

## How to fix, preserve and strengthen the Open Skies Treaty

By Alexandra Bell, Wolfgang Richter, Andrei Zagorski

A picture, it is said, is worth 1,000 words. The image-centric Treaty on Open Skies (Open Skies) embodies that concept perfectly. The trusted pictures shared among all the Parties to the treaty create more certainty than thousands of words ever could. In a world of growing mistrust and uncertainty over military intentions, the 34-nation agreement provides transparency across the Euro-Atlantic between Vancouver and Vladivostok. Despite that fact, for a few months in late 2019, it seemed as if the Trump Administration was moving to withdraw from the treaty.<sup>1</sup> The furious pushback from both allies and bipartisan experts seems to have granted the agreement a temporary reprieve. Unfortunately, Open Skies is by no means out of danger. While some critics will never be sated, it is incumbent upon treaty advocates to find solutions to the ongoing compliance problems with the agreement.

### The case for Open Skies

First, it is important to recount the benefits of Open Skies. Opened for signature in 1992 and in force by 2002, the treaty has 34 Parties that span the Northern hemisphere. The idea behind the agreement is simple: increasing transparency will decrease mistrust and instability. Under the treaty, each Party can conduct short-notice, unarmed surveillance flights over any other Party within a high number of passive quota an observed Party is obliged to accept (e.g. up to 42 each year for Russia and the United States).<sup>2</sup> The inspected Party is on board during an over-

flight and can effectively dismantle the plane in advance of an inspection to ensure the absence of unapproved technology. Since the inception of the treaty, Parties have conducted over 1,400 missions, including 500 flights over the Russian Federation. All of these flights help to give Parties a better idea of how countries are moving forces, which reduces uncertainty and enables better military planning.

The sensors used in Open Skies planes have an unanimously approved, verifiable resolution. Unlike some other treaties, Open Skies anticipated advances in technology and allows for updates, including electro-optical film and video cameras, thermal infrared cameras and Synthetic Aperture Radar (SAR) systems, again through unanimous agreement of all Parties.<sup>3</sup> That adaptability is an underrated benefit of the agreement. Currently, Parties are moving from wet film to digital images, though at different speeds. The nature of the imagery is not overly invasive, rather it allows countries to distinguish battle tanks from armored combat vehicles or artillery systems. Its resolution of 30 cm is comparable to the best commercial observation satellites. The flexibility of Open Skies observation flights with a preparation time of 24 hours provides advantages over technically more complicated rerouting of satellites. In addition, Open Skies flights can be successfully carried out even under overcast conditions if agreed observation flight altitudes are below cloud levels. For many Parties to the treaty, including many NATO allies, Open Skies is their

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only tool for independent overhead image collection. That independence is valuable both for individual countries and for countering accusations of bias or image manipulation. The usual sharing of observation flights with other observing Parties strengthens this effect.

Among the most important features of the treaty is the fact that after the observation flights, all collected imagery is shared with the Parties participating in such flights. On request, it can also be received by Parties to the treaty which did not participate in the same flights.<sup>4</sup> Since the images were collected through sensors and processes approved by those Parties, they are tamper-proof. That is a massive asset in a world rife with disinformation. A Party cannot deny the validity of Open Skies imagery since they themselves effectively participated in its collection. Further, since the images can be shared easily, the treaty can help manage ongoing conflicts. For example, if one Party is denying allegations of force deployments, overhead imagery collected under Open Skies can help to clarify the matter. Respective states might already have the necessary satellite imagery to show such movements, but cannot share it for classification reasons. An Open Skies flight over the area, however, can provide undeniable, unclassified confirmation. Thus, since 2014 dozens of Open Skies observation flights were carried out in context with the crisis in and around Ukraine. Up until 2016, the United States carried out around 200 observation flights over Russia while Russia conducted about 70 flights over the United States.<sup>5</sup> The higher the political stakes involved in a regional or sub-regional conflict, the more difficult it seems to apply cooperative means of security, such as the Open Skies Treaty. Some states use national technical means as a fallback option to monitor events. However, Open Skies can be helpful in flushing out those who are opposed to transparency.

In addition, there is also the more abstract benefit of the treaty, which is the constant interaction among Parties. Face-to-face military interaction can provide insights useful to intelligence and diplomatic communities. It allows countries to get a feel for how others are operating, how they explain emerging risk perceptions and their consequences for military activities, and how they are translating military doctrines into force postures. That level of military interaction is valuable in times of crisis, particularly while other channels of communications are shrinking. Such military-to-military contacts can create space for more cooperation in order to clarify and eventually deescalate tense situations. It also complements NATO's current approach towards modernizing the Vienna Document, which promotes trust and predictability through transparency and verification measures.

For almost twenty years, Open Skies has been a benefit to its members, providing much-needed transparency in a time of growing uncertainty. However, there are technical and political problems with the treaty that are used as arguments to threaten its continued existence.

### Implementation issues

While treaty implementation disputes are not uncommon in any treaty and also have been an issue under Open Skies,<sup>6</sup> two major problems have now emerged with Open Skies. The first is related to a Russian-imposed flight distance restriction over the Kaliningrad Oblast and the second concerns Russian-imposed proximity restrictions near South Ossetia and Abkhazia. The United States has formally declared Russia to be in violation over Open Skies due to these problems. Washington has taken some reversible countermeasures as a result of that declaration, such as restricting Russian observation flights to Pacific

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islands and missile defense sites in Alaska.<sup>7</sup> The United States government is reportedly actively considering withdrawal from the Open Skies Treaty. U.S. Secretary of Defense Mark Esper has argued that Washington “can’t continue” to tolerate Russian “noncompliance” with the treaty.<sup>8</sup> The United States, however, has been relatively muted on how exactly Russia could get back into compliance. For that reason, it is imperative that other Parties to the treaty step forward with new ideas.

### *Tackling problems of observation flights over the Kaliningrad Oblast*

The Russian imposition of a 500 km restriction for observation flights over Kaliningrad came following an Open Skies flight conducted by Poland in 2014.<sup>9</sup> While Russia approved the flight plan and Russians were on board the flight in question, the lengthy flight path ended up causing chaos with air traffic control, effectively shutting down civilian flights in and out of the area. It is not clear whether the Russian team that cleared the Polish overflight had consulted with civilians about the possible commercial flight disruption. The flight distances allowed by the Open Skies Treaty depend on the designated Open Skies airfields where observation flights may commence or terminate. Taking into account the size of the areas to be overflown, they vary between 250 km (Faroe Islands) and 6,500 km (Vorkuta, Magadan).<sup>10</sup> For observation flights over the large European part of the Russian Federation and Belarus, the treaty has assigned Kubinka, near Moscow, as the designated Open Skies airfield. From there the treaty allows for a maximum flight distance of 5,000 km. It is not clear why the Poles felt the need to use most of the permitted flight distance for conducting such an extensive overflight of the small Kaliningrad

area, which covers only 15,000 km<sup>2</sup>. Russia reacted by imposing a 500 km sub-limit to avoid a similar disruption of Kaliningrad’s airspace in the future. Although this sub-limit does not prevent States Parties from effectively observing the Kaliningrad Oblast, there is no treaty mechanism that allows for such a unilateral restriction. However, the treaty itself provides precedence for limiting flight distances in accordance with the size of the area to be covered by observation flights.<sup>11</sup>

So how can the treaty’s governing body, the Open Skies Consultative Commission (OSCC), fix this problem? If the Russian arguments were sincere that lengthy flights over Kaliningrad are prohibitively disruptive, perhaps the OSCC could foster an agreement among members to make sure that the issue will not arise again. For example, members could agree to some mutually amenable distance limitations over the territory. Specifically, if the root of the problem is the length of time commercial aviation is disrupted, perhaps an Open Skies flight over Kaliningrad could be broken up into a series of smaller flights with breaks within one day or across multiple days. Of course, the problem that observation flights have to commence and terminate in Kubinka still remains. Therefore, an alternative solution could be designating Kaliningrad as an Open Skies airport with its own flight distance restriction. If that is not acceptable to Russia, the St. Petersburg airport might be another option. Such or similar proposals by Western states would demonstrate that Russia’s concerns are being heard and cooperative solutions envisaged. Given the current attitudes of the White House, probably European states such as Germany or France would be in a better position to make such proposals which perhaps could open the door to other solutions, too.

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### *Addressing issues around Georgia, South Ossetia, and Abkhazia*

The second issue stems from restrictions within Open Skies and tensions that go far beyond the treaty itself. Under the terms of the agreement, Parties cannot fly within 10 km of the borders of non-treaty members.<sup>12</sup> South Ossetia and Abkhazia, two regions in Georgia, have declared themselves to be independent states in 2008. Georgia and most of the world do not recognize their independence, but Russia does. That led to the current situation in which Russia maintains the position that under the terms of Open Skies, flights cannot come within 10 km of the borders of those two regions.

Moving forward on this problem will be a challenge. Georgia maintains that any acknowledgement of the Russian-imposed 10 km limit is tantamount to recognizing the sovereignty of South Ossetia and Abkhazia. As a result of the impasse, Georgia has unilaterally declared a suspension of the Open Skies Treaty in relation to the Russian Federation and, in consequence, stated that Russia cannot conduct overflights of its territory. Open Skies does not actually allow for a member state to deny another treaty Party overflight privileges, but Open Skies signatories have found at least a temporary way to handle this issue. For some time, the United States and its allies have simply made sure that Russia did not have an opportunity to bid for an overflight of Georgia by exhausting Georgia's passive quota early in the annual flight coordination process.<sup>13</sup> However, this plan faltered in 2018, when through some level of confusion, Russia was able to make a bid to conduct a flight over Georgia. Georgia objected to the request and as a result, no Open Skies flights took place that year. Russia backed off in 2019 and flights resumed, but the underlying problem persists.

Open Skies was not designed and is not intended to be a tool for addressing border disputes. Nor can the OSCC simply bring the two breakaway regions into the treaty. The likely path ahead may involve coaxing Georgia into allowing the resumption of Russian overflights in return for waiving the 10 km limit. If Russian overflights are non-negotiable, perhaps a joint flight with Russian participation would be more acceptable. Which country (or countries) is in the best position to lead such a delicate diplomatic effort is unclear. One could make the case that perhaps the United States taking a lead would demonstrate that it is serious about resolving the issues with which it is so concerned. However, given the current priorities of the Trump Administration, such an effort is unlikely. Therefore, a European country, e.g. Germany or France, should take such an initiative. Whatever the State's position on the border disagreement: it should be clear that the treaty's benefits are more important than this particular issue. The problem deserves time and attention, but it should not be allowed to derail the agreement.

### **What next?**

Even with possible solutions within reach, the real issue is political. Neither Moscow nor Washington are currently investing the necessary political capital and showing sufficient flexibility to save the treaty. Russian policy towards its neighbors and uncooperative attitude in international fora may have started the crisis, but the Trump Administration's hostile attitude toward multilateralism has made the situation worse. This puts the spotlight on the European Parties to the Open Skies Treaty. Europe, for its part, was somewhat passive in its approach to the slow death of the Intermediate-Range Nuclear Forces Treaty (INF). It cannot afford

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to make the same mistake with Open Skies. Moving from bad to worse, three possible developments need to be addressed.

First, if the current impasse continues to linger, there might be further unilateral restrictions imposed on the operation of Open Skies. Thus, the Trump administration could decide to bar Russia from conducting observation flights over United States. Russia might reciprocate, if only for reasons of status. The result would be an instant loss of transparency for both Parties: In 2019, the United States conducted 18 flights over Russia, and Russia seven flights over the United States. For 2020, out of a total quota of 42 for each Party, the United States will conduct 21 flights over Russia and Russia will conduct seven over the United States.<sup>14</sup> Laying out the plain facts at the OSCC and at capitals across the Euro-Atlantic can reduce the likelihood of such tit-for-tat restrictions on the operation of Open Skies. Europeans should propose practical solutions to the current compliance problems in the OSCC and in the upcoming Open Skies Review Conference 2020. The Group of Likeminded States, that operates under German chairmanship and is devoted to the revival of conventional arms control in Europe, could issue a common statement to this end.<sup>15</sup> This is all the more urgent, as the current situation is unlikely to be sustainable for long.

Second, if nothing is done to fix ongoing compliance concerns, some U.S. officials, who have long been critical of the agreement, will continue to push for withdrawal. Despite bipartisan support for Open Skies, they may eventually succeed. In consequence, Russia will have fewer incentives to remain in the agreement. However, Europeans and Russians may consider continued implementation even without the

United States. European Parties to the treaty could even make clear that they will not simply follow a unilateral U.S. withdrawal from Open Skies. They could highlight that it is in the self-interest of Russia and Europe to maintain Open Skies, even without the United States. The treaty could continue to provide transparency into military movements and activities, including permanent or temporary deployment of forces in European assembly areas, logistical hubs, NATO-Russia contact zones and other border areas, as well as short-, medium, and intermediate-range dual-use systems in Europe and beyond the Urals after the collapse of INF. In 2017, Russia has conducted most of its 42 observation flights in Europe, only seven over U.S. territory.<sup>16</sup> After the stalemate in 2018, similar patterns can be observed in 2019 and 2020. Based on the lack of any noted restrictions, one could assume that Russia would also still have the ability to observe U.S. military bases in Europe. Further, Open Skies Parties, including Russia and Germany, have made recent investments in new Open Skies aircraft and sensors which shows commitment to the agreement and may strengthen the desire to save it.

Third, Russia could follow the United States in leaving the treaty. This would be the preferred option of those in Moscow who would be happy to blame the United States for the demise of yet another arms control treaty. There is also a legitimate concern in Russia that Washington might have continued access to Open Skies imagery even after withdrawal, because NATO allies could not be trusted to comply with the treaty obligations to not share such data with states which are not Parties to the treaty. Europeans should attempt to address such concerns directly by pledging to stick to treaty rules even

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in the event of a U.S. exit, but it is not clear how to underpin the credibility of such a promise under current political circumstances.

Withdrawal would also pose certain challenges to the Russian Federation. Russia together with Belarus has formed a group of states for the purposes of the treaty. That implies collective passive and active observation flight quota for the combined territories of the two states, common designated Open Skies airfields, and common maximum flight distances from these airfields.<sup>17</sup> As such, Russia should coordinate its moves with Belarus. Should Russia withdraw, Minsk would need to decide whether it wants to remain in the agreement. It is by no means certain that Belarus would follow suit. The fate of the Treaty on Conventional Armed Forces in Europe (CFE) provides precedence: Belarus did not withdraw from that treaty after Russia had suspended its participation in the CFE Treaty in December 2007.

Should Belarus stay in the treaty, all other remaining States Parties would have to decide about new allocations of flight quota, designated airfields and maximum flight distances. Many States Parties would probably be concerned that Belarus could share confidential images gained during observation flights over Europe and Canada with Russia. Should Russia hand over its Open Skies aircraft to Belarus (which does not possess a national observation aircraft), such concerns will be aggravated. These reservations would mirror possible Russian concerns that European States Parties would not bar the United States from acquiring confidential Open Skies images once it has left the treaty.

In Washington, leaders should realize that they cannot withdraw from the agreement and expect allies to fall in line. Even with Russian compliance problems, the United States would receive most of the blame if Open Skies collapsed. For all its stated concern over the treaty, the Trump administration did not manage to get an Ambassador posted to the Organization for Security and Co-operation in Europe (OSCE) until June of 2019. That Ambassador serves as the highest-ranking U.S. official at the OSCE and would be the obvious point person for working through compliance problems. After finally staffing the post, it was only a few months until the news of a possible U.S. withdrawal from Open Skies started to surface. That hardly seems like a government doing everything they can to preserve the agreement.

Fair or not, with a mantra of “America First” and a reckless record of treaty withdrawals, the Trump Administration has lost credibility in Europe. Simply assuming the United States could “give” imagery to other countries after the collapse of Open Skies is equal parts arrogant and ill-informed.<sup>18</sup> Many Parties to Open Skies value the independent data they gain from the treaty and are not interested in becoming an intelligence client state of the United States. Reducing possible misperceptions about military activities and intentions will benefit the security of Russia, the United States and Europe. This is in line with efforts taken in the OSCE to reduce risks and increase transparency.

Russia, in its turn, would be expected to show flexibility in addressing the pending issues described above within the OSCE in order to ensure the preservation of mutual benefits of the implementation of the treaty.

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Therefore, Moscow, Washington and other States Parties to Open Skies would be well advised to engage in a pragmatic process aimed at solving implementation problems, such as agreeing to an additional protocol that would fix reasonable flight distances over Kaliningrad in exchange for waiving flight restrictions over Alaska and Hawaii. Addressing the dispute over conducting Open Skies Treaty flights within 10 km distance to the borders of Abkhazia and South Ossetia will be a more challenging task of identifying a status neutral solution that may not enjoy support of either Georgia or Russia. Parties to the treaty should continue to work the problem, while making clear that the ongoing political dispute does not negate the overall benefits of the agreement.

Across Europe, leaders should realize that the time to panic is now. After a generation of building guardrails against mass conflict on the continent, those guardrails are being taken down. A new, more volatile rivalry between the United States and Russia is on the rise and

neither country seems to have an urgent need to devote political capital or substantive resources to maintain what is left of conventional arms control in Europe. Whether talking to U.S. or Russian leaders, it is time to be unflinchingly honest. Holding back criticisms will neither fix Open Skies nor will it create the political will needed to save the treaty. If the United States and Russia cannot or will not put forward solutions, then European leaders should lead the way.

All being said: Parties to Open Skies will have to work together to fix, preserve and strengthen the agreement. It is an effort worth undertaking. Not only is the treaty good for Euro-Atlantic security, its continued implementation can serve as an example to other parts of the world. There are multiple regions where cooperative aerial observation could serve to reduce and stabilize tension. Going forward, it will be up to the treaty's members whether Open Skies is a productive model to emulate or a cautionary tale to avoid.

## Endnotes

- <sup>1</sup> Alex Ward, “Trump may soon ban Russian observation flights over US military bases. That’s a bad thing”, *Vox*, October 10, 2019, <https://www.vox.com/2019/10/9/20906509/open-skies-treaty-trump-russia-cheat>.
- <sup>2</sup> Treaty on Open Skies (OST), Annex A, Section I.
- <sup>3</sup> OST, Article IV.
- <sup>4</sup> OST, Article IX, Section IV.
- <sup>5</sup> Ward, op.cit. In 2017, the U.S. conducted 13 observation flights over Russian territory and Russia 7 flights over the United States. OSCC.DEL/2/18 OSCC+, 8 May 2018.
- <sup>6</sup> Examples are Turkey’s denial of a Russian observation flight in Southeast Anatolia in February 2016, the U.S. delay of certification processes for Russian Open Skies aircraft and sensors, and Russia’s rejection of an Open Skies flight during its Center-2019 exercise in September 2019. Ece Toksabay/ Maria Tsvetkova, “Turkey rejects Russian request for routine observation flight”, *Reuters*, Ankara/Moscow, February 4, 2016, <https://reut.rs/3aJAZC3>; “National Defense Authorization Act for Fiscal Year 2016”, Pub. L. No. 114-92, sec. 1244; Dominik P. Jankowski, “How to Save the Open Skies Treaty”, *Carnegie Europe*, January 9, 2020, <https://carnegieeurope.eu/strategieurope/80738>.
- <sup>7</sup> Aaron Mehta, “U.S., Russia Remain at ‘Impasse’ Over Open Skies Treaty Flights”, *Defense News*, September 14, 2018, <https://bit.ly/2Q61M3C>.
- <sup>8</sup> Aaron Mehta, “US can’t continue tolerating Russian ‘noncompliance’ on Open Skies, says Esper”, *Defense News*, February 20, 2020, <https://bit.ly/3aQZtcn>.
- <sup>9</sup> The annual report on disarmament, arms control and non-proliferation in 2015 of the German government for the first time mentioned implementation deficits of the Russian Federation. “Bericht der Bundesregierung zum Stand der Bemühungen um Rüstungskontrolle, Abrüstung und Nichtverbreitung sowie über die Entwicklung der Streitkräftepotenziale“, Berlin, 2016, p. 67.
- <sup>10</sup> OST, Annex A, Section III.
- <sup>11</sup> E.g.: 600 km for the Czech Republic (79,000 km<sup>2</sup>) from Prague; 660 km for Bulgaria (111,000 km<sup>2</sup>) from Sofia and Burgas; 800 km for Denmark (43,000 km<sup>2</sup>) from Metropolitan airport; 1,200 km for Germany (357,600 km<sup>2</sup>) from Wunstorf and Landsberg/Lech; 3,000 km for Alaska (1,718,000 km<sup>2</sup>) from Elmendorf AFB, etc., *ibid*.
- <sup>12</sup> OST, Article VI, Section II, 2.
- <sup>13</sup> Parties to Open Skies have so-called “passive” and “active” flight quotas. Passive quotas describe the number of flights a state has to allow over its own national territory. Active quotas are the number of flights a state can carry out over the territories of other states. The overall amount of passive and active quotas of one state depends on the size of its territory, while the amount of passive and active quotas of one state is always equal.
- <sup>14</sup> U.S. State Department quoted in Peter Brookes, “Stay in the Open Skies Treaty ... For Now“, Heritage Foundation, *Report Global Politics*, January 21, 2020, p. 4, <https://www.heritage.org/node/19259619>.
- <sup>15</sup> In August 2016, then-German Foreign Minister Frank-Walter Steinmeier proposed a new initiative for a group of like-minded states to revive the process of conventional arms control in Europe. This group includes Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany (chair), Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Romania, Slovakia, Spain, Sweden, and Switzerland. Frank-Walter Steinmeier, “Reviving arms control in Europe”, Berlin, *Federal Foreign Office*, August 26, 2016, <https://is.gd/SfLbmT>.
- <sup>16</sup> Open Skies Consultative Commission, United States Delegation, “Open Skies Treaty Observation Flights 2017”, OSCC.DEL/2/18 OSCC+ of 8 May 2018.
- <sup>17</sup> OST, Art. III, Section II; Annex A, Section I – III.
- <sup>18</sup> Jan Gould/ Aaron Mehta, “US to Europe: Fix Open Skies Treaty or we quit”, *DefenseNews*, November 21, 2019, <https://is.gd/Ur8zRY>.



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