

Statement by the Deep Cuts Commission:

Preserve the Open Skies Treaty

In recent years, military tensions have increased in Europe, also raising the risk that a misunderstanding or miscalculation could lead to an unintended conflict. Confidence- and security-building measures seek to reduce such risks, in part by promoting openness and transparency regarding military activities that may appear ambiguous. One such measure is the Open Skies Treaty, which provides for unarmed reconnaissance flights on short notice to collect data, particularly imagery, regarding military facilities and military activities in participating states. Unfortunately, that treaty is now in danger of collapse.

The Open Skies Treaty entered into force in 2002. It originally included the United States, Canada, Russia and 24 other European states (seven other countries subsequently joined). The treaty establishes for each treaty-party an active quota, the number of Open Skies flights per year that it can conduct over other treaty-parties, and a passive quota, the number of Open Skies flights per year that it must accept over its territory. Aircraft sensors, such as cameras, meet treaty specifications, and the data collected is made available to all treaty-parties.

As of 2019, some 1,500 Open Skies flights had been conducted. Open Skies flights had become a routine part of Europe's confidence- and security-building regime. While satellites also collect imagery, aircraft offer certain advantages: they can fly below cloud cover and can fly flexible flight paths not constrained by orbital dynamics.

In May 2020, citing concerns about Russian limitations on Open Skies flights over Russian territory, the United States announced its intention to withdraw from the Open Skies Treaty, despite the fact that it had imposed reciprocal restrictions on Russian flights over American territory. That was a mistake. The Trump administration's announcement that it would withdraw from the agreement also was not in accordance with Sec. 1234 of the fiscal year 2020 National Defense Authorization Act, which required the administration to notify Congress 120 days ahead of a U.S. notification of an intent to withdraw from the treaty. The Trump administration did not do so, and it declared that the United States withdrew from the treaty in November 2020.

In January 2021, the Russian Federation announced that it had begun its internal procedures to prepare for withdrawal, asserting that other Open Skies treaty-parties had declined to undertake not to share data with the United States or to agree that Russian Open Skies flights could overfly U.S. military facilities and activities on their territory.

Russian withdrawal would doom the treaty. Moscow has begun deliberations on withdrawal just as a new U.S. administration has taken office in Washington. As a presidential candidate, Joe Biden strongly criticized the Trump administration's decision to leave the treaty, and the Biden administration reportedly is considering whether to rejoin it.

The Deep Cuts Commission sees several steps that could preserve the treaty and its benefits for European and trans-Atlantic security:

- The Biden administration should expeditiously conduct a review of its policy toward the Open Skies Treaty and announce whether it will seek to rejoin the agreement.
- The Russian government should pause its internal deliberations on withdrawal to give the U.S. government time to conduct its review.
- The United States and its NATO allies should issue a joint statement to the effect that, while the United States remains outside of the treaty, it will not seek and its allies will not share data collected by Open Skies flights. The statement should also indicate that allies will not deny Russian Open Skies flights the ability to overfly U.S. military installations or activities on their territories.
- If/when the United States indicates that it would like to rejoin the Open Skies Treaty, legal experts from the United States, Russia and other interested state-parties should meet to discuss and agree on legal mechanisms by which the United States could do so. Such mechanisms would require that the United States fully carry out its obligations and responsibilities under the treaty, like any other state-party, as well as enjoy its benefits.

Tensions today between NATO and Russia are at the highest level in some three decades. The Open Skies Treaty remains a valuable confidence- and security-building measure to reduce the risk of misunderstanding or miscalculation. The current treaty-parties and the United States should work to preserve the treaty.

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The Deep Cuts Commission (deepcuts.org) provides decision-makers as well as the interested public with concrete policy options based on realistic analysis and sound research. Since it was established in 2013, the Commission is coordinated in its deliberations by the Institute for Peace Research and Security Policy at the University of Hamburg (IFSH), the Arms Control Association (ACA), and the Primakov Institute of World Economy and International Relations, Russian Academy of Sciences (IMEMO, RAN).