Open Skies Treaty: A Quiet Legacy Under Threat

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On a pleasant day in August 2017, a low-flying jet pierced secure airspace near the White House, the Capitol, and the Pentagon that had been mostly off-limits since the Sept. 11, 2001, terrorist attacks. Surprise turned to suspicion when news reports revealed the midday flight was a Russian military aircraft taking photographs.

Was this some outgrowth of President Donald Trump’s campaign call for friendlier relations with Moscow? No. The Russian Tupolev Tu-154 had U.S. permission to fly over Washington that day because of an idea President Dwight Eisenhower had in 1955 and a treaty President George H.W. Bush forged in 1992.

The little-known Open Skies Treaty provided the authority for that surveillance flight and many like it elsewhere across the Euro-Atlantic region. The United States carries out similar surveillance flights over Russia and other treaty member states using two U.S. Air Force OC-135B observation aircraft. Yet despite its long history of enhancing mutual understanding and lowering military tensions, the 34-nation pact, centered around transparency and information sharing, has operated mostly unseen and unknown by the public.
Now, with several disputes hampering aspects of the treaty’s implementation and a U.S. administration openly questioning other bilateral and multilateral arms control agreements, the Open Skies Treaty is at risk. This is troubling because abandoning the treaty would destroy concrete national security benefits. It would deny the United States real-time, comprehensive images of Russian military facilities. It would pull the rug out from under long-standing U.S. allies. It would sap the confidence that is built through the treaty’s intense but cooperative implementation process. Above all, ending the Open Skies Treaty would be one more move by Trump and his national security adviser, John Bolton, to squander an arms control and national security inheritance that Bush and other Republican presidents worked so hard to hand down.

The Concept

In July 1955, Eisenhower shocked the Soviet Union and the world. In a bid to calm superpower tensions and lower fears of all-out surprise attacks, Eisenhower offered to allow unarmed Soviet aircraft to make unlimited surveillance flights over U.S. territory if the Soviet Union would permit U.S. planes to do the same over Soviet territory. Just a few months after Sen. Joseph McCarthy (R-Wis.) had spun the country into a red-scare frenzy, a scheme to let communist Soviet spy planes into U.S. airspace seemed sure to go over poorly.

Instead, the American public loved the idea. Eisenhower’s highly publicized offer brought him some of the highest approval ratings of his presidency. Senate Majority Leader Lyndon Johnson (D-Tex.) praised the Republican president’s gambit. Eisenhower’s approach, Johnson said, would “separate the warmongers from the peacemakers” at a time when the “American people yearn for peace.”

Decades would pass, however, before Eisenhower’s vision could become reality. For years, Moscow shunned Eisenhower’s proposal with a suspicion bordering on paranoia. It finally took another war vet to use a Cold War’s thaw to bring the vision to life. In May 1989, Bush spoke to the new graduates of Texas A&M University. In sweeping remarks dreaming of a path beyond the Cold War, he revived the long-forgotten Open Skies transparency plan.

Yet, Bush went even further. He called for a regime built “on a broader, more intrusive and radical basis.” His key twist was to propose applying overflight rights and duties to all of NATO and the Warsaw Pact, stretching from Vancouver to Vladivostok. As Bush put it, Soviet willingness to embrace the Open Skies idea could prove their commitment to real change. Moscow balked again, but by 1992, a newly formed Russian government finally agreed to open its entire territory to observation and overflight. Twenty-four states signed the new Treaty on Open Skies in Helsinki on March 24, 1992. Eventually, membership would rise to 34 states.

At its core, the treaty aims to lower the temptation and fear of surprise attack by guaranteeing that there will be photographic evidence of any major military preparations and movements across the Euro-Atlantic region. Each state-party must allow a certain number of flights over its own territory and then may conduct an equal number of flights over the territories of other states-parties.

Observing countries give very short notice of their specific flight plan. Each party’s cameras must be verifiably limited to a resolution well below state-of-the-art technology, even for 1992. The cameras just need to be good enough to distinguish a tank from a truck. The treaty explicitly permits a range of imagery, including optical and video cameras, as well as infrared and synthetic aperture radars, while barring collection of any other electromagnetic signals. All imagery collected from overflights is then made available to any state-party.

The treaty is simple in concept but excruciatingly detailed in its operation. The implementation process carries its own confidence-building benefit by creating more opportunities for interaction among parties.

U.S. Ratification

The Bush and Clinton administrations each thought the Open Skies Treaty provided valuable national security advantages. Before the United States could become a party to the treaty, however, the U.S. Senate had to give its advice and consent. Given the current congressional atmosphere, one might
expect that a treaty signed by a just-defeated Republican president would have had trouble winning approval from a Democratic-controlled Senate.

Fortunately, things were different in the early 1990s. Both sides of the aisle queried administration officials, worked through a few concerns, and signed off with a few minutes of floor debate and without a single opposing vote.

The Senate Armed Services Committee concluded that the treaty represented “the broadest international effort to date to promote openness and transparency of military forces and activities.” Even so, senators knew that the treaty was not the most important treaty they had ever considered. They knew that the United States had intelligence capabilities that far outstripped any other potential treaty partners. They understood that U.S. satellites could generally see more than what the treaty’s resolution limits would allow.

What they did not know was that Open Skies Treaty aircraft would become the best tool available for imaging significant parts of Russia. Senators also did not fully grasp then what experience has taught since, that it is a lot easier to use pictures acquired through Open Skies Treaty flights instead of sensitive satellite sources to gain diplomatic advantage. The conflict in Ukraine has put this aspect of the treaty’s value on display. By early 2014, the United States and its allies had already been able to use more than 10 Open Skies Treaty overflights covering “thousands of square miles” of Ukrainian and Russian territory to collect photos of Russian forces and military movements. These photographs could be shared among European governments without the usual delays or concerns that accompany sensitive intelligence declassification. As recently as December 2018, the United States and Ukraine again partnered to take advantage of the treaty to collect shareable, incontrovertible imagery following a Russian attack on Ukrainian vessels in the Sea of Azov.

Senators did understand that the treaty would help build transatlantic transparency, confidence, and stability. The Senate backed the treaty so unreservedly because European allies valued it. The
United States’ security partners, after all, do not have the same imaging capabilities as the United States. For most European allies, Russian tanks have just a border to cross, not a wide ocean. Those allies need and want U.S. backing in securing the rights of European countries to periodically fly east and take a look around.

After the other countries met their own treaty approval requirements, the treaty came into force in 2002. Since then, the United States, Russia, and 32 other countries have flown 1,426 picture-snapping flights over each other’s territories. The United States and its allies have been able to fly more than 500 times over Russian territory with Russian permission.

**Current Disputes**

Implementation issues arise with any arms control treaty. For the Open Skies Treaty, these questions are managed through the Open Skies Consultative Commission. With 34 parties and more than 100 pages of detailed rules, the commission has seen its share of disputes. Frustrations have risen over the last few years on a couple of key issues, mostly having to do with Russians activities.

Unlike Russia’s violation of the Intermediate-Range Nuclear Forces (INF) Treaty, from which Trump currently plans to withdraw the United States in early 2019 unless Moscow returns to compliance, the U.S. concerns regarding the Open Skies Treaty have focused on specific practices that do not fundamentally undermine what the United States and its allies gain from the treaty.

One ongoing dispute relates to flights near the border between Russia and Georgia. Article VI says that flights cannot happen within 10 kilometers of “the border with an adjacent State that is not a State Party.” Russia defies most of the world by asserting that South Ossetia and Abkhazia are independent states. To be consistent, Russia also has to deny treaty overflights along those disputed borders. In addition, Russia has created general implementation problems for Ukraine.

The Open Skies Treaty thus has become collateral damage in Russia’s deteriorating relationship with its neighbors. Yet, Russia is not the only country to prevent flights near a sensitive border. In 2016, Turkey prevented a Russian flight from getting too close to the Syrian border, a source of heavy Russian complaints. In all of these cases, problems are connected to broader national disputes.
More troubling is Russia’s unilateral imposition of a 500-kilometer sublimit for certain observation flights over Russia’s Kaliningrad exclave, despite the limitation having no basis in the treaty. Russia is allowing treaty-compliant planes to fly over Kaliningrad, just not for the flight distances technically permitted. The Russians imposed the restriction because some past flights over Kaliningrad have zigzagged across the small territory, creating problems for civilian flights and air traffic control. One 2014 overflight by Poland causing such problems has been cited as the origin of the dispute.\textsuperscript{14}

Based on this cumulative activity, the United States determined in 2016 that Russia has not been meeting its obligations and has therefore limited certain Russian overflight privileges here.\textsuperscript{15} Specifically, the United States has restricted flights under the treaty over the Pacific Fleet in Hawaii and the missile defense interceptor fields at Fort Greely, Alaska.\textsuperscript{16}

Although such reciprocal measures might be a natural response, by themselves they do not actually resolve disputes. The United States and Russia nevertheless have been able to find solutions in some cases. For instance, in its April 2018 report to Congress on treaty compliance, the Department of State stated that a long-standing disagreement about how to deal with overflights during major events had been settled.\textsuperscript{17} The April 2017 report confirmed that previous U.S. concerns about altitude restrictions over Chechnya had also been resolved.\textsuperscript{18}

Such progress has been complicated by those in the United States who seem happy to impede the treaty. The United States has caused particular trouble with regard to Russian moves to upgrade its treaty observation aircraft and replace film cameras with digital sensors. Congress has fueled the challenges to new Russian equipment. As early as 2014, the U.S. House of Representatives led Congress to require a report at least 30 days prior to signing off on any Russian proposal to modify or replace its treaty observation aircraft or sensor.\textsuperscript{19} The next year, the House pushed Congress to triple that warning time, unilaterally imposing an artificial three-month diplomatic cooling-off period.\textsuperscript{20} In August 2018, Congress defied administration objections and passed restrictions virtually guaranteed to force the United States to oppose any state-party’s bid to use infrared or synthetic aperture radar sensors in exactly the way the treaty envisions.\textsuperscript{21}

On the heels of this congressional direction, in early September 2018, the Trump administration caught allies and Congress by surprise when it blocked the consultative commission against certifying a new Russian Open Skies plane and its associated digital sensors. The United States eventually relented, but the incident served as a reminder of the administration’s disrespect for multilateral agreements that allies support.\textsuperscript{22}

September’s diplomatic dust-up had followed a late 2017 act of apparent neglect that resulted in no regularly planned Open Skies flights for 2018. Unlike in previous years, the United States and other partners had failed to coordinate on a plan for navigating a long-running dispute between Russia and Georgia. As a result, the treaty states-parties did not reach agreement on a regular schedule of flights for 2018.\textsuperscript{23} The same mistake did not happen in October 2018, and a regular program of flights is back on schedule for 2019.\textsuperscript{24}

Not content to stop at Russian aircraft, Congress has gotten in the way of upgrades to U.S. observation aircraft, as well. The Department of Defense has been seeking funds to overhaul and replace the 1960s-era OC-135B aircraft and its film-based cameras. According to Secretary of Defense Jim Mattis, in 2017 the United States could not complete roughly one-third of its scheduled Open Skies missions over Russia.\textsuperscript{25} In May 2018, the Omaha World-Herald revealed one U.S. flight crew’s harrowing experience during a 2016 mission over Russia, when an equipment failure caused one unplanned landing and then a cabin fire forced an emergency landing on the second attempt to leave Russia.\textsuperscript{26}

The Republican-controlled House Armed Services Committee nevertheless led Congress in 2018 in putting restrictions on the funding for replacing the aging aircraft and its outdated film camera unless the administration imposes reciprocal measures for Russia’s compliance shortfalls.\textsuperscript{27} In a hopeful turnaround for the treaty, however, a month after imposing those restrictions, Congress nevertheless appropriated nearly $150 million for two replacement observation aircraft.\textsuperscript{28}
All this adds up to a few positive signs and a treaty that will still be in serious danger without a more concerted effort to actually fix the problems and get matters back on track. It would be reckless to keep going down this route; none of what has been going wrong with the Open Skies Treaty should be enough to risk losing what is right with it.

A Worthy Fight

For the last 16 years, the United States made the most of the treaty, overflying Russia nearly three times as often as the Russia overflew the United States.\textsuperscript{29} Whatever the treaty’s shortcomings, the United States should strive to preserve a right for nations across the transatlantic region to collectively acquire images that distinguish tanks from trucks in all weather. Despite the problem areas, the overwhelming majority of Russia is available for overflights. With tensions between Russia and NATO on the rise, the treaty’s goal to provide mutual transparency is more important than ever.

Some U.S. critics have dismissed the value of imagery obtained under the treaty.\textsuperscript{30} They assert that the United States can get the same or better pictures from its own intelligence satellites while other countries could rely on intelligence shared by Washington or use commercial satellite digital imagery. Conversely, in 2016 testimony before the House Armed Service Committee, the director of the Defense Intelligence Agency, Lieutenant General Vincent Stewart, mused that Russia could use processing techniques on treaty-obtained digital imagery to somehow gain an unfair advantage.\textsuperscript{31}

The critics’ contentions are all faulty. The U.S. government had the chance to thoroughly examine the new Russian sensor and aircraft after the initial questions were raised. It certified that both fully fit within the treaty’s guidelines. It is also difficult to reconcile the call for relying solely on commercial digital imagery with the fear about processing lower-resolution, treaty-obtained digital imagery. Russia presumably could apply the same processing techniques to commercially obtained digital satellite imagery as would be applied to imagery acquired through the treaty.

As for U.S. flights over Russia, satellite imagery can surpass the limited resolution of cameras aboard Open Skies flights, but planes enjoy much more flexibility in choosing flight paths. The three to four days’ warning that observed countries get before a satellite overpass gives them ample time to move military assets. Treaty flights provide only 24 hours’ notice, increasing the odds that overflights capture an accurate assessment. Planes can also double back to provide a more comprehensive set of images than fixed-orbit satellites can.
Moreover, every party, observers and observed, can see the same set of certified Open Skies pictures. Any time the United States challenges Russia over new misbehavior in the region, Russia will look to exploit the public mistrust that still lingers from faulty U.S. claims about Iraq. The United States benefits immensely from having common Open Skies images that offer an indisputable level of authenticity and do not force the United States to expose its own intelligence means. Besides, 15 years after Iraq, many poorer, smaller allies would be loathe to lose Open Skies imagery and become the United States’ imagery intelligence client-state.

The treaty-mandated collaboration helps build confidence in its own right. The treaty forces countries’ military and government officials to work with one another, jointly solve air traffic or other logistical questions, inspect planes together, and confront problems in a broadly inclusive, transatlantic diplomatic framework. All these acts and the choice by the larger powers to submit themselves to them increase mutual trust and predictability.

This is why U.S. allies are voting for the Open Skies Treaty with their wallets, investing large sums in new Open Skies planes and digital sensors. They reject suggestions of nefarious activities connected to overflights; no treaty party has ever tried to employ prohibited technology during a flight. They know that the incredibly intrusive pre-flight inspection process, in which an aircraft is all but taken apart, should remove concerns that any observing party is somehow capturing unauthorized information. They appreciate that the treaty even lets a nervous observed country insist that its own Open Skies plane be used for an observation flight.

Mattis also apparently values the national security benefits of the treaty enough to invest more in it. “In order to maximize U.S. benefits from the Treaty,” Mattis wrote, “the United States needs to recapitalize and modernize its sensors and aircraft.” Mattis’s advocacy looks more and more likely to set up a showdown at some point with Bolton. When that happens, the fate of a national security legacy passed down from Eisenhower and Bush may hang in the balance.

A Squandered Inheritance?
Bush used his 1989 Open Skies proposal to test the Soviet Union’s commitment to changing its relationship with the world. The U.S. approach toward the treaty now will test its own commitment to a once-honored U.S. strategy of using adroit diplomacy and collective action to secure key national security interests.

It is no coincidence that Bush, the last World War II military veteran to serve as president, valued an arms control concept put forward by Eisenhower, the first World War II vet to occupy the Oval Office. They, along with President John Kennedy, another combat veteran of that war, grasped the urgency of averting modern great-power war because they survived the worst conflict the world had ever known. They understood the true costs of war. They knew that avoiding war between great powers was at least as important as any thoughts about “winning” such a war.

To be sure, the Open Skies Treaty by itself will not guarantee that major conflicts will never return to the Euro-Atlantic region. Yet, the treaty joins other arms control agreements and a larger institutional order to form a safety net that has kept the world from falling back into the chaos and destruction of great-power war. There can be no doubt that, with each and every discarded international agreement, the inherited safety net frays and the United States slips further down an uncertain and unsafe path.

Opponents of arms control thrive on attacking the shortcomings of each treaty or agreement one by one. The compliance problems are easy to see, while most of a treaty's benefits only truly reveal themselves in the shadow left by their absence. The full potential of each individual treaty or agreement can only be seen if it sits within a larger, complementary ecosystem of other agreed rules and behaviors.

More difficult still to prove, but perhaps most important of all, is the benefit that comes from the spirit of collaboration and mutual problem solving required of the leaders who create and sustain arms control treaties and agreements. As valuable as the Open Skies Treaty has been and will continue to be, the real inheritance that Bush left was the example he set in forging the treaty in the first place. He was fundamentally committed to working cooperatively with heavily armed adversaries to avoid the mutual catastrophe of war, even when doing so meant assuming new obligations and denying himself the fantasy that instead he should simply aim to destroy those adversaries.

Walking away from a treaty that Eisenhower imagined and that Bush built would cost more than the national security insights lost and the alliance resentments generated. Rejecting the treaty would be one more step away from the spirit of confidence, patience, and problem solving that made the treaty possible in the first place.

The Open Skies Treaty has existed mostly out of sight, but its dissolution would be felt across the Euro-Atlantic region. As the United States continues to reflect on the passing of a president who led us out of a Cold War, it is important to sustain the legacy he left behind.

ENDNOTES


14. U.S. government officials, discussions with author, Washington, D.C., November 2018


17. 2018 AVC report.

18. 2017 AVC report.


22. Kingston Reif, “U.S. Reverses Course on Open Skies Treaty,” Arms Control Today, October 2018,
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29. AVC, “Key Facts About the Open Skies Treaty.”


32. Mattis letter.

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