



# Making a Better Treaty on Open Skies

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Middlebury Institute of  
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*James Martin Center for Nonproliferation Studies*

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Cover image: OC-135B Open Skies aircraft. It's primary function is unarmed observation to support the Treaty on Open Skies. [Source: Wikimedia Commons]

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# Introduction

The United States withdrew from the Treaty on Open Skies on November 22, 2020. In response, Russia announced on January 15, 2021 that it would begin internal steps required to withdraw from the treaty. The Russian statement did not say when Moscow would formally inform the other parties to the treaty of its intention to withdraw, which would begin a six-month clock to withdrawal. It seems difficult to imagine how Open Skies can continue without these two members. If the treaty is to be sustained, the US will have to rejoin, and Russia will have to suspend its withdrawal. There are encouraging indications that the two sides have begun talking about Open Skies in the wake of the Biden inauguration.<sup>1</sup>

For the Biden Administration, the key question will be whether Open Skies is worth expending time and political capital, given many other priorities. For the Russians, the key issue is whether they are prepared to work to address issues which have given critics of the treaty ammunition against it, or whether letting Open Skies go is preferable as part of a broader diplomatic strategy. For the remaining members of the treaty, and particularly the larger European allies, it is time to indicate firmly that they value the treaty and are unwilling to see it slide into history. The Biden Administration, in particular, may require indications of support from key allies as it makes decisions as to what to prioritize in its first months in office.

While saving the treaty is the immediate priority, lost in the scramble to do so is consideration of the deeper question of whether the treaty is in need of reform. Open Skies was first proposed in 1955, revived in 1989, signed in 1992 and entered into force in 2002. In many respects, it has changed very little. Perhaps the Trump withdrawal from Open Skies, unfortunate though it may have been, could serve as an inflection point in the history of the treaty; a moment to step back and consider whether something more suited to today's world can be developed. This paper will examine whether and how the treaty could be sustained and will propose short-term ideas to that effect. It will also consider medium and longer-term ideas that could be pursued not merely to maintain the existing agreement, but to

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<sup>1</sup>During a telephone conversation between Presidents Biden and Putin on January 20, 2021, which was primarily about extending the Strategic Arms Reduction Treaty (START), the two sides also discussed the future of the Open Skies Treaty. See, Tetrault-Farber, G. and T. Hunnicutt, "Russia-U.S. extend arms pact, Kremlin says, as Biden, Putin talk," Reuters, January 26, 2021, at: <https://www.reuters.com/article/us-russia-usa-security-kremlin/russia-u-s-extend-arms-pact-kremlin-says-as-biden-putin-talk-idUSKBN29V10N>.

modify, update and expand the concept. It is hoped that the ideas presented in this paper will stimulate the treaty members to re-think what they want from Open Skies in the 21<sup>st</sup> Century, while also providing ample incentive for the US to re-join and Russia to remain. That said, considerations about the future of Open Skies, for both the US and Russia, are part of a much bigger web of issues.

# Background

The idea behind Open Skies is very straightforward; each participant<sup>2</sup> permits other members of the treaty to conduct short-notice overflights, using agreed aircraft and sensors, for the purpose of building confidence that untoward military or other activities are not in preparation.<sup>3</sup> Open Skies is a “stand alone” agreement; it is not tied to the verification provisions of any other arms control agreement or Confidence-Building Measure (CBM). Nor is it formally part of the Organisation for Security and Cooperation in Europe (OSCE), though there are links between the two which will be explored later in this paper. Open Skies overflights can obviously be used to help verify other agreements, or to support the purposes of the OSCE (or any other body) and this is explicitly recognized and welcomed in the Preamble to the treaty. The flights can also be used to acquire information for any other purpose.

For much of its history, the Open Skies regime operated quietly and effectively. Between its entry into force in 2002 and 2020, over 1,500 Open Skies flights had taken place, most without any controversy. Under the terms of the treaty, the data collected on each flight is available to every other member of the regime, on a cost-recovery basis, thus enabling all to have access to an enormous amount of information. This is particularly a boon to the smaller regime members, who do not conduct many overflights themselves or have their own means of collecting aerial imagery. Indeed, the treaty has always been seen as a vehicle to promote confidence and transparency at multiple levels. As noted, for the smaller nations, including many of America’s allies, the ability to collect and receive Open Skies data represents a unique means of allaying concerns and building confidence. Even for the larger states, Open Skies flights return data which cannot easily be replicated by satellites. Flights can linger over particular areas in

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<sup>2</sup>Following the US withdrawal, the 34 state parties to the Open Skies Treaty are: Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark (including Greenland), Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom. Kyrgyzstan signed the treaty but has not yet ratified it.

<sup>3</sup>For general histories of the negotiation of the Open Skies Treaty see: Jones, P., *Open Skies: Confidence-building, Transparency and the End of the Cold War*, (Palo Alto: Stanford University Press, 2014); Tucker, J., “Negotiating Open Skies: A Diplomatic History,” in Krepon, M. and A. Smithson, (eds.), *Open Skies, Arms Control and Cooperative Security*, (New York: St. Martin’s Press, 1992); and Dunay, P., M. Krasznai, H. Spitzer, R. Wiemker and W. Wynne, *Open Skies: A Cooperative Approach to Military Transparency and Confidence Building*, (Geneva: UNIDIR, 2004).

ways that most satellites cannot and can get beneath cloud cover. Moreover, information collected through intelligence means cannot easily be shared, which means that countries such as the US may know something is happening but find it difficult to prove without compromising intelligence sources and methods. By contrast, Open Skies data is *meant* to be shared widely, can serve this purpose well and its provenance is assured.

Another key aspect of Open Skies is that it requires ongoing and extensive collaboration between its members in order to function. This regular and sustained cooperation which is required between the military establishments of the participating countries in order to stage these flights is unprecedented and lays a foundation for greater understanding on a broader level.

# Compliance Issues

Of course, like any other treaty, some compliance issues have arisen. What are these issues?<sup>4</sup>

The first concerns a region of Russia known as Kaliningrad, a small enclave on the Baltic coast which is separated from the main part of Russia. In 2014 a Polish Open Skies flight over Kaliningrad flew back and forth in a way which played havoc with civilian air traffic control; it flew what some have called a “lawn mower” pattern. Russia imposed a 500km restriction on the duration of overflights involving this region in order to reduce the amount of time a flight can spend over Kaliningrad and thereby prevent flights of this nature in the future.<sup>5</sup> In doing so, it stretched to the breaking point the provisions of the treaty governing allowed flight distances. Other members of the treaty objected, and the US imposed similar types of flight restrictions for Russian flights over Alaska and Hawaii in retaliation.

The second issue cited by the US as cause for its departure from the treaty concerns overflights of a small number of regions which are contested. In 2008, South Ossetia and Abkhazia declared themselves independent from Georgia. Most of the world follows Georgia in not recognizing their independence, but Russia does recognize it. Moscow, therefore, maintains that Open Skies flights over its territory cannot come within 10 km of its borders with these two regions, as the treaty prohibits flights closer than 10 km of the border of a non-Party, which both South Ossetia and Abkhazia hold themselves to be. By this means, Russia is attempting to get the world to recognize, in practice, the independence of South Ossetia and Abkhazia.

Georgia has declared a suspension of the Treaty on Open Skies in relation to Russia. While this is, technically, not allowed under the terms of the treaty, the annual distribution of quotas has been managed in such a way as to prevent it becoming an issue by making sure that Russia does not have an overflight of Georgia. In 2018, this

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<sup>4</sup>For more on these issues see Bell, A., W. Richter and A. Zagorski, “How to fix, preserve and strengthen the Open Skies Treaty,” *Deep Cuts Issue Brief* #9, March, 2020, accessed at: [https://deepcuts.org/files/pdf/Deep\\_Cuts\\_Issue\\_Brief\\_9-Open\\_Skies\\_Treaty.pdf](https://deepcuts.org/files/pdf/Deep_Cuts_Issue_Brief_9-Open_Skies_Treaty.pdf); and Graef, A., “Saving the Open Skies Treaty: Challenges and possible scenarios after the U.S. withdrawal,” *European Leadership Network Policy Brief*, September, 2020, accessed at: <https://www.europeanleadershipnetwork.org/wp-content/uploads/2020/09/22092020-AGraef-ELN-OST-Policy-Brief.pdf>.

<sup>5</sup>Ministry of Foreign Affairs of the Russian Federation, “Treaty on Open Skies: Questions and Answers”, May 26, 2020, accessed at: [https://www.mid.ru/foreign\\_policy/international\\_safety/regprla/-/asset\\_publisher/YCxLFJnKuD1W/content/id/4138584?p\\_p\\_id=101\\_INSTANCE\\_YCxLFJnKuD1W&\\_101\\_INSTANCE\\_YCxLFJnKuD1W\\_languageId=en\\_GB](https://www.mid.ru/foreign_policy/international_safety/regprla/-/asset_publisher/YCxLFJnKuD1W/content/id/4138584?p_p_id=101_INSTANCE_YCxLFJnKuD1W&_101_INSTANCE_YCxLFJnKuD1W_languageId=en_GB).



procedure failed, and Russia acquired an overflight of Georgia. The latter objected and withheld consensus on the entire quota exercise, such that there were no Open Skies flights in 2018. Flights resumed in 2019 when Russia once again “failed” to successfully bid for an overflight of Georgia under the quota regime.

More broadly, this matter illustrates a problem under the Open Skies regime with what might be called “contested spaces.” These would be defined as specific areas where sovereignty is disputed between members of the treaty. For example, after Russia’s annexation of Crimea, which is not recognized by any other Open Skies member, Moscow insisted that overflights of this region had to be approved by them as part of routine requests to overfly the Russian Federation. Russia also designated an airfield in Crimea as an Open Skies refuelling site, thereby having other treaty members recognise their sovereignty over Crimea if they use that airfield. The other treaty members refuse to accept these steps, as they would be tantamount to recognizing Russian sovereignty over a territory still held by everyone else to belong to Ukraine.

To these treaty-specific compliance issues, the Trump Administration added another reason why it was withdrawing from the treaty: the charge that Russia benefitted unequally from the treaty and was using flights to target critical infrastructure in the US. This charge has little to do with the Treaty on Open Skies itself, as sensors are equal (though Russia has invested in more modern ones than the US, which could also do so if it wished) and member states are entitled to fly over any part of the observed country they wish and use the data for any purpose. Indeed, it was the US which insisted on this approach in the negotiations over the original Treaty after the Soviet delegation sought to hold certain areas off-limits for security reasons. In effect, in levelling this last reason for departing the regime, the Trump Administration charged Russia with doing exactly what the United States insisted the treaty should allow them to do and what every other member does as well. It is therefore difficult to come up with a “fix” for this charge, as it makes little sense except as a piece of red meat for Trump supporters to chew on.<sup>6</sup>

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<sup>6</sup>For a critical review and discussion of the justifications used by the Trump Administration for the U.S. withdrawal see, Jones, P., “Open Skies: Can the U.S. withdrawal be delayed?” *European Leadership Network Policy Brief*, November, 2020, accessed at: <https://www.europeanleadershipnetwork.org/wp-content/uploads/2020/11/Open-Skies.pdf>. For the views of someone who supported the U.S. withdrawal see, Morrison, T., “Russia Flouts Another Arms Control Treaty, So We’re Leaving It,” *New York Times*, May 21, 2020.

# The Trump Withdrawal

Before the Trump Administration came to office the Kaliningrad and Georgia issues were being dealt with through consultation and diplomacy within the Open Skies Consultative Commission (OSCC), the body established by the treaty to oversee its implementation. While these compliance concerns were real, progress was being made on them. Indeed, until the Trump Administration was in power the annual reports issued by the U.S. State Department on compliance registered “concerns” over compliance, but never outright accused Russia of cheating.

Soon after Trump assumed office the tone of these reports changed dramatically to outright accusations of cheating, even though the situation had not changed.<sup>7</sup> In a statement of May 21, 2020, announcing the U.S. intention to withdraw from Open Skies, Secretary of State Pompeo stated, “Russia has flagrantly and continuously violated the treaty in various ways for years.... Despite the Open Skies Treaty’s aspiration to build confidence and trust by demonstrating through unrestricted overflights that no party has anything to hide, Russia has consistently acted as if it were free to turn its obligations off and on at will, unlawfully denying or restricting Open Skies observation flights whenever it desires.” Pompeo went on to accuse Russia of “weaponizing” the treaty by using it to coerce smaller nations and to target critical infrastructure in the US.<sup>8</sup>

Though Pompeo’s May 21 statement did hold out the idea that the US would rescind the withdrawal if Russia came back into compliance, it appears that the real issue was much larger than Open Skies. When combined with the other withdrawals the Trump Administration has made from various arms control agreements (the INF Treaty and the Joint Comprehensive Plan of Action), and broader multilateral agreements (such as the Paris climate change accord and the World Health Organization), the withdrawal from Open Skies fits a pattern of simply rejecting multilateralism and cooperation as the preferred mechanisms to manage and resolve international issues. It was exactly this approach which then-candidate Joe Biden excoriated in a statement released on May 22, 2020. In the statement Biden said,

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<sup>7</sup>See the analysis of these reports in Graef, A., “The End of Open Skies and the Politics of Compliance,” LawfareBlog, July 6, 2020, accessed at: <https://www.lawfareblog.com/end-open-skies-treaty-and-politics-compliance>.

<sup>8</sup>See Pompeo, M.R., “On the Treaty on Open Skies, Press Statement,” U.S. Department of State, May 21, 2020, accessed at: <https://www.state.gov/on-the-treaty-on-open-skies/>.

In announcing the intent to withdraw from the Open Skies Treaty, President Trump has doubled down on his short-sighted policy of going it alone and abandoning American leadership. With the world confronting the health and economic consequences of a global pandemic, the United States should be leading the international community, working with allies, and avoiding destabilizing actions....I supported the Open Skies Treaty as a Senator, because I understood that the United States and our allies would benefit from being able to observe — on short notice — what Russia and other countries in Europe were doing with their military forces. That has remained true for the nearly two decades the treaty has been in force. During the Obama Administration, the United States and our partners successfully used Open Skies flights and imagery to support Ukraine when Russia violated its territory, disprove Russian disinformation, and show the world what Russia was doing.<sup>9</sup>

There is thus reason to believe that President Biden may wish to re-join Open Skies. But this may not be easy to accomplish. Legal experts are divided on whether the Biden Administration can simply declare the Trump withdrawal to be void, due to irregularities in the way it was done and re-join the treaty, or whether the Senate must re-issue its “advice and consent.”<sup>10</sup> Either way, political capital will be required. Moreover, President Biden will have much on his plate – between the pandemic and the economic crisis, and the many domestic and international issues his Administration must repair after the disastrous Trump years. This is where strong allied indications of a desire to see the US return to Open Skies could be useful in the first months of the Biden Administration. The allies made such representations when the Trump Administration was considering leaving the treaty, but they fell on deaf ears.<sup>11</sup>

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<sup>9</sup>See Biden, J., “Statement by Vice President Joe Biden on President Trump’s Decision to Withdraw from the Open Skies Treaty,” May 22, 2020, accessed at: <https://medium.com/@JoeBiden/statement-by-vice-president-joe-biden-on-president-trumps-decision-to-withdraw-from-the-open-606a9668d489>.

<sup>10</sup>See the commentaries of two leading American arms control treaty law experts. Professor David Koplow takes the view that there may be ways around the need for full Senate re-ratification of the Treaty in his, “U.S. Withdrawal from the Open Skies Treaty: Three Legal Issues,” Arms Control Wonk, 24 November, 2020, accessed at: <https://www.armscontrolwonk.com/archive/1210417/u-s-withdrawal-from-the-open-skies-treaty-three-legal-issues/> Meanwhile, former senior Department of state official U.S. Stephen Rademaker is of the view that full re-ratification will be required; “Are There Shortcuts for the U.S. to Rejoin the Open Skies Treaty?” Lawfare Blog, January 15, 2021, at: <https://www.lawfareblog.com/are-there-shortcuts-us-rejoin-open-skies-treaty>.

<sup>11</sup>See, for example, “NATO Allies, other nations, urge U.S. not to withdraw from Open Skies accord,” France 24, May 21, 2020, at: <https://www.france24.com/en/20200521-us-to-withdraw-from-open-skies-accord-in-trump-s-latest-treaty-pullout> In addition, 11 European countries issued a formal statement regretting the U.S. decision to withdraw. See: “Statement of the Foreign Ministries of France, Belgium, Czech Republic, Finland, Germany, Greece, Italy, Luxemburg, Netherlands, Portugal, Spain and Sweden on the announcement by the US to withdraw from the Open Skies Treaty (May 22, 2020),” on the website of the French Foreign

# The Russian Withdrawal<sup>12</sup>

Russia's initial reaction to the Trump withdrawal was to express regret, but also to signal a desire to remain involved in the treaty. However, the Russians did state that changes would be required. For example, they sought assurances that America's allies would not share the results of their Open Skies flights with the US after the latter left the treaty. They also sought assurances that Russian overflights could cover U.S. military bases in countries which remained part of the treaty, such as Germany and the UK. The first concern, data sharing, is covered in the Treaty by paragraph 4 of Article IX, which states that Open Skies data will be shared with parties to the treaty.<sup>13</sup> Russia, however, sought additional assurances which the allies were reluctant to give as this would establish a precedent that assurances could be demanded beyond those provided for in the treaty. Discussion of the second Russian condition, overflight of U.S. bases in Europe, was largely seen as a non-issue as such bases are covered by the provisions that any part of a country to be overflown is subject to overflights. It is understood that the US did not demand that allies exclude American bases in their countries from overflights but did ask for advance notice if a U.S. base would be overflown in order to take measures to halt particular activities. This is already happening and would not have been a change from the present situation.<sup>14</sup> But the Russian demand that the allies publicly commit was again seen as raising possible difficulties for the allies in their relations with Washington.

It is not known whether the concerns expressed by Russia when the US withdrew from Open Skies were real, or a diplomatic ploy designed to drive a wedge between the remaining Treaty members who value the Treaty (and especially the NATO nations) and the US. This ploy having failed, the Russian statement of January 15 on their intention to withdraw may have been designed to send signals to the incoming Biden Administration on the much wider agenda of security issues facing the two countries, including the future of the New START Treaty (now resolved, for the time being), how to respond to Russian cyber-attacks, and the possible US

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Ministry at: <https://www.diplomatie.gouv.fr/en/french-foreign-policy/security-disarmament-and-non-proliferation/news/2020/article/statement-of-the-foreign-ministries-of-france-belgium-czech-republic-finland>.

<sup>12</sup>For the text of the withdrawal announcement see: "Statement by the Ministry of Foreign Affairs of the Russian Federation on the Beginning of Domestic Procedures for the Withdrawal of the Russian Federation from the Treaty on Open Skies," January 15, 2021, accessed from the Russian Foreign Ministry website at: [https://www.mid.ru/en/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/4522563](https://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4522563).

<sup>13</sup>Paragraph 4 reads: "Data collected by sensors during observation flights shall be made available to States Parties in accordance with the provisions of this Article and shall be used exclusively for the attainment of the purposes of this Treaty."

<sup>14</sup>Private correspondence with a U.S. official who has requested anonymity.

return to the Joint Comprehensive Plan of Action.<sup>15</sup> The fate of Open Skies is thus part of a wider conversation about other security issues.

Assuming, however, that we take the concerns expressed by Russia when America withdrew from Open Skies at face value, both of them are completely addressed if the US returns to the Open Skies Treaty. Data-sharing with the US would no longer be a problem if it were back in the treaty, and overflights of U.S. bases in Europe would also cease to be an issue. Logically, Russia should be prepared to abandon its withdrawal process if the Biden Administration signals that it will move to re-join the treaty; all of the reasons Russia has given for its intended withdrawal would be resolved, and Russia would regain the right to perform overflights of the US, which may have been its primary goal all along. Indeed, the statement of January 15 also alluded to the change in the “balance of interests” between the parties which the U.S. withdrawal had created.

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<sup>15</sup>See Troianovski, A. and D. Sanger, “Russia’s Exit from Open Skies Treaty May Complicate Relations with Biden Team,” New York Times, January 16, 2021, p. A11.



# A Way Forward

The key steps to sustain the treaty are thus for the US to re-join, and Russia, in response, to abandon its own pending withdrawal. As noted, President Biden is on public record as being sympathetic to the treaty and opposed to the Trump withdrawal. His Administration has not, however, committed to re-join, either through Executive decision or by re-submitting the treaty to the Senate. This may be due to a calculation as to how much political capital and effort would be required to do so in the face of other priorities.

Whichever mechanism was selected to re-join, if the Biden Administration decided to do so, the most effective way to smooth the U.S. path back into the treaty would be through an effort to address the concerns used by Trump as the excuses for withdrawal. Even if Trump ultimately used these as excuses to justify an ideological desire to withdraw, his Administration did state when it announced the withdrawal that the US would consider remaining in the treaty if these issues were “fixed.”<sup>16</sup> Addressing these issues now would thus answer criticisms which opponents of a Biden move to re-join may have.<sup>17</sup> The proposals advanced in this paper assume that, if the US re-joins, Russia would abandon its intent to withdraw. Beyond simply easing America’s way back into the treaty, however, it is also time to go further in terms of adapting the treaty to the present circumstances.

This paper thus suggests six proposals which can be explored by the treaty members. These ideas are presented in three groups. The first group are things that can be done now to fix the issues which, allegedly, led to the Trump withdrawal and the subsequent Russian decision to withdraw. The second group of proposals (the third and fourth) are for medium-term consideration, after the US has re-joined and Russia has abandoned its intention to withdraw. These proposals are intended to address concerns that the treaty requires modernisation to cope with technical and political events which have taken place in the almost 30 years since it was signed. The final group of proposals (the fifth and sixth) will take much longer to realise. They involve bringing new countries into the treaty, and extending

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<sup>16</sup>See Pompeo, M.R., “On the Treaty on Open Skies, Press Statement,” U.S. Department of State, 21 May, 2020, accessed at: <https://www.state.gov/on-the-treaty-on-open-skies/> The official statement to this effect was not categorical and left room for backsliding. Resolution of the data-sharing and third country base issues would not, of course, address the more general and baseless “spying” charge. But that charge is simply an assertion that Russia is using the Treaty in the way America insisted it be designed during the negotiation. The charge is therefore difficult to respond to as it is a political stance designed to create mischief.

<sup>17</sup>An additional question is the status of the U.S. Open Skies aircraft. The Trump Administration attempted to have these aircraft scrapped upon withdrawal from the treaty, but this was not done before it left office. That said, the aircraft are very old and there had been calls for many years for them to be replaced. If the US opts to re-join the treaty, aircraft replacement will be an issue, but it would have been anyway had the US remained in the treaty.

its scope in other significant ways. Indeed, it is probably too soon to even begin discussion of them on the official level. Nevertheless, the beginning of serious, but unofficial exploratory discussions of these ideas will signal that the treaty is capable of evolution.

## **Group 1 – Short-term Measures to Ease a US Re-entry and Prevent Russian Withdrawal**

### **Proposal 1: Fix the Kaliningrad Issue Once and for All**

Any number of complex workarounds may be envisaged for this, many involving the designation of a new support airfield for Open Skies in this region and complex formulae to calculate flight distances for sub-regions. The simplest way forward, however, would be for the Parties to the treaty to affirm, through an agreed statement in the Open Skies Consultative Commission, that they will seek as a matter of principle to ensure that Open Skies flights have the least possible impact on normal civilian air traffic, consistent with the terms of the treaty that, “(Open Skies) Observation flights shall take priority over any regular air traffic.”<sup>18</sup>

In any case, it may be that this issue was on the way to being resolved before the US withdrew from the treaty. In February, 2020, Russia permitted a flight being conducted by Estonia, Lithuania and the US to fly a route over Kaliningrad of some 505 km, thereby signalling that its insistence on the 500 km sub-limit may be ending.<sup>19</sup> Perhaps choreographed statements by Russia that the 500 km sub-limit over Kaliningrad will no longer apply, and by all members of the OSCC that they will make best endeavours to ensure that Open Skies flights do not unduly interfere with civilian air traffic, might suffice to put this issue behind us. In turn, the US, if it signals a desire to re-join the treaty, could also explicitly state that it will remove restrictions it has placed on flights over Alaska and Hawaii once it has resumed membership in Open Skies.

### **Proposal 2: Georgia**

It is important to note that the Treaty on Open Skies was never intended to be a vehicle to either pursue or resolve territorial disputes. Flights should not be embroiled in attempts to establish or dispute

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<sup>18</sup>Treaty on Open Skies, Article VI, Section 1, paragraph 15.

<sup>19</sup>Ministry of Foreign Affairs of the Russian Federation, “Treaty on Open Skies: Questions and Answers”, May 26, 2020, accessed at: [https://www.mid.ru/foreign\\_policy/international\\_safety/regprla/-/asset\\_publisher/YCxFJnKuD1W/content/id/4138584?p\\_p\\_id=101\\_INSTANCE\\_YCxFJnKuD1W&\\_101\\_INSTANCE\\_YCxFJnKuD1W\\_languageld=en\\_GB](https://www.mid.ru/foreign_policy/international_safety/regprla/-/asset_publisher/YCxFJnKuD1W/content/id/4138584?p_p_id=101_INSTANCE_YCxFJnKuD1W&_101_INSTANCE_YCxFJnKuD1W_languageld=en_GB).

sovereignty. With respect to Georgia, one can imagine specific workarounds. These might include an agreement by Russia that it will waive its insistence that flights within 10 km of its borders with the breakaway areas should conform to the “no flights within 10 km of a non-party” rule in the treaty, in return for Georgia agreeing that Russian overflights of Georgia may, in principle, resume. It is difficult, however, to imagine this working for Crimea.

## **Group 2 – Medium-term Measures to Modernise the Existing Treaty**

### **Proposal 3: No Areas Off-limits**

Thus, the larger issue of what this paper calls “contested spaces” is one that should be considered after the US has returned to the treaty and Russia has suspended its withdrawal. In such cases, it is proposed that an agreement be reached in the OSCE that, for the purposes of Open Skies only, and without prejudice to larger claims, overflights of these disputed areas may go ahead on a non-prejudicial basis, so as to monitor the territory in dispute. Such flights could be undertaken by an agreed “neutral” Party (Sweden, for example) with the data automatically being shared with both the country which *de facto* controls the territory and the country which claims it, and being available to all others as per the terms of the treaty. The key would be an explicit agreement that these flights would not constitute “recognition” in a diplomatic sense of any side’s sovereignty over the contested area.

This will obviously be an extremely sensitive issue. Consideration may be given to the provisions of Article X, paragraph 6, and Annex L, Section III of the treaty for ways to accomplish this. These sections of the treaty establish the relationship between the Open Skies Consultative Commission and the (as it then was) Conference on Security and Cooperation in Europe – now the Organization for Security and Cooperation in Europe (OSCE). When the treaty was being negotiated language was included to encourage the use of Open Skies in support of the conflict prevention and management objectives of the OSCE. Thus, Annex L, Section III, creates what are known as “extraordinary observation flights.” Paragraph 1 of Annex L, Section III reads:

The Open Skies Consultative Commission shall consider requests from the bodies of the Conference on Security and Co-operation in Europe authorized to deal with respect to conflict prevention and crisis management and from other relevant international organizations to facilitate the organization and conduct of extraordinary observation flights over the territory of a State Party with its consent.

These flights have been used. For example, during the fighting in eastern Ukraine, Kiev requested extraordinary observation flights over its own territory in order to make known Russian activity there. These were the flights that Joe Biden referred to in the earlier quoted statement lamenting the Trump withdrawal from the treaty.

Taking the reality of “extraordinary observation flights” further, and relating it to the “contested spaces” concept advanced in this paper, one could imagine agreement that flights over such “contested spaces” could be undertaken on an extraordinary basis by the OSCE’s Conflict Prevention Centre, using the existing aircraft of a neutral country.<sup>20</sup> In this way, sovereignty would not be compromised, as it could be if another state requested a flight on a national basis. Rules and procedures would have to be worked out, and both countries involved in the dispute over the territory will no doubt have much to say, but this could provide a mechanism under the treaty, using existing treaty language and ideas, for the extension of Open Skies flights to such “contested spaces.”

## Proposal 4: New Sensors

When the Treaty on Open Skies was negotiated much time was spent on the issues of which sensors would be allowed and what their resolution would be. The US and other NATO countries initially took the view that any sensor could be used, provided the overflying country was prepared to allow the other side to inspect it upon arrival and see it in operation. This would have conferred an advantage on the more technically sophisticated regime members in terms of the sensors they could use and the data they could collect. The Soviets, as part of a general desire to limit the Treaty’s intrusiveness, proposed a very primitive sensor suite. The other countries involved in the negotiation eventually came to an understanding that any sensors could be used, provided all parties had equal access to them on a commercial basis. This idea was first proposed by the Czech ambassador at the Ottawa Open Skies conference as part of package of trade-offs which became known within the negotiation as the “Grand Compromise.”<sup>21</sup> After much negotiation, this was the formula adopted in the treaty.

Another issue which consumed much time was the question of what these sensors were meant to see. Once again, the US and other NATO countries initially took the view that there should be no restrictions

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<sup>20</sup>More information on the OSCE Conflict Prevention Centre may be found at: [https://www.osce.org/files/f/documents/e/3/13717\\_0.pdf](https://www.osce.org/files/f/documents/e/3/13717_0.pdf).

<sup>21</sup>See Jones, P., *Open Skies: Transparency, Confidence-building and the End of the Cold War*, (Palo Alto: Stanford University Press, 2014), pp. 79-81.

or definitions; that observation of anything was within the purview of the treaty. The Soviets objected and stated that a definition had to be worked out, based on a priority for military confidence-building, which they then defined very narrowly. These positions are, of course, ironic, given the Trump Administration's charge that Russia is "spying" on critical infrastructure in contravention of the treaty. It was exactly the US position when Open Skies was being negotiated that these flights should be free to look at anything.

After much negotiation, it was agreed that Open Skies flights should be able to distinguish a tank from a truck, in all weather, 24 hours a day, a task which requires a sensor resolution of 30 cm and an all-weather, day/night capability. Open Skies flights were not restricted to this objective, and can take pictures of whatever they want, but this mission requirement set the standard for the agreed sensor capabilities. A set of sensors was selected which meet the "all weather, 24 hours" requirement and it was agreed that they would be set to 30 cm resolution to achieve the "tank from a truck" objective. These include: optical panoramic and framing cameras; video cameras with real time display; infra-red line scanning devices; and sideways looking synthetic aperture radar. The treaty includes detailed descriptions of these sensors, of how they shall be calibrated to ensure that the 30 cm resolution rule is respected and of how the resulting data will be shared.<sup>22</sup>

Recognising that technology would change over time, the parties to the treaty structured it such that new sensors, both as to the capabilities of the agreed types and also as to entirely new types of sensors, could be added to the package provided all agreed within the OSCC. Critically, they agreed that the OSCC was empowered to consider and approve,

...improvements to the viability and effectiveness of this Treaty, consistent with its provisions. Improvements relating only to .... updates and additions to the categories or capabilities of sensors pursuant to Article IV ... shall be agreed upon within the Open Skies Consultative Commission and shall not be deemed to be amendments to this Treaty.<sup>23</sup>

This means that new sensor capabilities and *entirely new types of sensors* can be added without having to re-ratify treaty amendments

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<sup>22</sup>See Articles IV and IX, and Annexes B, D and K of the Treaty on Open Skies. For more on these negotiations see: Jones, P., *Open Skies: Confidence-building, Transparency and the End of the Cold War*, (Palo Alto: Stanford University Press, 2014).

<sup>23</sup>Treaty on Open Skies, Article X, paragraph 5.



each time. The parties to the treaty have taken advantage of this ability to evolve, most notably when they agreed to begin the move from analog to digital sensors in 2010.

Moreover, even when the Treaty on Open Skies was being negotiated, it was already understood that the regime could evolve and find uses beyond military confidence-building.<sup>24</sup> Thus, the sixth and seventh Preambular paragraphs of the treaty read:

Noting the possibility of employing such a regime to improve openness and transparency, to facilitate the monitoring of compliance with existing or future arms control agreements and to strengthen the capacity for conflict prevention and crisis management in the framework of the Conference on Security and Co-operation in Europe and in other relevant international institutions, (and)

Envisaging the possible extension of the Open Skies regime into additional fields, such as the protection of the environment.<sup>25</sup>

The ability to take entirely new types of measurements, for new purposes, would significantly enhance the utility of Open Skies flights and help to make it a truly cooperative aerial monitoring agreement. It is therefore proposed here that consideration be given to augmenting the existing sensors with new types. Specifically, the inclusion of air sampling sensors could permit Open Skies overflights to play a role in helping to verify compliance with undertakings concerning biological, toxin and chemical weapons, and also agreements to observe treaties, such as the Limited Test Ban Treaty and moratoria on nuclear testing. This would be a significant addition to Open Skies' utility in terms of arms control verification.<sup>26</sup>

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<sup>24</sup>The head of the U.S. delegation to the Open Skies conferences, Ambassador John Hawes, wrote about this shortly after the Treaty was signed. See Hawes, J., "Open Skies: Beyond Vancouver to Vladivostok," *Henry L. Stimson Center, Occasional Paper No. 10*, Washington, December, 1992.

<sup>25</sup>Treaty on Open Skies, Preamble, paragraphs 6 and 7. Section 4 of Annex L lays out the procedure whereby the OSCC shall consider these matters.

<sup>26</sup>These applications of the Treaty were specifically suggested by the late Sidney Drell in his Foreword to my Open Skies book. See Drell, S.D. "Foreword," in Jones, P., *Open Skies: Confidence-building, Transparency and the End of the Cold War*, *op cit*, p. xvii. The effectiveness of aerial sampling for detection of specific BTWC or CWC violations is debated. Even if banned or suspicious substances are detected, it is difficult to determine exactly where they came from. That said, detection can serve as a "trigger" for other verification methods. See Rowe, G.D., "Using Airborne Remote Sensing to Verify the CWC," *Nonproliferation Review*, vol.3, no.3 (Spring/Summer 1996), pp.63 – 73 and Smithson, A.E., and M. Krepon, "Strengthening the Chemical Weapons Convention Through Aerial Inspections," in Krepon and Smithson, (eds.), *Open Skies, Arms Control... op cit*, Chapter 11.

Beyond arms control verification, air sampling would allow Open Skies to begin to assist in, as Preambular paragraph seven states, “...the protection of the environment.” This will, hopefully, stimulate a re-thinking of how the treaty is used by its member states. Up to this point, the military establishments of the Parties have been the custodians of the treaty. They have, not surprisingly, conceived of and used it for their purposes. That will go on, of course, but it is likely that those elements of national bureaucracies charged with monitoring and protecting the environment are not familiar with Open Skies.<sup>27</sup> If they learned that the opportunity exists to augment other techniques of environmental monitoring by cooperatively gathering and sharing data on environmental issues throughout most of the northern hemisphere, perhaps that will change. In so doing, states may be motivated to develop new aircraft and sensor suites, thereby incentivizing the re-capitalisation of the Open Skies fleet of aircraft.<sup>28</sup>

### **Group 3 – Longer-term Measures to Widen the Scope of the Open Skies Idea**

## **Proposal 5: Invite New Members to the Existing Treaty**

Proposals 5 and 6 are somewhat different in tone and substance; they are necessarily longer-term and will require intensive discussions with countries not presently part of the Open Skies regime. That being said, it is time to consider expanding the territorial scope of the Open Skies regime. The eventual expansion of the regime was always envisaged. Preambular paragraph five reads,

Recognizing the potential contribution which an aerial observation regime of this type could make to security and stability in other regions as well.<sup>29</sup>

These were not merely words. A set of procedures was laid out in the treaty. In Article XVII, the Parties designed a phased formula which gave first right of joining to any successor state of the USSR which had not participated in the negotiations. Secondly, states of the OSCE which were not part of NATO or the Warsaw Pact were entitled to

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<sup>27</sup>Though perhaps they are. The US, for example, has used its Open Skies aircraft to monitor the environmental after-effects of massive storms in the US and Central America and Germany has used its Open Skies aircraft to help monitor and assess flood damage in Europe.

<sup>28</sup>For more on this idea see Spitzer, H., “Prospects for Extensions of the Multilateral Open Skies Treaty,” Chapter 7 of, Dunay, P., M. Krasznai, H. Spitzer, R. Wiemker and W. Wynne, *Open Skies: A Cooperative Approach to Military Transparency and Confidence Building*, (Geneva: UNIDIR, 2004), pp. 127-148.

<sup>29</sup>Treaty on Open Skies, Preamble, paragraph 5.

apply for membership within six months of the entry into force of the treaty, and many did. Finally, paragraph 5 of Article XVII states that, “Following six months after entry into force of this Treaty, the Open Skies Consultative Commission may consider the accession to this Treaty of any State which, in the judgement of the Commission, is able and willing to contribute to the objectives of this Treaty.”<sup>30</sup>

The door is thus open for any other state to apply to join the treaty. Though the treaty has been viewed to date as primarily a Euro-Atlantic instrument, it is proposed here that the time has come to begin what will likely be a lengthy process of extending it to select other countries.<sup>31</sup> More specifically, the treaty does include the Pacific territories of Russia, the US and Canada, but no other countries from that region. As one of the purposes of Open Skies is to use cooperative aerial inspections to allay fears of surprise attack, and the Pacific region is, arguably, the one where fears of conflict are growing, the extension of the regime to China, Japan and South Korea is an idea whose time has come. The addition of these countries would be an enormous boost to the utility and scope of the regime. Ideally, the addition of North Korea would also be highly desirable, but that seems a step too far to contemplate for the time being.

It will, of course, not be easy. Even though it officially lamented the US withdrawal from Open Skies,<sup>32</sup> China is likely to take a dim view of subjecting itself to this level of transparency. There may also be some existing treaty members who will have reservations about Chinese overflights of their territory. The question of “contested spaces” will arise between countries in this region, perhaps more so than in Europe. If the accession of these countries were ever to go ahead, a host of technical matters, such as overflight quotas, would have to be re-designed.

All of this will require time and discussion. We should not be surprised. It took decades for the USSR to come around to Open Skies, and then only grudgingly. The U.S. withdrawal from the treaty shows that its benefits are not universally admired in that country. Thus, we should not be daunted by the fact that this discussion will be a difficult one.

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<sup>30</sup>Treaty on Open Skies, Article XVII, paragraph 5.

<sup>31</sup>Again, this is an idea which those who negotiated the original Treaty always understood to be one which should eventually be pursued. See Hawes, op cit, and Jones, P., “Open Skies in Other Regional Contexts” in Poole and Guthrie (eds.) *Verification 1994: Arms Control, Peacekeeping and the Environment* (London; VERTIC and Brassey’s, 1994).

<sup>32</sup>The following statement was made by the Chinese foreign ministry after the U.S. withdrawal, “This move by the U.S. undermines military mutual trust and transparency among relevant countries, is not conducive to maintaining security and stability in relevant regions and will also have a negative impact on the international arms control and disarmament process.” See, “China lashes out at U.S. withdrawal from open skies treaty,” Associated Press, 23 November, 2020, accessed at: <https://apnews.com/article/beijing-asia-pacific-china-russia-dc5d2f77537464c48568e39e628f9ade>.

But even the discussion itself will be useful. It is time to begin to bring select countries in Asia further into the discussion of what confidence-building means. If managing the emergence of Asian powers is one of the central geo-political challenges of this century, then developing a conversation with them about how trust is built and conflict avoided is critical. Moreover, adding Japan and China to the treaty would mean that it would be the only CBM to cover all of the overlapping memberships of the P5 and G7. Having the military establishments of all of these countries together and cooperating under the auspices of one regime could provide benefits beyond those of the overflights themselves.

## Proposal 6: Wider Still, and Wider

Beyond opening the existing treaty to a select group of other participants, options exist to broaden the scope of the Open Skies *idea* even further. A case could be made to consider the creation of some sort of global Open Skies military confidence-building regime. This has been, informally, discussed in Open Skies circles at times, but most members have not seen it as feasible. The reasons for the rejection were that a global regime would be extremely unwieldy in terms of things such as overflight quotas and agreed sensors, and the idea was thus seen as largely symbolic in its practical effects. Simply put, the difficulties of creating a regime to conduct overflights involving a large number of countries, which are so widely separated that they do not have much military interest in one another, were seen to outweigh the benefits.

But, if a general proposal for global Open Skies overflights as a military CBM is not likely to succeed, more directed applications of the Open Skies idea, or perhaps cooperative aerial monitoring generally, can be envisaged. These include using Open Skies and modified Open Skies aircraft/sensor platforms (with the addition of air sampling sensors), as part of a global system of monitoring nuclear and other arms control agreements. In such a case, the Open Skies regime would continue to exist and perform its functions within its assigned geographical space, but the aircraft and sensors, along with those from other countries, could also be used for global verification of such undertakings. Presumably, the verification mechanisms of these treaties would be adjusted to allow for this.<sup>33</sup> Such a pool of aircraft could also be used for more global monitoring of environmental agreements.<sup>34</sup> Finally, the creation of a pool of suitably equipped

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<sup>33</sup>See, for example, Drell S. and C. Stubbs, "Realizing the Full Potential of the Open Skies Treaty," *Arms Control Today*, July/Aug., 2011.

<sup>34</sup>Lindley, D., "Cooperative Airborne Monitoring: Opening the Skies to Promote Peace, Protect the Environment, and Cope with Natural Disasters," *Contemporary Security Policy*, vol. 27, no. 2, August 2006.

national aircraft and sensors could also serve as a “standby” pool which could be made available to the UN for aerial support to peacekeeping operations.<sup>35</sup>

In addition to considerations of how the Open Skies regime and aircraft could be used to support more global objectives, there is a case for the application of the Open Skies idea as a military CBM in other, specific regional contexts. It seems unlikely, however, that the existing treaty can simply be replicated in other contexts; in each case the countries concerned will need to consider and develop their own approach which reflects their unique needs. The existing treaty could, however, serve as a model for the beginning of discussions of other regional arrangements. In addition to the general discussions which have been published on the possible negotiation of Open Skies regimes in other regional contexts,<sup>36</sup> specific studies have been done as to the possible benefits of aerial observation as a military CBM in the India-Pakistan,<sup>37</sup> Korean Peninsula<sup>38</sup> and Middle East<sup>39</sup> contexts, and there may well be others.

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<sup>35</sup>See Dorn, A.W., “Blue Sensors: Technology and Cooperative Monitoring in UN Peacekeeping,” *Cooperative Monitoring Center Occasional Paper 36*, SAND 2004-1380, (Albuquerque, NM: Sandia National Laboratories, April 2004); and Salerno, R.M., M.G. Vannoni, D.S. Barber, R.R. Parish, and R.L. Frerichs, “Enhanced Peacekeeping with Monitoring Technologies,” SAND2000-1400, (Albuquerque NM: Sandia National Laboratories, June 2000).

<sup>36</sup>See Hawes, op cit; Jones, “Open Skies in Other Regional Contexts,” op cit; Kraznai, M., H. Spitzer and W. Wynne, “Regional Application of the Open Skies Approach,” in Dunay, P., M. Krasznai, H. Spitzer, R. Wiemker, and W. Wynne, *Open Skies: A Cooperative Approach to Military Transparency and Confidence Building* (Geneva: United Nations Institute for Disarmament Research, 2004); and Pregenzer, A.L., M. Vannoni, and K.L. Biringier, “Cooperative Monitoring of Regional Security Agreements,” SAND96-1121, (Albuquerque, NM: Sandia National Laboratories, November 1996).

<sup>37</sup>Chaudhry, Air Marshal (Pakistan Air Force, Retired) M.A., and Air Marshal (Indian Air Force, Retired) K.C. Cariappa, “How Cooperative Aerial Monitoring Can Contribute to Reducing Tensions Between India and Pakistan,” SAND98-0505/22, (Albuquerque, NM: Sandia National Laboratories, December 2001).

<sup>38</sup>Olson, J., “Confidence-building Measures to Support the Sunshine Policy,” SAND2001-2159P, (Albuquerque: Sandia National Laboratory, July 2001).

<sup>39</sup>See Goodby, J.E., “Transparency in the Middle East,” *Arms Control Today*, vol. 21, no. 4, (July, 1991); and Krepon, M. and P.D. Constable, “Confidence-building, Peacemaking and Aerial Inspections in the Middle East,” *Occasional Paper No. 6*, (Washington: Henry L. Stimson Center, 1992). There is already an aerial monitoring component to the implementation of the bilateral Egypt-Israel Peace Treaty. See Vannoni, M.G., “Sensors in the Sinai: A Precedent for Regional Cooperative Monitoring,” SAND96-2574, (Albuquerque, NM: Sandia National Laboratories, June 1998). Moreover, aerial monitoring was used in the region to great effect by the former United Nations Special Commission on Iraq (UNSCOM) to monitor that country’s compliance with disarmament provisions imposed upon it after the first Gulf War. Of course, this was not done cooperatively, as is the case with Open Skies. See: Molander, J., “Mandated Aerial Inspections: The Iraqi Case,” in Krepon and Smithson, (eds.), *Open Skies, Arms Control...* op cit; and Findlay, T., “Lessons of UNSCOM and UNMOVIC for WMD Non-proliferation, Disarmament and Arms Control,” in Sidhu, W.P.S. and T. Thakur, (eds.), *Arms Control After Iraq: Normative and Operational Challenges*, (Tokyo: United Nations University, 2006).



# The Need for a Phased Approach

These latter proposals are highly ambitious. While all six proposals in this paper would, taken together, constitute a significant makeover of Open Skies, it would not be wise to pursue them simultaneously. Instead, priority should be given to sustaining the existing treaty as a valuable platform in its own right, and then move on to the more ambitious agenda. The danger exists that overloading Open Skies with too much, too soon, would result in deadlock. It should be remembered that the original negotiation of the Treaty on Open Skies was arduous, and the idea of such overflights still has its skeptics.

If sustaining the existing treaty is the short-term goal, then re-establishing U.S. participation in the treaty and preventing Russian withdrawal must be the key immediate objectives. Pursuing wider reforms, attractive though they may be, should be avoided if they would impede securing these priority goals. For that reason, the first two reforms suggested in this paper (solving the Kaliningrad issue, and resolving the Georgia issue) should be the primary objectives of the treaty members. In tackling the first two issues proposed in this paper, the treaty members will remove the objections which the Trump Administration had cited as the reasons for leaving in the first place. Russia, in turn, would have no reason to leave if the US was prepared to come back.

However, even as they work to smooth the return of the US to the Treaty on Open Skies, and to halt Russian withdrawal, those concerned about its future should begin to develop a broader and phased agenda for change. Thus, the second group of reforms proposed in this paper could be acted upon once the US has re-joined the treaty and Russia has abandoned its withdrawal. A more permanent approach to the “contested spaces” issue, and also the fourth potential reform outlined in this paper (updating and expanding the sensor package) would significantly enhance the existing treaty and bring it more into line with the challenges it faces today. These should be the first order of business for official negotiation once the US returns to the treaty.

The final group of reforms suggested in this paper – beginning a long process to admit selected new members from Asia to the existing regime; to extend cooperative aerial monitoring to a global scale; and to promote consideration of the creation of similar types of regimes in

other conflict areas – will take much more time, but should begin. It may be best to begin discussion of proposal 5 (expanding the existing regime to selected Asian countries) outside official channels in the first instance. What is envisaged here are dialogues amongst non-official experts and officials in their private capacities to begin developing the ideas, perhaps even to begin unofficial outreach to China and others in order to “seed” the ideas for subsequent official follow-up. This is not new in the history of arms control; various non-official international movements have played a role in nurturing conversations and developing ideas which were not yet ready for official negotiation until the day governments were ready to embrace them.<sup>40</sup>

As this is going on, proposal 6 (considering even wider global and regional applications of cooperative aerial monitoring) can also be pursued by the same means. A careful reading of the notes to this paper will show that much work was done in the 90s, shortly after the treaty was signed, to consider expanded applications of the Open Skies idea. There was optimism at the time that the achievement of the original Treaty on Open Skies might be a stimulus to much wider acceptance of cooperative aerial monitoring in a variety of different contexts and regions. That this did not happen demonstrates that the appeal of the idea is not universally shared and is a cautionary tale for today. Allowing another state or international body to overfly oneself for the purpose of gathering data on military or other activities is still not an idea which comes naturally or easily to most countries. That said, it is now some 30 years since the treaty was achieved and the time may have come to re-examine ideas for other regional applications of cooperative aerial monitoring in the light of events.

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<sup>40</sup>For more on the role of civil society actors, such as Pugwash and various scientific groups, to stimulate informed consideration of arms control ideas which governments were not yet ready to embrace officially see: Evangelista, M., *Unarmed Forces: The Trans-National Movement to End the Cold War*, (Ithaca, NY: Cornell University Press, 1999); and The National Research Council, *Scientists, Engineers, and Track-Two Diplomacy: A Half-Century of U.S.-Russian Interacademy Cooperation*, (Washington, DC: The National Academies Press, 2004).

## Table 1: Developing Open Skies: Proposals and Timelines

Proposal	Actors	Method	Timeframe
1. Kaliningrad	Officials	<ul style="list-style-type: none"> <li>• Statement of understanding by all Treaty Parties on the need for Open Skies flights to not conflict with air traffic control to the extent possible.</li> <li>• Statement by Russia to remove the 500km restriction on flights over Kaliningrad.</li> <li>• Statements by others (including the US when it re-joins) to remove any similar restrictions.</li> </ul>	Immediate
2. Georgia	Officials	Statements by Russia and Georgia to remove restrictions imposed as a result of this issue.	Immediate
3. “Contested Spaces” (Crimea, etc.)	Officials	Develop and adopt an agreement to have the OSCE’s Conflict Prevention Centre conduct “Extraordinary Observation Flights” (as envisaged by Annex L, Section III of the Treaty) in contested areas on a “without prejudice” basis with respect to conflicting claims.	Begin immediate discussions within the Open Skies Consultative Commission with the objective of an agreement within 1 year.
4. New Sensors	Officials	Develop an agreement for adoption by the OSCC to add air sampling sensors, and agree to the methodology for calibrating and certifying them.	Begin immediate discussions with the objective of an agreement within 1 year and addition of certified sensors to Open Skies aircraft within 2 years.
5. New members (China, Japan, South Korea)	<ul style="list-style-type: none"> <li>• Officials and civil society Open Skies experts from the existing Open Skies countries and those who will be invited to join the Treaty to meet informally for discussions and exploration of how this might be done.</li> <li>• Followed by official negotiations on accession when the potential new members are ready.</li> </ul>	<ul style="list-style-type: none"> <li>• Track 2 and Track 1.5 workshops (similar to those sponsored by groups such as Pugwash and the Academies of Science during the Cold War) to explore the issues and develop understandings.</li> <li>• Followed by official negotiations when the potential new members are ready at some point in future.</li> </ul>	<ul style="list-style-type: none"> <li>• Track Two can begin laying the ground for the informal discussions by reaching out to civil society experts and officials in the countries envisaged for new membership.</li> <li>• Move to official discussions when the players have had time to familiarise themselves with the issues and are ready to do so.</li> </ul>
6. Exploration of adapting the Treaty for more global cooperative aerial monitoring purposes, and for use in other regional contexts.	Track Two	<ul style="list-style-type: none"> <li>• Track Two workshops (similar to those sponsored by groups such as Pugwash and the Academies of Science during the Cold War) to explore how Open Skies could serve as a platform for the global application of cooperative aerial monitoring.</li> <li>• Track Two workshops (similar to those sponsored by groups such as Pugwash and the Academies of Science during the Cold War) to explore how Open Skies could serve as a model for the development of aerial CBMs in other regional conflict contexts.</li> </ul>	<ul style="list-style-type: none"> <li>• Begin as soon as possible in Track Two and then ongoing.</li> <li>• Move to Track 1.5 and then Track 1 when possible, but do not expect this to happen quickly.</li> </ul>

# Conclusion

There is an old saying that one should “never let a good crisis go to waste.” The US withdrawal from Open Skies, and Russia’s signal that it intends to follow suit, are a crisis for the treaty. More broadly, they are part of a deep malaise for the structure of agreements which has underpinned trans-Atlantic security. The inauguration of President Biden gives some hope that the damage done by Trump may be repaired. But Russia has a role to play as well. Attempts to use the desire of the other parties to preserve the treaty, as a vehicle to create pressures as part of a structure of trade-offs on other issues may fail – Open Skies may not be that important, relative to the other issues in play. Those who wish to see the Treaty on Open Skies sustained need to step up and say so in both Washington and Moscow.

Assuming that the statements of both the Trump Administration and Russia concerning the rationale for their respective withdrawals are genuine, there is no reason the Treaty cannot be sustained. The specific reasons given by Trump for withdrawal (Kaliningrad and Georgia) can be fixed, and having the US re-join would, in turn, answer the concerns expressed by Russia as the reason for its withdrawal. But this paper also suggests that the Open Skies community should look beyond simply re-establishing the status quo before Trump withdrew. Open Skies has had a long and somewhat tortuous history. First proposed by a Republican president in 1955, it was rejected by the Soviet Union and lay dormant for decades until being revived on a new and multilateral basis in 1989 by another Republican president. It then saw intensive negotiations leading to agreement, and then decades of quiet and effective implementation, only for its original champion to abandon it as a consequence of internal, largely ideological impulses.

Getting the US back into Open Skies and preventing Russian withdrawal are necessary first steps, but we should look upon this moment as a chance to build an improved version of the treaty. We can begin by resolving once and for all some issues which have plagued that treaty. Going further, the inclusion of new types and categories of sensors could facilitate the extension of Open Skies into new areas of arms control verification and cooperative aerial monitoring, in addition to the military-to-military confidence-building which has been at the heart of the treaty to date. The use of Open Skies to cooperatively monitor the health of the environment, for example, would be a sea-change in the way people have conceived of these flights to this point and could bring entirely new groups of users into the Open Skies

process. Beyond that, this may be the moment to begin the process to extend Open Skies beyond the boundaries first proposed by its original supporters and into a region, Asia, which is suffering from growing tension and uncertainty. Finally, the application of tailored cooperative aerial monitoring in other regional contexts is an idea which should be returned to for further examination and discussion.

None of this will be easy, but, with vision, determination and perseverance, Open Skies may prove, once again, to be one of the most enduring and adaptable of confidence-building ideas.

## About the Author

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