

Keeping the Skies Open over Europe

The Open Skies Treaty requires coordinated and outspoken European support to ensure its survival following the US' withdrawal announcement. If the treaty is to continue, with or without US participation, resolving existing compliance issues with Russia will be crucial.

By Névine Schepers

On 21 May 2020, and after months of speculation, the US administration announced its intended withdrawal from the Open Skies Treaty, which would take effect on 21 November. While Russian compliance issues, which are cited as the reason for the US' withdrawal, are problematic, no other party sees them as unsolvable or as providing a sufficient reason to abandon the framework altogether. This latest US departure from yet another arms control mechanism casts a shadow over the fate of New START (Strategic Arms Reduction Treaty) – the last remaining nuclear arms control treaty, which is set to expire in February 2021 unless it is extended for up to five years by mutual agreement. The Trump administration has refused to take a decision so far, which does not bode well for New START.

Signed in 1992 and enforced a decade later, the Open Skies Treaty enables reciprocal observational flights over the territories of its 34 members, including all but three NATO states (Albania, Montenegro, and North Macedonia), Russia, Belarus, Bosnia and Herzegovina, Finland, Georgia, Sweden, and Ukraine. After nearly 30 years and more than 1500 flights later, Open Skies serves effectively as a legally-binding confidence-building measure, which supports conventional and strategic arms control, provides transparency, predictability and stability, and enables military-to-military cooperation. The treaty remains in the interest

of all European parties, including NATO allies and non-NATO partners. As one of the few remaining treaties upholding the post-Cold War arms control architecture, Open Skies is worth saving. In an official statement, US Secretary of State Mike Pompeo did allow for a scenario in which the United States would remain in the treaty should Russia return to full compliance by 21 November. This leaves a small window of opportunity for European parties to publicly and privately appeal to both the US and Russia, and to push for solutions. Even without the US, Open

Key Points

- The Open Skies Treaty serves European security interests by providing transparency, predictability and stability, as well as enabling military-to-military cooperation between NATO allies, partners, and Russia.
- While a US withdrawal from the treaty may be inevitable, there is a small window of opportunity for western European parties to coordinate an appeal to the US highlighting the benefits of the treaty, and to continue to work together with Russia to resolve outstanding compliance issues.
- The European response has thus far been mostly led behind closed doors, but with limited time available, a more public defense strategy should be pursued. European parties should also seek strength in numbers and ensure that future statements bring together as many members as possible.

Skies is still valuable to European parties and Russia, and could continue functioning. Whether Russia decides to remain in the treaty is not yet certain, however, and will require diplomatic efforts on the part of the Europeans.

Open Skies: Benefits to European Security

The Open Skies Treaty provides European signatories with several benefits. First, the imagery obtained through observation missions is accessible to all parties, and its validity is indisputable. Officials from the state whose territory is under observation take part in both the flight and the data processing, thereby ensuring that the imagery cannot be manipulated. Without Open Skies, states such as the US and Russia can continue to obtain such imagery using reconnaissance satellite capabilities, but for most other parties to the treaty this option is out of reach. Moreover, while the US might be willing to share information it acquires through its own national technical means with allies, Washington would be free to decide what, when, and with whom to share it.

Second, the cooperative nature of the process serves to enhance trust. Even during the initial treaty negotiation process, the US acknowledged that it would benefit from increased security in Europe through the building of cooperative security relationships.ⁱ Not all parties have the necessary certified and equipped aircraft to conduct Open Skies missions, meaning that those states who do can share flights, lease their plane to other parties, or even allow for the use of their plane to the observer state under the so-called ‘taxi option.’ Several European states have certified and functioning Open Skies planes, including Germany, whose newly acquired aircraft should begin operations in 2021. While the US, which also has its own Open Skies plane, often shares its flights with European partners (and vice versa), the loss of those flights will not greatly affect European capacity to conduct missions and might even facilitate more shared flights between Europeans.ⁱⁱ

Third, Open Skies missions provide a valuable tool for military-to-military engagement – few of which remain between Russia and the West since the former’s annexation of Crimea and the outbreak of the Russian-Ukrainian conflict in 2014. Technical cooperation in the air and on the ground provides opportunities for dialogue and relationship building. These, in turn, contribute to sustained contact and provide potential pathways for de-escalation in the event of a crisis.

Fourth, the events of 2014 have also highlighted a novel use of the treaty as a way to demonstrate support and strengthen security commitments between partners. By using a special provision in the treaty, the US was able to con-

duct an ‘extraordinary observation flight’ over Ukraine collecting evidence of Russian military activities along the border. This provision was used again in 2018, following a Russian attack on Ukrainian vessels in the Kerch Strait.

Finally, at a time when most of the post-Cold War arms control and security architecture is crumbling, and with nothing concrete in the offing to replace it, Open Skies encourages transparency, predictability, and stability on the European continent. The treaty’s built-in flexibility, which has enabled it to adapt to technological advances, such as upgrades from wet-film to digital cameras, and its ambition to facilitate the monitoring of compliance with both existing and future arms control agreements make it relevant when devising future arms control frameworks in Europe and beyond.

US Withdrawal and Russian Compliance Issues

Following the US’ withdrawal notice, the Open Skies Consultative Commission (OSCC), which consists of representatives of each of the 34 members, held a virtual conference on 6 July to consider the implications of such a move. Discussions were made difficult by both the online rather than ‘in-person’ format, as well as the pressure to address compliance issues, which all European parties have expressed concern for.

The US State Department’s 2020 compliance report lists three Russian violations with the Open Skies Treaty. The first is the enforcement of a 500-kilometer sub-limit over Kaliningrad Oblast. At the same time, Russia also allowed a US-Estonian-Lithuanian flight into this 500-kilometer zone in February 2020, thereby demonstrating some flexibility and allowing for some optimism regarding a future resolution. The second violation is the denial of flights within a 10-kilometer corridor along Russia’s border with the Georgian breakaway regions of South Ossetia and Abkhazia, which Russia, contrary to all other Open Skies members, recognizes as independent states. Due to its geopolitical nature, this issue will be more difficult to solve. Russia has offered to allow flights within 10

Further Reading

Alexandra Bell / Wolfgang Richter / Andrei Zagorski, “**How to Fix, Preserve and Strengthen the Open Skies Treaty**,” *Deep Cuts Issue Brief*, March 2020.

This brief provides an overview of the main compliance issues and how they might be resolved.

United Nations Institute for Disarmament Research (UNIDIR), ***Open Skies: A Cooperative Approach to Military Transparency and Confidence Building***, 15.08.2004.

A historical, technical, and legal overview of the Open Skies Treaty.

kilometers of its borders with both regions in exchange for the resumption of Russian flights over Georgia, which Georgia has staunchly refused. While requiring careful political balancing, a suggested compromise could involve European observation flights with Russian participation over Georgia.ⁱⁱⁱ The third violation is the denial of a flight over Russia's TSENTR military exercise in 2019. Clarifying protocols and conditions regarding the overflight of military exercises could help avoid similar future incidents. Beyond these compliance issues, the US also claims that Russia is using the treaty as a 'tool to facilitate military coercion' by using flight data for targeting purposes rather than confidence-building. These claims go beyond the treaty's legal framework, however, and are thus harder to substantiate and resolve.

Russia has raised a number of issues of its own, such as Georgia's refusal to allow Russian overflights, the cancellation of rest stops for Russian observation aircraft crews at several US airfields, and the imposition of a maximum flight distance over Hawaii.^{iv} Some of these measures were taken by the US in response to previously indicated Russian compliance concerns. In the lead up to, and during the 6 July conference, Moscow was more insistent that its concerns should also be taken seriously. This has placed additional pressure on European states, which are intent on resolving Russian compliance issues while simultaneously trying to avoid antagonizing Moscow.

As has been the case with some other compliance issues in the past, the current points of contention can and should be addressed through the OSCC. None are severe enough to either justify a material breach of the treaty, which the US has not claimed, or, from the perspective of the US' allies and partners, a withdrawal. The current US withdrawal date is set for 21 November, which still falls within Trump's term, regardless of how November's elections turn out. Democratic nominee Joe Biden has denounced the withdrawal and noted his support for the treaty. It is unclear, however, whether he would simply be able to 'rejoin' if elected and without having Congress ratify it again. The possibility for the US to resume participation could be discussed within the OSCC and, if all parties agree, offered to Washington as a potential option.

Europe's Response: Possible Scenarios

Since reports of an impending US withdrawal emerged in October 2019, the European response has been mostly confined to the private diplomatic sphere, including some joint demarches, and to both written and verbal appeals, notably from high-level Swedish and German officials. Only immediately after the US exit declaration did eleven



A Ukrainian Antonov An-30B aircraft used under the Open Skies Treaty. *OSCE*

European members issue a public statement in which they declared their regret at the US' decision and reaffirmed the treaty's added-value for European security. Some public figures, such as Germany's Foreign Affairs Minister Heiko Maas, urged the US to reconsider its decision. NATO allies held a meeting on the day, but issued only a modest statement that called on all parties to honor their obligations under the treaty, and highlighted the intent of NATO allies to work with Russia for a prompt return to compliance. Moreover, no European joint statements were issued in the wake of this month's conference.

This relatively private European approach to dealing with the brewing Open Skies crisis is at odds with the rather public and steady US criticism of the treaty by an array of state officials through op-eds, speeches, and resolutions in Congress. US supporters of the treaty, both in Congress and in the non-governmental sphere, have responded in kind, consistently defending the treaty's confidence-building, transparency, and military cooperation bona fides. Russian officials have also mounted a public campaign around the treaty by sharing more official documents and actively engaging with the media and expert community. Similar public efforts have been considerably more subdued in the European context. The lack of official statements or documents from the OSCC also does little to improve public understanding of the treaty's issues and processes. Creating public awareness around Open Skies in Europe, especially within national parliaments, would help mount a larger and more multifaceted defense that can complement diplomatic efforts behind closed doors. With the treaty's October review conference approaching fast, it is now time for Europeans to speak up in order to ensure the survival of Open Skies.

The Open Skies Treaty faces three potential scenarios in the near-term. The first, and arguably most optimis-

tic, would be for the US to change course before November and remain party to the treaty. This would require European members to work through compliance issues with Russia, and for the US to accept the outcomes of these exchanges to be sufficiently satisfactory. Despite the low-probability of this scenario, coordinated and steadfast European efforts to resolve compliance concerns remain necessary to guarantee the continued implementation of the treaty more generally. Such efforts would also facilitate a US return to the treaty in the event of a Biden presidency, as they would provide less ammunition to opponents in Congress. While coordination between NATO allies can be difficult, a joint statement from NATO state parties in support of Open Skies would send a much stronger message to the US than the scattered responses seen so far. While this could pose a risk to NATO unity, it would not have to be done through the existing NATO structure. Moreover, the inclusion of non-NATO states such as Sweden, Finland, and Ukraine would add to its political acceptability while simultaneously reinforcing the message. Though Georgia's involvement is unlikely, engagement with Georgia should also be pursued in order to find a compromise regarding the issue of flights over its territory and near the border with South Ossetia/Abkhazia, which will otherwise continue to plague the implementation of the treaty.

A second scenario would be for the US to withdraw while Russia remains a signatory. Even without US participation, Russia would still benefit from Open Skies through flights over the territories of European members and Canada, which already account for a majority of Russian flights, including US bases on those territories. A key concern for Moscow is continued US access to Open Skies imagery through its NATO allies. While difficult to alleviate given the structure of the NATO alliance, European parties will need to convincingly reassure Moscow through strong public statements that Open Skies imagery will only be shared among state parties. Russia will likely await the outcome of the US elections before deciding on how to proceed.

In the case of a second Trump presidency, Moscow may well decide that retaining the moral high ground on Open Skies does not counterbalance the loss of access over US territory or the loss of status equality with Washington. This would lead to a third scenario, wherein both the US and Russia withdraw from the treaty. Without either of the two great powers, the treaty would be reduced to a hollow

shell and lose most of its operational relevance. It may be worth keeping afloat, however, if only to enable the US and Russia to re-join at a later stage. This would depend on whether the remaining parties could reach a consensus, which, if other states also decide to leave the treaty, would become increasingly difficult. The willingness of member states to keep the agreement alive will also depend on their willingness to spend limited political capital and resources on an idle treaty. Yet, preserving some aspects of Open Skies would be useful when negotiating new arms control agreements, as they could be applied in the enforcement of transparency, confidence-building, and verification mechanisms.

Preparing for all three scenarios, which should be prioritized in the order presented here, requires robust coordination efforts and leadership on the part of western European states. Both Germany and Sweden have been active in promoting the treaty, coordinating joint actions, and reaching out to the US and Russia. As a NATO and non-NATO state, they are well-placed to continue coordinating and mediating efforts between parties. Germany, which has invested in a brand new Open Skies aircraft, has an additional incentive to ensure the treaty's continuation. A firm European commitment to uphold the last remaining pillars of the post-Cold War arms control architecture begins with making an urgent case to save Open Skies. Without the US, the treaty will in principle still cover territories ranging from 'Vancouver to Vladivostok,' but its balance will undeniably be altered. The outcome of negotiations on Open Skies will also set the stage for the fate of New START, the extension of which remains crucial to preserving strategic stability and legal constraints on the US and Russian nuclear arsenals.

Selected sources

- i Amy F. Woolf, *Testimony before the Committee on Foreign Affairs US House of Representatives*, Hearing on "The Importance of the Open Skies Treaty," 19.11.2019.
- ii Alexander Graef / Moritz Kütt, "Visualising the Open Skies Treaty," *Institute for Peace Research and Security Policy, University of Hamburg*, 27.04.2020.
- iii Wolfgang Richter, "Attack on the Open Skies Treaty," *SWP Comment* 29, June 2020.
- iv Andrei Kelin, "Open Skies Clouded by Sham and Ambiguity," *RUSI Commentary*, 02.07.2020.

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