



Statement of

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Chairman Keating and Representative Kinzinger, Chairman Hastings and Representative Wilson, thank you for inviting me here today to address the question of the Importance of the Open Skies Treaty. I'm Amy Woolf, a Specialist in Nuclear Weapons Policy at the Congressional Research Service. Three separate questions may be useful to examine when assessing whether the Treaty is important for U.S. national security. First, what goals did the Treaty seek to achieve when 22 countries signed it in 1992? Second, does the Treaty, now with 34 participating nations, contribute to those goals today? Third, does the Treaty provide a net benefit for U.S. national security, given the costs and risks that may accompany U.S. participation in the Treaty's overflights?

Original Goals

The negotiations on the Open Skies Treaty began in 1990, as the Cold War was ending and the Soviet Union was fading as a threat to U.S. and European security. President George H. W. Bush, in his commencement address at Texas A&M University in May 1989, had revived President Eisenhower's proposal for a treaty that would allow the United States and Soviet Union to fly unarmed aircraft over the territory of the other country to "open up military activities to regular scrutiny." President Bush saw the Treaty as a way to test Soviet intentions and, by expanding it to include all NATO and Warsaw Pact nations, to encourage transparency across a still-divided Europe. He noted that "Such unprecedented territorial access would show the world the true meaning of the concept of openness." He said "the very Soviet willingness to embrace such a concept would reveal their commitment to change."

In 1991, the negotiators altered their approach and produced a Treaty among individual nations rather than a pact between alliances. With this change, the Treaty served less as a measure of Soviet (or Russian) willingness to open up to cooperation and more as a broad transparency and confidence building measure among the nations of Europe. The Treaty was one of several endeavors at the end of the Cold War that was designed to produce a Europe "whole and free," as President Bush had said in a speech in Germany a few weeks after his speech at Texas A&M. In this vein, Open Skies would allow nations across Europe to build cooperative security relationships and to avoid misperceptions that might lead to military escalation.

When the U.S. Senate held hearings to consider the ratification of the Treaty in September 1992, experts and government officials broadly agreed that the United States would not acquire much new information about military forces and infrastructure during its observation flights. They offered a similar assessment for Russia, as both nations operated capable reconnaissance satellites. Nevertheless, they still saw benefits for U.S. national security in the Treaty's transparency regime. Ambassador John Hawes, the U.S. representative to the Open Skies Conference, noted during his testimony before the Senate Foreign Relations Committee that, for most of the other participants

The ability to utilize the Open Skies sensor suite to observe the full territory of the other participating countries will represent a new and very significant enhancement in their ability to gather security-related information. The United States will ... be a major indirect beneficiary of this increase in knowledge, confidence, and security of the participants.

In other words, while nations that lacked satellite capabilities would benefit most from the information collected during Open Skies flights, the United States would benefit from the improved security environment in Europe.

During the Senate's consideration of the Treaty, some witnesses and Members did express concerns about possible U.S. vulnerabilities to data collection during flights over U.S. territory. The concern was not about Russian access to U.S. territory because Russia already had access through its satellite capabilities. The concern was that the parties to the Treaty who did not have satellites would now have access to data collected during the Treaty's observation flights. There also was some concern that the data could leak to other nations or groups who were outside the treaty framework. This concern seems almost quaint today, in light of the expansion of commercial satellite capabilities and the growth of open source intelligence capabilities, but it was a concern in 1992.

Continued Relevance of Treaty Goals

Analysts and officials who support the Treaty on Open Skies continue to emphasize the role it plays in fostering transparency and reducing the risk of conflict in Europe. Secretary of Defense James Mattis recognized these goals in a letter he sent to Members of Congress in March 2018. He noted that the Open Skies Treaty "is an important mechanism for reengaging with our allies and partners." He also indicated that the ability to "gather information through aerial imaging on military forces and activities ... contributes to greater transparency and stability in the Euro-Atlantic region, which benefits both the United States and our allies and partners."

Treaty partners in Europe have expressed similar support for the ongoing relevance of the Treaty's goals. For example, in June 2019, as Germany took delivery of a new Open Skies airplane, Niels Annen, the Minister of State at the Federal Foreign Office, said the Open Skies agreement is an "indispensable pillar of arms control in the OSCE area." Last month, Filippo Lombardi, the Chair of the OSCE Parliamentary Assembly's Committee on Political Affairs and Security, noted that "this Treaty has provided a framework for greater openness and transparency in military activities and has substantially enhanced security through concrete confidence-building measures and co-operation..."

Treaty supporters also emphasize that the Treaty builds confidence by facilitating cooperation among the Treaty partners. In this regard, they highlight several features of the Treaty regime:

- During each observation flight, officials from the nation hosting the inspection fly along with the nation conducting the observation flight. This not only helps ensure that the flights remain within their approved parameters, it also, as Secretary Mattis noted in his letter, makes the Treaty an important military-to-military engagement tool.
- Parties can join overflights on aircraft provided by other nations, allowing those without their own aircraft to participate in the process and providing all participants the opportunity to expand their role in the Treaty.
- The observing nation or nations and the observed nation all have access to the data from each flight; other parties can purchase copies of the data, so all can share information collected during all flights.

Some analysts, however, have questioned whether the United States and Europe need to continue to participate in the Treaty on Open Skies to gain these security benefits. They contend that commercial satellite and open source intelligence could provide data similar to that collected during observation flights. They also note that there is little risk of war among most nations in Europe, and even though Russia continues to pose a challenge, they argue that U.S. satellite capabilities, along with other sources of data and intelligence can monitor military deployments that threaten the rest of Europe.

Analysts who support the continued implementation of the Open Skies Treaty have questioned these assertions. They note that, while the United States might share its concerns about military activities with other nations in Europe, it is unlikely to share highly classified satellite images or data. Moreover, they dispute the view that commercial satellites and open source data could provide the scope of coverage, particularly if they do not provide images that focus on areas of interest to the Treaty participants. They have also noted that the Treaty parties may lack confidence in the source and accuracy of data from commercial sources as there is a risk that these images might be altered in ways that could exacerbate, rather than mitigate, misperceptions. As one recent analysis noted, all Treaty participants know “when, where and how every single picture is taken, and that it is unaltered.” With the growing ability to create sophisticated, manipulated imagery, images “with the degree of provenance that Open Skies provides will have a high value.”

Supporters have also contested the view that the Treaty is not needed to bolster confidence and security among Treaty parties. They note that the Treaty allows the parties to request flights over their own territory on short notice and that these “extraordinary overflights” provide a security benefit that the parties could not replace outside the Treaty. Ukraine has exercised this provision twice in recent years – once in 2014 when the United States and its Treaty partners conducted a flight along Ukraine’s border to monitor Russian troop concentrations on the other side and once on December 6, 2018, after Russia attacked Ukrainian naval vessels in the Black Sea near the Kerch Strait. According to the U.S. Department of Defense, “the timing of this flight [was] intended to reaffirm U.S. commitment to Ukraine and other partner nations” and to demonstrate that the United States “is resolute in our support for the security of European nations.”

Implications for U.S. National Security

From an analytic perspective, the question of whether the Open Skies Treaty remains important for U.S. national security does not rest only on assessments of whether the Treaty continues to provide benefits for the United States and its partners in Europe. The Treaty also creates costs and risks that could balance, or offset the value of the security benefits. The public debates have focused on three costs and risks.

Modernization of Open Skies sensors. Open Skies aircraft can be equipped with four types of sensors –

- Still photography cameras with a ground resolution 30 centimeters (around 1 foot);
- Video cameras with a ground resolution of 30 centimeters (around 1 foot);
- Infrared line-scanning devices with a ground resolution of 50 centimeters (around 20 inches); and
- Sideways-looking synthetic aperture radars (SARs) with a ground resolution of 3 meters (around 8 feet).

The sensors must be derived from “off-the-shelf” technology available to all the parties. In addition, the images taken during a flight are downloaded using certified equipment to make sure that they cannot be altered after the flight. The Treaty parties can update their sensors to take advantage of advances in technology, although the new sensors are subject to the same limitations on resolution as the older sensors. The Open Skies Consultative Commission (OSCC) has to approve proposals for new sensors with a consensus of the state parties; if any participant objects, the requesting party cannot use the new sensor.

Russia, Germany, and the United States have begun to transition from wet-film cameras to digital, or electro-optical, cameras. Russia was the first party to take advantage of this change, installing new cameras on the airplane used in observation flights over Europe in 2014. It is also converting the cameras on the longer-range airplane used in flights over the United States and Canada. In 2018, the United States

blocked approval of Russia's use of new cameras, delaying flights planned for that year; it reversed this decision in late 2018 and flights have resumed in 2019.

Some officials in the Pentagon and U.S. intelligence community have expressed concern about the quality of data that Russia could collect with these new cameras, asserting that the information could help Russia compensate for weaknesses in its satellite surveillance capabilities. Admiral Richard echoed this concern during his nomination hearing when he said that participation in the Treaty "does come at a counterintelligence cost to the United States." However, the capabilities of the new Russian cameras may not present new risks. They are within the same resolution parameters set by the Treaty that applied to the old cameras and they use commercially available, unclassified technology. Further, as some analysts have noted, the Treaty allows all parties to take equal advantage of advances in photographic technology. So, they note, if there is a gap between U.S. and Russian capabilities, the United States could narrow it when it completes its own program to update to digital cameras.

Costs of modernizing and maintaining U.S. aircraft and sensors. When the Senate considered the ratification of the Treaty on Open Skies in 1992, several Members raised concerns about the costs of outfitting and operating the U.S. Open Skies aircraft. They argued that these costs would outweigh the benefits of the Treaty because the United States could acquire similar information from its existing satellites. Cost concerns led the Department of Defense to reduce its planned fleet of Open Skies aircraft from three to two airplanes.

The United States did not acquire new aircraft when the Treaty entered into force; the OC-135B aircraft currently supporting this mission are nearly 60 years old. In his letter to Members of Congress last year, Secretary Mattis noted that the U.S. aircraft "experience regular, unplanned maintenance issues often resulting in mission delays or cancellations." The aircraft also lack the range to access some of Russia's approved airfields and continue to use outdated wet-film cameras. According to Secretary Mattis, the United States completed only 64% of its scheduled flights over Russia in 2017. As a result, he directed the Pentagon to begin recapitalizing the U.S. aircraft. Admiral Charles Richard, recently confirmed as the new Commander of U.S. Strategic Command, also noted during his confirmation hearing last month that the United States "would need to make the appropriate resource and operational commitments to utilize the full provisions of the Treaty..." to continue to benefit from its provisions.

However, some Members of Congress question whether the cost of maintaining and operating U.S. Open Skies Aircraft exceed the benefits from the Treaty. They argue not only that satellites can provide the United States with similar or better data about Russia, but also that Russia's use of new electro-optical cameras and Russian violations of the Treaty have put the United States at a distinct disadvantage. For example, Senator Tom Cotton recently expressed this view when he stated that "the president should withdraw from the Open Skies Treaty and redeploy the hundreds of millions of dollars the Pentagon wastes on the flights and equipment to increase U.S. combat power."

Concerns About Russian Compliance. The 2019 version of the State Department's Annual Report on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments highlighted two areas of concern about Russian compliance with the Open Skies Treaty. The first notes that, while the Treaty establishes a maximum range of 5,500 kilometers for observation flights, Russia has imposed a sublimit of 500 kilometers for flights over its Kaliningrad region. Kaliningrad is a relatively small, but heavily militarized area that is geographically separate from Russia. According to some reports, Russia imposed this limit after an overflight by Poland in 2014 lingered over Kaliningrad and interfered with commercial aviation in the area. While this sublimit does not preclude flights over or observations of military activities in Kaliningrad, it is inconsistent with the terms of the Treaty and an OSCE decision that "precludes a State Party from decreasing the maximum flight distance from an Open Skies airfield."

The 2019 Compliance Report also notes that Russia has prohibited observation flights within ten kilometers of its border with the South Ossetia and Abkhazia regions of Georgia. This dispute is less about the provisions of the Treaty than it is about Russia's dispute with Georgia over the status of these regions. The Treaty permits parties to prohibit flights within ten kilometers of independent states that are not a party to the Treaty. While Georgia is a party to the Treaty, Russia has considered South Ossetia and Abkhazia to be independent states since its 2008 conflict with Georgia. Because these regions have not joined the Treaty, Russia has argued that flights cannot approach their borders. The United States and other parties to the Treaty have not accepted this interpretation of the status of South Ossetia and Abkhazia. Russia has recently indicated that it would lift the ban on flights within ten kilometers of the borders with South Ossetia and Abkhazia if Georgia were to accept Open Skies overflights from Russia. Georgia had suspended this access in 2017 and 2018.

U.S. officials have also voiced concerns about restrictions that Russia has placed on U.S. flights near Moscow and other actions that Russia has taken to limit access to bases where U.S. aircraft can spend the night. In response, the United States has imposed limits on the length of Russian observations flights over Hawaii and has removed access to two U.S. air force bases that Russia has used during their missions over the United States.

Some critics argue that the restrictions Russia has placed on Open Skies flights not only limit other parties' ability to conduct flights over Russian territory, but also demonstrate Russia's ongoing disregard for arms control agreements across the board. This bolsters their view that the United States should not permit Russia to continue flying over U.S. territory when the Treaty does little to advance U.S. national security interests. Others, however, question this conclusion. They note that Russia's restrictions, while inconsistent with the accepted requirements of the Treaty, represent distinct and relatively limited challenges. They do not eliminate the broader benefits of Treaty implementation. They argue that, instead of withdrawing from the Treaty and undermining those benefits for the other parties, the United States should continue to work within the OSCC to address these concerns.

In conclusion, there is widespread support among officials in the United States and Europe for the view that the Treaty on Open Skies strengthens transparency and cooperation among the Treaty parties and reduces the risk that misunderstandings that could lead to war. There is also broad agreement that the Treaty imposes some costs on the United States and that Russia's implementation has been, in some places, inconsistent with the terms of the Treaty. There remains, however, an ongoing debate about whether these costs and risks exceed the value of transparency and cooperation, and whether the Treaty continues to benefit U.S. national security interests.