout the executive, legislative, and judicial branches, and officials often engaged in corrupt practices”?
  - g. “Corruption in law enforcement remained a serious problem”?
  - h. “Political and executive influence on the judicial system was observed in some high-profile cases”?

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<sup>17</sup> Office of the United States Trade Representative, 2011 Special 301 Report, p. 25 (April 2011)

[http://www.ustr.gov/webfm\\_send/2841](http://www.ustr.gov/webfm_send/2841).

<sup>18</sup> Id. at p. 26 (emphasis added).

<sup>19</sup> Obama Message Regarding a Peaceful Nuclear Cooperation Agreement with Russia, supra note 3.

<sup>20</sup> Barack Obama, Remarks of the President at the Acceptance of the Nobel Peace Prize, Dec. 10, 2010,

<http://www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize>.

<sup>21</sup> United States Department of State Bureau of Democracy, Human Rights, and Labor, 2010 Country Report on Human Rights Practices: Russia, April 8, 2011, <http://www.state.gov/documents/organization/160474.pdf>

## **Conclusion**

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Senators have spoken forcefully about their constitutional duty to evaluate Executive Branch nominees. Considering ambassadorial nominations provides the Senate with an opportunity to evaluate the executive's foreign policy practice. Answers to these questions may help Senators in both their consideration of the nomination of Michael McFaul to be U.S. Ambassador to Russia, as well as provide more information on the Obama Administration's one-sided Russia reset policy.

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