

Stay in the Open Skies Treaty...For Now

Peter Brookes

KEY TAKEAWAYS

The United States is well within its right to withdraw from the Open Skies Treaty due to publicly available information on Russian violations.

There are also reasons for staying within the treaty, including maintaining transatlantic ties and retaining aerial observation capabilities.

It is critical that the Trump Administration directs—and Congress supports—a comprehensive evaluation of America's participation in the Open Skies Treaty.

The 2002 Open Skies Treaty (OST) is a confidence- and security-building agreement among 34 nations, including Russia, which allows pre-approved, unarmed aerial observation flights over the entirety of member states' territory in the interest of transparency.¹

The Trump Administration asserts that Russia has been in non-compliance with—and is currently violating—the OST for a number of reasons. Some Members of Congress have also expressed concern about Russian OST flights over the United States.² Press reports indicate that the Trump Administration is actively considering leaving the OST. Despite this, the Treaty has supporters, including in the U.S. Congress and among NATO allies and partners, who value the agreement for providing openness and cooperative interaction with Russia in a period of heightened tensions with Moscow.³

This paper, in its entirety, can be found at <http://report.heritage.org/ib5026>

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Indeed, the 2020 National Defense Authorization Act conference report summary calls for congressional notification and a 120-day waiting period before announcing its intent to withdraw from the OST, “including requiring consultation with allies prior to withdrawal from the Open Skies Treaty.”⁴ As such, before a final decision is made on continued participation in the OST, the U.S. government should conduct a thorough review of American involvement in the treaty, including its costs, risks, benefits, and possible new means to optimize U.S., allied, and partner participation.

The Treaty

The idea of aerial observation for transparency purposes goes back to President Dwight D. Eisenhower, who proposed it to Soviet Union Chairman Nikita Khrushchev in 1955 in Geneva. The Soviets rejected the notion as an American effort to collect intelligence on the communist superpower.⁵

The idea resurfaced in the George H. W. Bush presidency after the fall of the Berlin Wall. It finally came into force in 2002 during the George W. Bush Administration, when the U.S. Senate ratified the treaty. In 2018, the U.S. Air Force (USAF) called the \$10-plus million OST program “one of the most wide-ranging international efforts to date to promote openness and transparency of military forces and activities.”⁶ Often mischaracterized, the OST is not an arms control treaty *per se* in that, while it may support the monitoring of various arms control agreements, it does not limit or ban any conventional or unconventional weapons system.

The treaty is administered by the Open Skies Consultative Committee (OSCC), which meets at the Organization for Security and Co-operation in Europe in Vienna, Austria. The treaty allows for a mutually agreed number of annual OST flights over member states’ countries.⁷

OST flight-hosting countries must be notified of a mission request at least 72 hours in advance; the host country must also approve the flight plan over its territory, has the right to inspect the aircraft to ensure it is in compliance with OST guidelines, and have a host country representative on that mission flight.⁸

The treaty allows for potential airborne collection of photographic, infrared (IR), and synthetic aperture radar (SAR) data, but only photographic imagery collection is currently certified for use.⁹ All collected OST information is considered unclassified and is made available to the host country as well as other treaty members.¹⁰

The United States has two USAF Air Combat Command OC-135B aircraft, equipped with vertical, oblique, and panoramic cameras, available for Open

Skies missions.¹¹ The USAF is seeking to replace these decades-old OC-135 airframes with two new aircraft and upgrade its imagery sensor package to a digital system at a cost of approximately \$250 million.¹²

For its part, Russia is replacing older OST aircraft (e.g., the TU-154) with the newer TU-214ON, which is outfitted with digital sensors, providing a possible edge over existing American OST aircraft.¹³ The TU-214ON made its first OST flight over the United States in April 2019.¹⁴ According to the State Department, in 2019, Washington conducted 18 OST flights over Russia, and Moscow conducted eight OST flights over the United States: Washington is allocated 21 flights for 2020 and Moscow's quota is seven.

Any party to the treaty can withdraw from it upon providing states parties with six-months' notice of its decision to vacate the agreement.¹⁵ A U.S. withdrawal from the multilateral treaty does not dissolve the agreement for all parties.

Should I Stay or Should I Go?

According to the U.S. State Department's August 2019 report to Congress, Russia was in non-compliance with the OST for the following reasons:

- Since 2014, Russia has imposed and enforced a 500-kilometer flight route sublimit over the highly militarized Russian exclave of Kaliningrad on the Baltic Sea, wedged between Poland and Lithuania.¹⁶ The OST does not provide for such a restriction.¹⁷ In practice, while not restricting flying over any point, this means that an OST mission may only fly a total of 500 kilometers over Kaliningrad on a single mission.
- Since May 2010, Moscow has also restricted OST observation flights from approaching to within 10 kilometers of Russia's border with the Georgian regions of South Ossetia and Abkhazia.¹⁸ While South Ossetia and Abkhazia are within the borders of Georgia, Russia considers these areas to be independent and, therefore, not party to the OST, and, as such, cannot be observed.¹⁹

In addition, recent reports raise other serious concerns:

- In September 2019, Moscow refused to allow a U.S. OST plane to fly a "flight segment under an agreed mission plan" over the Russian Tsentr-2019 strategic-level exercises, which included China as a participant in the military drills and involved upwards of 120,000 troops.²⁰

- In November 2019, a senior Administration official said that Russia is “mis-using the treaty in their targeting of critical U.S. infrastructure.”²¹ Though unspecified, this possibly relates to Russian flights in 2017 over military and non-military sites around the Washington, DC, area and beyond—potentially providing Moscow an unintended national security advantage.²²

The Trump Administration has raised compliance issues with Russia at OSCC meetings and other meetings and has restricted Russian flights over Hawaii and Alaska in response.²³ Unfortunately, Russia has not removed the restrictions it has imposed on OST flights yet.

Despite these serious concerns, there are good reasons to stay in the OST, too.

American allies and partners value U.S. participation in the OST for several reasons, including its standing as an important element in maintaining strong transatlantic ties and its support of the U.S. commitment to peace and security in Europe during a period of Russian belligerence and aggression.²⁴ A recent example includes an “extraordinary observation flight” over Ukraine in December 2018 by an American OST mission in the aftermath of the unprovoked attack on Ukrainian naval vessels in the Kerch Strait.²⁵

Moreover, there is also the alacrity and ease with which the OST mission-collected (unclassified) imagery information can be shared with OST members, especially with NATO allies, and the general public—which can be important to its understanding of international events. For instance, between March and July 2014, OST member states, such as Sweden, Ukraine, and the United States, conducted 22 missions over southwestern Russia and Ukraine, providing important, releasable information to concerned states—and possibly the public—during the crisis following Russia’s moves on Crimea.²⁶ In contrast, the release of highly classified U.S. military satellite information to U.S. allies and partners—much less the public—is a significant, potentially lengthy challenge for a number of reasons, including protecting sensitive intelligence sources and methods.

Another factor is that most U.S. allies and partners that are members of the OST lack military satellites. The regular purchase of directed commercial satellite imagery, beyond possibly dated, archival material, could be cost-prohibitive to these governments. And while OST aircraft imagery systems lack the resolution of military-grade overhead systems, the OST program provides a unique aerial observation capability. It provides a level of redundancy and diversity to overhead collection platforms, unique access to normally denied territory, and an inexpensive, quick response capability not usually afforded by national technical means.

In addition, depending on meteorological conditions (e.g., cloud cover or fog), some potential targets may be more accessible to the observation of an OST aircraft than a higher-resolution commercial or military satellite.²⁷ This capability could be important at higher, northern latitudes, including the Arctic region, where Russia is involved in a significant military build-up, and cloud cover is reportedly increasing.²⁸

As a collection platform, OST missions are also potentially capable of providing unique or corroborating information on a target of interest, including Russian order of battle, force movements, and military maneuvers, including “snap exercises,” that supplement other information gathering. With a number of security challenges worldwide, there are limits on the availability of U.S. military satellite coverage. In some cases, an OST flight might be the only instrument available to collect on an important security event in short order.

Further, withdrawing from the treaty would end American access to OST territory and information collected by member states that may fulfill an important, but lower priority, request for information that might not be answered otherwise. There are also concerns that—should the United States leave the OST—remaining OST members, especially NATO allies, might allow for the use of IR and SAR on OST flights over their territories, including U.S. forces and facilities in Europe, undermining U.S. national security.²⁹

Recommendations

In light of these issues, the Administration should do the following before leaving the Open Skies Treaty:

- **Conduct a comprehensive review of the U.S. OST program.** The Administration has arguably yet to make an overwhelming public case for leaving the OST, leaving a large number of ponderables and unanswered questions among concerned parties. As such, the Administration should conduct a wide-ranging review of the costs and benefits and strengths and weaknesses of the U.S. OST program, from the existing airframe to the sensors to the value of the information collected, before making a final decision.

Of particular concern is the projected cost of replacing the aged OC-135. Finding options for reducing the expected cost of airframe replacement must be thoroughly explored by the Department of Defense, the USAF, and Congress. The comprehensive review should

also include the development of metrics of success for the program and possible ways to maximize the efficiency and effectiveness of OST missions. Consultations with Members of Congress, professional staff, outside subject matter experts, and other stakeholders, including allies and partners, should be conducted. The findings of this review should be provided to the interagency policy coordination process for consideration before a decision is made on treaty withdrawal.

- **Instruct the Director of National Intelligence to conduct a comprehensive counterintelligence assessment on the threat of Russian OST flights over the United States.** The OST is meant to build confidence and security, not undermine the national security of the United States, our allies, and partners. To ensure that, the U.S. intelligence community, in cooperation with friendly intelligence services, should conduct an assessment of American vulnerabilities to Russian OST overflights to national and homeland security. The results should be reported to the National Security Council.
- **Pressure U.S. allies and friends to coerce Russia to come back into compliance with the treaty.** American allies and partners have as much—if not, arguably, more—interest in Russian compliance with the OST than the United States. As such, these parties must share the burden of pushing Russia back into full compliance with the treaty. As with the U.S. withdrawal from the Intermediate-Range Nuclear Forces Treaty and ongoing negotiations on New START, Moscow must understand that violating bilateral or multilateral security agreements is unacceptable—and will not be without cost.
- **Make the case—to the maximum extent possible—to Congress and the American people if withdrawal is warranted.** While it is possible that some aspects of the decision may be difficult to release due to the possibility of revealing sensitive intelligence sources and methods, the Administration must do its best to prove to Congress and the American people that withdrawing is the right decision if that course is deemed appropriate after the OST program review. The public's support and understanding of the Administration's withdrawal from OST, including that of its congressional representatives, is critical to the effective conduct of U.S. foreign policy.

- **Undertake pre-announcement consultations with allies and partners to reassure them of America’s commitment to the transatlantic ties and security, if withdrawing.** If a decision to leave the OST is made after an in-depth review is completed and considered, the Trump Administration should also privately make the case to allies and partners. This would be important to easing concerns about the American withdrawal and the anticipated Russian information operations that will seek to lay the blame on the United States as part of its ongoing effort to shake NATO and transatlantic ties.

Conclusion

The United States is well within its right to withdraw from the OST due to publicly available information on Russian violations, non-compliance, potential counterintelligence concerns, and OC-135 replacement costs. There are also reasons for staying within the treaty, including maintaining transatlantic ties and retaining observation capability of Russian military developments, operations, and doctrine. The decision to stay or go is unquestionably one of significant importance for American interests as well as that of our allies and partners.

As such, it is critical that the Trump Administration directs—and Congress supports—a comprehensive review and evaluation of America’s participation in the Open Skies Treaty before a final decision is made to withdraw.

Peter Brookes is Senior Research Fellow for Weapons of Mass Destruction and Counter Proliferation in the Center for National Defense, of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation.

Endnotes

1. Officially, the Treaty on Open Skies.
2. "A Resolution Calling for the Withdrawal of the United States from the Open Skies Treaty, and for Other Purposes," S. Res. 388, 116th Cong., 1st Sess., <https://www.congress.gov/bill/116th-congress/senate-resolution/388> (accessed December 10, 2019).
3. Eliot L. Engel, Chairman of the Committee on Foreign Affairs, U.S. House of Representatives, letter to Robert C. O'Brien, National Security Advisor," October 7, 2019, https://foreignaffairs.house.gov/_cache/files/4/6/46136e03-1d92-431b-aa31-7d20d2f266f9/5B01C6DD219BB03F508CB4377B03183E_ele-letter-to-o-brien-open-skies-treaty-final.pdf (accessed December 10, 2019).
4. Armed Services Committee, "FY 2020 NDAA Summary," U.S. Senate, https://www.armed-services.senate.gov/imo/media/doc/FY20%20NDAA%20Conference%20Summary%20_%20FINAL.pdf (accessed December 12, 2019).
5. "President Eisenhower Presents His 'Open Skies' Plan," July 17, 2019, <https://www.history.com/this-day-in-history/eisenhower-presents-his-open-skies-plan> (accessed December 12, 2019).
6. U.S. Air Force, "Addendum to Fiscal Year (FY) 2019 Budget Request," March 2018, <https://www.saffm.hq.af.mil/Portals/84/documents/FY19/OM/FY19%20OM%20Addendum.pdf?ver=2018-03-09-124001-630> (accessed December 12, 2019).
7. Organization for Security and Co-operation in Europe, "Open Skies Consultative Commission," <https://www.osce.org/oscc> (accessed December 12, 2019).
8. Organization for Security and Co-operation in Europe, *Treaty on the Open Skies*, <https://www.osce.org/library/14127?download=true> (accessed November 27, 2019).
9. Ibid., and VERTIC, "A Primer on the Treaty on Open Skies," October 2019, http://www.vertic.org/wp-content/uploads/2019/10/FS14_Open_Skies.pdf (accessed December 17, 2019).
10. Organization for Security and Co-operation in Europe, *Treaty on the Open Skies*.
11. U.S. Air Force, "OC-135B Open Skies," February 1, 2001, <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104496/oc-135b-open-skies/> (accessed November 27, 2019).
12. Gareth Jennings, "USAF Issues Draft RFP for New Open Skies Aircraft," *Jane's Defense Weekly*, March 1, 2019, <https://www.janes.com/article/86954/usaf-issues-draft-rfp-for-new-open-skies-aircraft> (accessed November 27, 2019), and Steve Liewer, "Air Force Seeks \$430 Million to Replace Aging Offutt-Based Aircraft," *Omaha World-Herald*, April 30, 2018, https://www.omaha.com/news/military/air-force-seeks-million-to-replace-aging-offutt-based-aircraft/article_c4619f3b-3600-5e84-87de-e081c6362a2b.html (accessed December 16, 2019).
13. Steve Liewer, "Russia's 'Ahead of Us' on Technology Used in Open Skies Observation Flights, StratCom Warns," *Omaha World-Herald*, March 27, 2016, https://www.omaha.com/news/military/russia-s-ahead-of-us-on-technology-used-in-open/article_59bd7ae8-39f5-5c1c-a9e6-4e953eccdb25.html (accessed December 17, 2019).
14. "Upgraded Russian SPY PLANE Makes Maiden Flight Over U.S. Nuclear and Military Sites: Report," April 27, 2019, <https://www.rt.com/news/457679-russian-spy-plane-us/> (accessed December 17, 2019).
15. Organization for Security and Co-operation in Europe, *Treaty on the Open Skies*.
16. U.S. Department of State, *Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*, August 2019, <https://www.state.gov/wp-content/uploads/2019/08/Compliance-Report-2019-August-19-Unclassified-Final.pdf> (accessed November 22, 2019).
17. Ibid.
18. Ibid.
19. Ibid. The Republic of Georgia is a member of the OST.
20. U.S. Mission to the Organization for Security and Co-operation in Europe, "Joint Statement on Euro-Atlantic Security," December 6, 2019, <https://osce.usmission.gov/joint-statement-on-euro-atlantic-security/> (accessed December 17, 2019), and Holly Ellyatt, "Russia Conducts Massive Military Drills with China, Sending a Message to the West," CNBC, September 17, 2019, <https://www.cnbc.com/2019/09/17/russia-conducts-tsentr-2019-military-exercises-with-china-and-india.html> (accessed December 17, 2019).
21. Joe Gould and Aaron Mehta, "U.S. to Europe: Fix Open Skies Treaty or We Quit," November 21, 2019, <https://www.defensenews.com/pentagon/2019/11/21/us-to-europe-fix-open-skies-treaty-or-we-quit/> (accessed November 27, 2019).
22. Jon Ostrower, Peter Morris, and Noah Gray, "Unarmed Russian Air Force Jet Overflies the Pentagon, Capitol, CIA," CNN, August 10, 2017, <https://www.cnn.com/2017/08/09/us/russian-air-force-tu154-overflight-dc/index.html> (accessed December 6, 2019).
23. U.S. Department of State, *Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*, and Gould and Mehta, "U.S. to Europe: Fix Open Skies Treaty or We Quit."
24. Gustav Gressel, "Open Skies: Trump's Next Big Blunder?" European Council on Foreign Relations, December 4, 2019, https://www.ecfr.eu/article/commentary_open_skies_trumps_next_big_blunder (accessed December 11, 2019), and Engel, letter to O'Brien.

25. Department of Defense, "DOD Statement on Open Skies Flight Over Ukraine," December 6, 2018, <https://www.defense.gov/Newsroom/Releases/Release/Article/1703977/dod-statement-on-open-skies-flight-over-ukraine/> (accessed December 6, 2019).
26. John Engvall, *OSCE and Military Confidence-Building in Conflicts: Lessons from Georgia and Ukraine*, Swedish Defense Research Agency (FOI), March 2019, <https://www.foi.se/rest-api/report/FOI-R--4750--SE> (accessed December 12, 2019).
27. Jeffrey T. Richelson, "Ups and Downs of Space Radars," *Air Force Magazine*, January 2009, pp. 67–70, <https://www.airforcemag.com/PDF/MagazineArchive/Documents/2009/January%202009/0109radars.pdf> (accessed December 16, 2019).
28. National Oceanic and Atmospheric Administration, "Why Is It Getting Cloudier in the Arctic?" September 12, 2017, <https://research.noaa.gov/article/ArtMID/587/ArticleID/24/Why-is-it-getting-cloudier-in-the-Arctic> (accessed December 16, 2019), and Jackie Northam, "In A Remote Arctic Outpost, Norway Keeps Watch On Russia's Military Buildup," NPR, November 3, 2019, <https://www.npr.org/2019/11/03/775155057/in-a-remote-arctic-outpost-norway-keeps-watch-on-russias-military-buildup> (accessed December 16, 2019).
29. Gould and Mehta, "U.S. to Europe: Fox Open Skies Treaty or We Quit."