

ESSAY

Treaty on Open Skies in a regional context: The implications of the US and the Russia's decisions to withdraw from the treaty for the security of South Caucasus and Georgia

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Abstract

The Treaty on Open Skies has been an important legal instrument contributing to global arms control in recent years. Signed in 1992, the Treaty on Open Skies allows the monitoring and collection of data on military potential through observation flights over one another's territories, thus becoming a confidence-building and transparency measure among its signatories. The recent decisions by the US and Russia to withdraw from this agreement impact the security situation globally and regionally. They reflect a gradual erosion of the architecture of arms control that has been introduced since the end of the Cold War. Georgia remains the only state in the South Caucasus to be a signatory to this Treaty. It is also the only state in the region to remain (since 2008) in a conflict with Russia. While striving to join the EU and NATO, it lies on the land of strategic importance to Russia and other regional and global players.

The main objective of this publication is to discuss the importance of the Treaty on Open Skies, considering its specificity from a regional perspective, and to assess the implications of the withdrawals of the US and Russia from the Treaty on security in Georgia and in the South Caucasus. Using a descriptive approach and legal-political analysis, the author discusses the creation, functioning, and causes of the breakdown of this legal-institutional system, while looking at its importance for global arms control and security related consequences it may trigger for the region.

A closer look at the South Caucasus highlights the author's belief in the Treaty's critical role in the region and the importance of preserving its existence.

Keywords

Treaty on Open Skies, arms control, USA, Georgia, South Caucasus, Russia

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Introduction

The twilight of arms control was foreseen at least a decade ago,¹ and it has been underscored by a gradual process of termination of treaties² that were supposed to constitute confidence-building measures in this security domain. The current situation³ around the Treaty on Open Skies⁴ (hereinafter: the Treaty or the Agreement) may be considered one of the most recent arguments strengthening this process.⁵

On 21 May 2020, the United States of America (US) decided to launch a withdrawal from the Treaty, effectively concluding it on 22 November 2020. The decision did not come as a surprise considering that in the most recent yearly reports on its implementation, President Donald Trump's administration accused the Russian Federation of cheating and of breaching provisions of the Treaty.⁶ This element was part of a bigger picture in which, by the end of 2020, the US (under President Trump) withdrew from several treaties on arms control, including the Intermediate-Range Nuclear Forces (INF)⁷ and Joint Comprehensive Plan of Action

¹ Z. Lachowski, "Zmierzch kontroli zbrojeń w Europie," *Bezpieczeństwo Narodowe*, no. 21 (January 2012): 31–48.

² For example, In 2019 the US withdrew from INF-Intermediate Range Nuclear Forces Treaty and in 2007 Russia suspended the CFE - Conventional Armed Forces in Europe Treaty.

³ The Russian aggression on Ukraine launched in February 2022 and condemned by the UN General Assembly on 2 March 2022 (resolution A/RES/ES-11/1), constitutes a blatant attempt to recreate the rules of international system. The Treaty on Open Skies remains a part of the system that fell under this revision. While the conflict evolves, its impact on the Treaty will not be further explored in this publication.

⁴ The Treaty establishes the Open Skies regime for the conduct of short notice, unarmed, observation flights by States Parties over the territories of other States Parties. Signed March 24, 1992, it entered into force on 1 February 2002. *Treaty on Open Skies*, available at: <https://www.osce.org/files/f/documents/1/5/14127.pdf>.

⁵ T. Frear, "Status Neutral Approach for Georgia and Russia," European Leadership Network (August 2017).

⁶ P. Jones, "Making a Better Treaty on Open Skies," Centre for Non-proliferation Studies (CNS) Occasional Paper, no 50 (February 2021), 6, https://nonproliferation.org/wp-content/uploads/2021/02/making_a_better_open_skies_treaty.pdf.

⁷ The 1987 Intermediate-Range Nuclear Forces (INF) Treaty aimed at eliminating all Russian and US nuclear and conventional ground-launched ballistic and cruise missiles with ranges of 500 to 5,500 kilometres. The US withdrew from the Treaty on 1 February 2019. In reaction to it, Russia suspended the obligation to implement its provisions. More on INF in: M. Gross, "The Future of the INF Treaty," *Harvard Political Review*, (March 2021), <https://harvardpolitics.com/inf-treaty-future/>.

(JCPOA).⁸ In reaction to the US decision on the Treaty of Open Skies, Russia's withdrawal happened in the beginning of December 2021.⁹

Steps taken by the US and Russia towards this Agreement indicate a gradual erosion of the security architecture and a fading out of arms control in place since the end of the Cold War. Surprisingly, Russia's retaliatory actions in response to the US decision have not sparked a lively debate among the Treaty's remaining signatories about its future application.¹⁰ The Agreement was adopted with the aim of preserving peace with Russia,¹¹ so the recent developments may call into question a need for its future implementation. The current situation, following the two decisions on withdrawal, impacts the security of those that remain party to the Treaty, and those that have been interested in keeping an eye on the activities of its signatories. It is therefore of academic interest to research the subject to a larger extent.

The main objective of this publication is to discuss the importance of the Treaty on Open Skies considering its specificity from a regional perspective, and to assess the implications of the withdrawals of the US and Russia from the Treaty on security in Georgia and in the South Caucasus. To achieve this objective, the author presents an overview of the importance of the region from a geopolitical perspective, pointing to its links with the Agreement. The publication also explains the provisions of the Treaty that, within the political context, are relevant for the research, relations between some of its signatories, and their reaction towards the US and Russian decisions. The author analyses the issues that impacted or paved the way towards the gradual erosion of the international security architecture.

While discussing the substantive content of the Treaty and its obligations, the author uses descriptive research methodology as well as legal-political analysis. The chosen case study examines one of the legal instruments of arms control, the Treaty on Open Skies and its application in the South Caucasus and Georgia. The author undertakes a legal analysis of those Treaty provisions, that are relevant for the subject researched, while attempting to understand political conditions impacting this instrument and its implementation. The theory of the international system from an ontological point of view remains the basic instrument for this research. In this perspective, the international system is understood as a set of integrated elements

⁸ JCPOA: Joint Comprehensive Plan of Action, a nuclear agreement between Iran and P5+1 (China, France, Germany, Great Britain, Russia, and USA) signed in 2015. President Trump formally withdrew the US from the deal in May 2020. The current US administration under Joe Biden has however declared readiness to re-join it. More on JCPOA: K. Davenport, "*The Joint Comprehensive Plan of Action (JCPOA) at a Glance*," Arms Control Association (July 2021), <https://www.armscontrol.org/factsheets/JCPOA-at-a-glance>.

⁹ P. Jones, "*Making a Better Treaty*," 6.

¹⁰ Ibid.

¹¹ S. Nunn, W.J. Perry and G.P. Schultz, "*Open Skies Help Keep the Peace With Russia*," Nuclear Threat Initiative (October 2019), <https://www.nti.org/analysis/opinions/open-skies-help-keep-peace-russia/>.

(or phenomena) that experience reciprocal action,¹² while creating unity with the international environment.¹³ The Treaty on Open Skies constitutes a part of a broader system of global arms control, and hence, the level of its implementation has a direct impact on the effectiveness of this area of security.

To undertake the research, the author used open sources of primary and secondary nature. The primary sources considered as original source of information include legal acts (Treaty on Open Skies and the UN security resolutions), official documents issued by the public administration of US, Russia, and Georgia, as well as publicly available accounts of interviews with the US, Russian, and Georgian representatives. Secondary sources consist of books, working papers, and articles published in journals, as well as websites and newspaper articles. Their selection for elaborating this publication was based on their relevance for the researched subject. During the research, it has been discovered that the chosen subject has not been presented in depth in the academic literature. This has impacted the selection of background materials used to undertake the analysis, leading to research focusing more on its empirical rather than theoretical aspects. Yet, despite limited resources, the author believes that her research may still contribute to a gradual and scientifically reliable explanation in the future.

The importance of the South Caucasus and Georgia's link to the Treaty

The South Caucasus is a region that encompasses three states: Armenia, Azerbaijan, and Georgia.¹⁴ From the north, it borders Russia, and from the south, its neighbours are Turkey and Iran. It is of growing geopolitical importance, including symbolic and historical significance,¹⁵ as it is considered a 'fault zone' between the West and the East, where several protracted conflicts have occurred (i.e., over Abkhazia and South Ossetia in Georgia, as well as over the region of Nagorno-Karabakh). It resembles a 'melting pot' with different ethnic (Azeris, Armenians, Russians, Georgians) and religious (i.e., Georgian Orthodox Church, Muslim, Russian Orthodox, Armenian Apostolic, Catholic, and Jewish) communities spread across the entire region.¹⁶ Affected by the protracted conflicts, it continues to be "imprisoned" at crossroads of paths heading either towards West or East.

¹² T. Pawłuszko, "Kategoria Systemu Międzynarodowego," in *Teorie i podejścia badawcze w nauce o stosunkach międzynarodowych*, eds. R. Zięba, S. Bieleń, J. Zając, (Warsaw: Wydawnictwo Wydziału Dziennikarstwa i Nauk Politycznych Uniwersytetu Warszawskiego, 2015), 264.

¹³ Z.J. Pietraś, *Podstawy teorii stosunków międzynarodowych* (Lublin: Wydawnictwo UMCS, 1986), 114–16.

¹⁴ K. Zasztowt, "Kaukaz Południowy w cieniu rosyjsko-tureckiego kryzysu," *Biuletyn PISM* nr 14 (2016).

¹⁵ P. Stronski, "The shifting geography of the South Caucasus," *Carnegie Endowment for International Peace* (23 June 2021), <https://carnegieendowment.org/2021/06/23/shifting-geography-of-south-caucasus-pub-84814>.

¹⁶ Encyclopaedia Britannica, accessed 30 October 2021, <https://www.britannica.com>.

Through ethnicity and religion, the South Caucasus holds close links with the broader Middle East. Turkey is home to a minority population from the North and South Caucasus, including Azerbaijanis, Armenians, Circassians, and Ossetians. Approximately 4% of Lebanon's population is ethnically Armenian. Another 100,000 Armenians inhabited Syria before the civil war began in 2011. Armenia remains one of the largest recipients of displaced Syrian citizens.¹⁷

Considering their geographic proximity and ethnic and religious sympathies, Russia, Turkey, and Iran have remained important actors engaged in the South Caucasus. However, among them, only Iran has diplomatic relations with all states in the region, as well as with Moscow and Ankara.¹⁸ A significant level of mutual hostility between the various actors (i.e., between Russia and Georgia,¹⁹ between Armenia and Azerbaijan,²⁰ Iran recently confronting Azerbaijan²¹), their alliances (Turkey supporting Georgia and Azerbaijan while Russia siding with Armenia²²) fuel the existing conflicts, contribute to a high militarization of the region, and impact the security and economic situation. Due to existing connections and various national interests, the instability of the South Caucasus may have a spill-over effect beyond the territories of the three states.

Economic ties involving the South Caucasus are extensive. Diverse energy and gas routes across the region strengthen existing alliances and forge new relationships with other actors, such as Israel (roughly 40 – 45% of Israeli oil imports originate in Azerbaijan, and Azerbaijan is the second-largest buyer of Israeli arms)²³ and China (via the Belt and Road Initiative²⁴ or the presence of Chinese companies in the

¹⁷ P. Stronski, “*The shifting geography*,” 2.

¹⁸ B. Belkania, “*The platform of the 3+3 Format: A Review*,” Security Review, Georgian Foundation for Strategic and International Studies (2021), <https://www.gfsis.org>.

¹⁹ Hostility between Russia and Georgia resulted in the war of 2008.

²⁰ Latest hostility between Armenia and Azerbaijan resulted in Nagorno-Karabakh war in September 2020.

²¹ In the confrontation over Nagorno-Karabakh in September 2020, Iran sided with Azerbaijan. It has never recognized the lands in and around Karabakh as an independent entity, and always insisted on the validity of the 1993 UN Security Council resolutions demanding the withdrawal of Armenian forces from the Armenian-controlled territories surrounding Nagorno-Karabakh. However, after the election of a new president, Iran launched military exercises along the Azerbaijani border, which prompted a similar response from Azerbaijan and Turkey. As underlined by Z. Batiashvili, “Iran has unequivocally declared that it does not intend to remain a passive observer”. The relations became particularly tense, despite the large community of Shiites in Azerbaijan, in September – October 2021. See Z. Batiashvili, “*Iran - Azerbaijan Confrontation: threats and challenges*,” Security Review, Georgian Foundation for Strategic and International Studies (2021), <https://www.gfsis.org>.

²² Although in conflict over Nagorno-Karabakh in 2020, Russia has not openly backed Armenia, it has a military base in Armenia, and the two countries are members of the Moscow-led Collective Security Treaty Organization. The treaty envisages Russia's military support if Armenia is attacked (with exception of attack on Nagorno-Karabakh or the other Azerbaijani regions around it seized by Armenian forces). BBC News: Armenia, Azerbaijan and Russia sign Nagorno-Karabakh peace deal (10 November 2020) <https://www.bbc.com/news/world-europe-54882564>.

²³ P. Stronski, “*The shifting geography*,” 2.

²⁴ For details on Belt and Road Initiative see <https://www.beltroad-initiative.com/belt-and-road/>.

region, as China remains the third-largest trading partner of Georgia).²⁵ The various economic ties also contribute to an increase in tensions in the region.²⁶

In this context, confidence-building measures such as the Treaty on Open Skies are important. In the South Caucasus, only Georgia is a signatory to this Agreement²⁷ and, until recent weeks when the Russian aggression against Ukraine occurred, it has been the only state among signatories to remain since 2008 in conflict with Russia. While striving to join the European Union (EU) and the North Atlantic Treaty Organization (NATO), Georgia is in a region of strategic importance to regional and global players. In a close geographical proximity to Georgia, aside of Russia, also Turkey ratified the Treaty. The engagement of both of Georgia's neighbours in the broader region – including Azerbaijan and Armenia - remains considerable. Therefore, considering geography, close relations, and existing tensions among various actors active in the South Caucasus, the implementation of provisions of the Treaty remains significant to the security of the region in general, and to Georgia specifically. While significance is mainly of symbolic nature, as explained below, the Treaty offers several tangible advantages that shall not be neglected.

The recent submission of the official application for accession to the European Union reconfirmed Georgia's long desire to be part of "West", including NATO and the EU. This desire has been present in Georgia's politics since the mid 90's.²⁸ Joining the Treaty on Open Skies back in 1998 has therefore been an integral part of this process. In 1999 in his speech of Georgia's accession to the Council of Europe Zurab Zhvania, the former speaker of the Georgian parliament in one sentence framed the Georgian modern identity: "I am Georgian and, therefore, I am European." This sentence not only underlined the need to "escape" from Russia, but also pointed to desire to distance Georgia from Islamic groups surrounding

²⁵ M. Ivaniadze, "China's activities in the South Caucasus," Rondeli Foundation, Issue 25, (18.10.2021 – 31-10.2021), <https://www.gfsis.org>.

²⁶ The Russian negotiated ceasefire between Armenia and Azerbaijan in November 2020 envisions the creation of new transportation routes through both countries. This may enhance Russia's presence in the region and create new links between the Caspian Sea, the Mediterranean, and the Persian Gulf. Such scenario is not welcomed by the Georgian government, as it would undermine Georgia's role as the key east-west trade route between the Caspian and Mediterranean Seas. Any such economic cooperation is not welcomed by Armenia which fears new coalitions against her plans in Nagorno-Karabakh, given its trust deficit with Turkey and Azerbaijan. P. Stronski, "The shifting geography," 4.

²⁷ Georgia ratified the Open Skies Treaty in June 1998, but since 2012 it has suspended its implementation towards Russia.

²⁸ In 1994 Georgia joined the NATO-run Partnership for Peace further deepened after the Rose Revolution of 2003 that pushed for number of reforms. Since 1996, Georgia and the EU have cooperated in the INOGATE framework, and in 2006 a five-year "Action Plan" of rapprochement was implemented in the context of the European Neighbourhood Policy (ENP). A more comprehensive Association Agreement entered into force on 1 July 2016, providing Georgia with access to some sectors of the European Single Market, as well as visa-free travel to the EU. See NATO relations with Georgia, available at: https://www.nato.int/cps/en/natohq/topics_38988.htm as well as: EU relations with Georgia, available at: <https://www.consilium.europa.eu/en/policies/eastern-partnership/georgia/>.

Georgia (in Turkey, Azerbaijan, and in the mountains of the North Caucasus).²⁹ This pro-Western approach has been (and continues to be) driven by numerous factors including historical need to “find a loyal external protector and secure other perceived benefits”³⁰ of security related, social and economic nature.³¹ The Treaty on Open Skies, aside of being a platform of cooperation, offered Georgia fulfilling its political objective of siding with the West. On one side it allows to conduct the flights, on the other: it permits the signatories to check claims of military build-ups at the borders.

Material scope of the Treaty on Open Skies

The Treaty on Open Skies is an international legal instrument of unlimited duration that remains open to accession for all states. It establishes a programme of unarmed aerial surveillance flights over the entire territory of signatories and allows for the collection of data about their military potential. The Treaty does not specify objectives of the flights, in practice allowing the states to determine probability of surprised armed attack or to verify arms control or for any other purpose they wish for. In other words, it aims at building confidence through the application of principle of general transparency. The Agreement also requires free access to surveillance flights that are announced 72 hours in advance and are undertaken with previously agreed-upon types of aircraft and approved equipment such as radars, scanners, thermal cameras, and other apparatus. The principal object of such flights is the verification of stages of compliance with various treaties relative to arms control,³² such as the Conventional Forces in Europe (CFE) Treaty and the Chemical Weapons Convention.³³ The Treaty on Open Skies is designed to enhance mutual understanding and build confidence among its signatories. It is not directly linked with other instruments of arms control. Despite existing similarities, it is also not part of the Organisation for Security and Cooperation in Europe (OSCE).³⁴ The Treaty, signed in 1992 by 34 states,³⁵ entered into force on 1 January, 2002.³⁶

²⁹ N. Lejava, “Georgia’s unfinished search for its place in Europe,” Carnegie Europe (April 2021), 3.

³⁰ Ibid., 8.

³¹ Ibid.

³² More on the Treaty in: P. Jones, *Open Skies: Confidence building, Transparency and the End of the Cold War* (Palo Alto: Stanford University Press 2014).

³³ B. Jenkins, “A farewell to the Open Skies Treaty, and an era of imaginative thinking,” Brookings (June 2020).

³⁴ For more see P. Jones, “Making a Better Treaty.”

³⁵ Belarus, Belgium Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Georgia, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Turkey, Ukraine, and the United Kingdom. Kyrgyzstan has not yet ratified the document and on 7 June 2021, Russia took the decision to withdraw from the Treaty (decision effective as of December 2021).

³⁶ A.F. Wolf, “The Open Skies Treaty: Background and Issues,” Congressional Research Service Insight (June 2021), <https://crsreports.congress.gov/product/pdf/IN/IN10502>.

The concept of creating such a programme was initially proposed in 1955 by US President Dwight D. Eisenhower. However, the Soviets refused, assuming that the mutual aerial observation flights were like intelligence activities that would be more beneficial to the US than to the Soviet Union. In the last years of the Cold War, the concept resurfaced with US President George W. Bush recommending the creation of a system of open skies on 12 May 1989.³⁷ In December 1989, the then-participants of the North Atlantic Council published a document titled ‘Open Skies: Basic elements’,³⁸ calling for the establishment of such a programme for NATO and the Warsaw Pact³⁹ to achieve openness, transparency, and predictability.⁴⁰ At the meeting between NATO and the Warsaw Pact on 12 February, 1990, in Ottawa, Hungary, and Canada promoted the concept.⁴¹ In 1992, Russian authorities, following the dissolution of the Warsaw Pact (1991) and the Soviet Union (1991), expressed a readiness to make their territory available for observation and aerial flights.⁴² Negotiations, were concluded with the signing of the Treaty on Open Skies on 24 March, 1992, in Helsinki.⁴³

From its entry into force in 2002 until 2019, 1,500 observation flights took place, of which 500 were over Russia, which remains the most monitored state within the framework of the Treaty.⁴⁴ Between 2002 and 2019, Moscow undertook 77 flights over the USA, while the latter flew over Russia 181 times and over Belarus 47 times.⁴⁵ So, in 17 years of Treaty implementation, US aircraft flew over Russia nearly three times more than Russians over the US.⁴⁶

The Treaty establishes passive quotas for each signatory, constituting the overall quantity of observation flights that each party to the Treaty must approve over its territory. Active quotas indicate the number of observation flights that can be undertaken by each side.⁴⁷ Their quantity cannot exceed the number of passive quotas, and

³⁷ Ibid.

³⁸ Available at: <https://fas.org/nuke/control/os/text/opensky-nato.htm>.

³⁹ More on Warsaw Pact can be found in: Encyclopaedia Britannica, <https://www.britannica.com/event/War-saw-Pact>.

⁴⁰ P. Jones, “*Open Skies: Confidence building*,” 1–7.

⁴¹ M. Clark, I. Mather, Opening the skies. NATO and Warsaw Pact Ministers meet in Ottawa to clear the way for inspection overflights (12 February 1990) <https://archive.macleans.ca/article/1990/2/12/opening-the-skies>.

⁴² A.F. Wolf, “*The Open Skies Treaty*.”

⁴³ P. Jones, “*Open Skies: Confidence building*,” 1–7.

⁴⁴ S. Nunn, W.J. Perry and G.P. Schultz, “*Open Skies Help Keep the Peace With Russia*.”

⁴⁵ For the implementation of the Treaty provisions, Russia and Belarus have been considered as “a group of states”. It means that they obtained collective passive and active quotas for both territories and airports, as well as the maximum distance from those airports possible to cover. A. Graef, M. Kütt, “*Visualizing the Open Skies Treaty*,” University of Hamburg: Institute for Peace Research and Security Policy (2020), <https://openskies.flights/>.

⁴⁶ S. Nunn, W.J. Perry and G.P. Schultz, “*Open Skies Help Keep the Peace With Russia*.”

⁴⁷ *Treaty on Open Skies*. Available at: <https://www.osce.org/files/f/documents/1/5/14127.pdf>.

no signatory may demand more than half of another signatory's passive quotas. As foreseen by the Treaty, the parties may establish groups to commonly manage the overall quantity of their active and passive quotas.⁴⁸

In principle, the Treaty does not limit the purpose of the flights undertaken. It therefore may be that the aerial observation flights undertaken within the framework of the Treaty collect imagery intelligence (IMINT)⁴⁹ on potential military displacement, providing satellite images and permitting the mitigation of concerns about unannounced armed attacks. The data gathered during such flights is available both to the observed, and the observing parties, while any other state may request paid access to the files. The signatories may undertake combined flights with several partners onboard.⁵⁰ Furthermore, any party may invite others to fly over its territory.⁵¹ In general, it is impossible to prevent anyone from conducting such observations within the framework of the Treaty. However, each party may suggest altering the route under two circumstances: severe weather conditions or deteriorating flight security.

Challenges relative to the implementation of the Treaty on Open Skies

In 2022, the signatories should celebrate the 20th anniversary of the creation of this confidence-building mechanism. With the withdrawal of the USA and Russia from the Treaty, there is little hope that anyone will commemorate this occasion. As mentioned, the US decision did not come as a surprise. The US, Canada, and the European states all raised concerns about Russia's compliance with the provisions of the Treaty,⁵² while Russia made critical comments about flights undertaken by several signatories, including the UK, France, and Norway.⁵³

The challenges related to the implementation of the Treaty include those that have occurred since 2002,⁵⁴ and those that will need to be mitigated in the future

⁴⁸ Ibid.

⁴⁹ IMINT allows for establishing databased images derived from photos, radio-locators, infrared and thermal electro-optical equipment as well as other tools. G. Nowacki, *Rozpoznanie satelitarne USA i Federacji Rosyjskiej*, Warsaw: AON (2002).

⁵⁰ A.F. Wolf, "The Open Skies Treaty: Background and Issues," 1.

⁵¹ In 2014, Ukraine approved observation of Russian military activities on the border with Russia during the Crimea conflict. Ibid.

⁵² A. Graef, "Saving the Open Skies Treaty: challenges and possible scenarios after the US withdrawal," European Leadership Network: Euro-Atlantic Security Policy Brief (September 2020), 2.

⁵³ Ibid.

⁵⁴ A. Graef, "The End of the Open Skies Treaty and the Politics of Compliance," July, 2020, <https://www.lawfareblog.com/end-open-skies-treaty-and-politics-compliance>.

(such as technical challenges, treaty implementation, and quota distribution)⁵⁵ – if the Treaty continues to be applied.

Since 2002, disputes relative to the security of flights have arisen from different interpretations of its provisions.⁵⁶ As already indicated, according to the Treaty, the signatories may be prevented from conducting a flight, but only in relation to the existence of severe weather conditions or deteriorating flight security.⁵⁷ Yet, Russia has prevented flights over its military exercises (in 2019) and over Kaliningrad (since 2014)⁵⁸ without such a reference, raising doubts about its compliance with the provision of the Treaty.

Threats to national security, especially to any critical infrastructure, are another excuse used by the signatories to prevent any flights over their territories. This argument has been used by the US against Russia's flights.⁵⁹

Territorial conflicts constitute the third group of issues that interrupt a smooth implementation of the Treaty. However, it should be underscored that its provisions are not in any way a tool to resolve these disputes.⁶⁰ Yet, since 2002, several such issues have surfaced, the first being an attempt by Cyprus to gain access to the Treaty opposed by Turkey; a second example being Russia's illegal annexation of Crimea in 2014.⁶¹

Georgia and the implementation of the Treaty

As previously pointed out, among the states of the South Caucasus, only Georgia is a party to the Treaty. Taking this issue in a broader (regional) context, any potential relocation of Turkish and Russian militaries is also of great interest to those that are not party to the Agreement. However, let us first discuss Georgia's engagement in this confidence building mechanism and the role it played in the current crisis.

The implementation of the Treaty in relation to Georgia has been hampered by its internal political situation and dispute between Tbilisi and Moscow. Following

⁵⁵ Those challenges in future implementation of the Treaty are discussed in detail in: A. Graef, "Saving the Open Skies Treaty."

⁵⁶ A. Graef, "The End of the Open Skies Treaty." To resolve interpretation related issues, Open Skies Consultative Commission (OSCC) was established by the Treaty based on article X of the Treaty to facilitate implementation of its provisions. More on the Commission: OSCC, <https://austria.mfa.gov.by/de/osce/oscc/>.

⁵⁷ Ibid.

⁵⁸ More on the issue of Kaliningrad can be found in: K. Reif and S. Bugos, *Critics Question U.S. Open Skies Complaints* (July/August 2020), https://www.armscontrol.org/about/Kingston_Reif, as well as in: P. Jones, *Making a Better Treaty on Open Skies*, 4.

⁵⁹ A. Graef, "The End of the Open Skies Treaty".

⁶⁰ P. Jones, "Making a Better Treaty," 11.

⁶¹ More on the illegal annexation of Crimea in: G. Sasse, "Revisiting the 2014 annexation of Crimea," *Carnegie Europe* (March 2017), <https://carnegieeurope.eu/2017/03/15/revisiting-2014-annexation-of-crimea-pub-68423>.

the Russo-Georgian War of 2008,⁶² there has been an ongoing conflict over the status of two separatist regions within the territory of Georgia: Tskhinvali (known also as South Ossetia) and Abkhazia.

Despite the technical nature of the Treaty and its detailed provisions agreed to by all signatories, the dispute between Russia and Georgia has been linked with the interpretation of Point 2 of Article VI in relation to Point 8 of Article II of the Agreement.⁶³ According to Point 8 of Article II, “territory” means “the land, including islands, and internal and territorial waters, over which a State Party exercises sovereignty”.⁶⁴ Those provisions stipulate that observation flights over territories less than 10 kilometres from the borders of a state that is not a party to the Agreement are not permitted.

As a follow-up to the 2008 war with Georgia, in 2010, Russia decided to ban all parties to the Treaty from conducting flights over its territories that are less than 10 km from the so-called border zones of Tskhinvali and Abkhazia. This approach has been in place ever since. For Russia, both regions have been considered as separate states that are not party to the Treaty. None of the other signatories agree with this interpretation, implying that both regions are de jure integral parts of Georgian territory and cannot be considered third parties under the Treaty. Hence, Article VI could not be applied to them.⁶⁵ Despite the pressure, Russia did not alter its interpretation.

In response to this stance, back in 2012, Georgia suspended unilateral implementation of the Treaty vis-à-vis Russia.⁶⁶ It prevented Russia from conducting aerial flights over its territory and it discontinued its activities within the framework of the Treaty over the territory of Russia.⁶⁷

As noted, “Georgia did not accept Russia’s ban and, in response, Moscow accused Tbilisi of violating the treaty and disrupting an important agreement for European security”.⁶⁸ This created another layer of tension between the two states. From the Russian perspective, this situation could be used twofold: to point to Georgia’s

⁶² More on timeline of the conflict between Georgia and Russia in: A. Crow, “Georgia-Russia Conflict Timeline (includes South Ossetia and Abkhazia),” RUSI 2008, <https://rusi.org/explore-our-research/publications/commentary/georgia-russia-conflict-timeline-includes-south-ossetia-and-abkhazia>.

⁶³ More on the dispute between Georgia and Russia in the context of the implementation of the Treaty in: M. Grigalashvili, “GIP Commentary: The Treaty on Open Skies and the Causes of Russian-Georgian Confrontation,” Georgian Institute of Politics (June 2018), <http://gip.ge/the-treaty-on-open-skies-and-the-causes-of-russian-georgian-confrontation/>.

⁶⁴ Treaty on Open Skies. Available at: <https://www.osce.org/files/f/documents/1/5/14127.pdf>.

⁶⁵ A. Graef, “The End of the Open Skies Treaty,” 2.

⁶⁶ M. Grigalashvili, “GIP Commentary: The Treaty on Open Skies,” 1.

⁶⁷ Ibid.

⁶⁸ Ibid.

breach of the Treaty and to advocate for recognition of the independence of the Abkhazia and Tskhinvali regions.⁶⁹

As mentioned, the Treaty does not foresee the possibility of refusing observation flights among the signatories (except for the two concrete grounds mentioned above) and should not constitute a tool for solving territorial disputes. Although technical in nature and intended to boost confidence among its signatories, the Treaty could not have been shielded from being used as a political tool to advance the national interests of some of its parties. To mitigate this challenge at the time, the other states, including the US and like-minded states, started to request all passive quotas available over the territory of Georgia well in advance.⁷⁰ However, at the end of 2017, Moscow did not accept the refusal of flights over Georgian territory, and in months to come it acquired overflight of Georgia causing Tbilisi to object it, and to withhold consensus on the entire quota exercise, such that there were no Open Skies flights in 2018.⁷¹ It was only in 2019 when the deadlock was broken and the flights over and by Russia were relaunched, except for conducting a mutual observation between Georgia and Russia.⁷² In public, both Russia and Georgia have continued to uphold their positions, and despite time passing, the dispute has not been resolved. Instead, it became one of the arguments used by the US to withdraw from the Treaty.

In principle, data collected during the observation should only be available to member states of the Treaty, without the possibility of sharing it even with NATO or OSCE.⁷³

Although there is no proof of such practices, during the period of flight suspension, Georgia could have access to the data gathered about Russia while Moscow could gather information on Georgia from other sources.

Similarly, taking the issue of collection of data into regional context - considering the other protracted conflicts in the South Caucasus and existing alliances - one cannot exclude the possibility of Armenia or Azerbaijan receiving data from other signatories to the Treaty. As rightly pointed out, “despite existing procedures for processing and storage, verifying that data is not shared beyond the Treaty members is a complicated task”.⁷⁴ At no point since the entry into force has any political statement been made reassuring that the data gathered during observation flights

⁶⁹ Ibid.

⁷⁰ A. Bell, W. Richter and A. Zagorski, “*How to fix, preserve and strengthen the Open Skies Treaty?*” Deep Cuts Issue Brief 9, (March 2020), 3, https://deepcuts.org/files/pdf/Deep_Cuts_Issue_Brief_9-Open_Skies_Treaty.pdf.

⁷¹ P. Jones, Making a better Treaty on Open Skies, 5.

⁷² Ibid.

⁷³ A. Graef, “*The End of the Open Skies Treaty,*” 3.

⁷⁴ Ibid.

is not shared with external partners, nor has any signatory been officially accused of such practice.

The context of the US and Russian withdrawals from the Treaty and the reaction of other signatories

In February 2020, US Defence Secretary Mark Esper announced that the United States “can’t continue” to tolerate Russia’s “noncompliance” with the Treaty on Open Skies.⁷⁵ The announcement made by the US administration was not followed by any recommendation on how exactly Russia could be compliant.⁷⁶

On 22 May, 2020, the US published a communiqué on its planned withdrawal from the Treaty on Open Skies.⁷⁷ The decision entered into force on 22 November, 2020 and was not revoked after the US presidential elections.

In its speech on the withdrawal, the Trump administration focused on the issue of Russia’s breach of the provisions of the Treaty. According to the US, Russia had limited access to Kaliningrad, Moscow, and areas along the Russian-Georgian border. Moreover, on several occasions, Russia has not requested permission for observation flights, ignoring the Treaty requirements. The Trump administration argued that the Treaty no longer served US national security interests.⁷⁸

Following his election, US President Joe Biden upheld the decision made by his predecessor, informing Russians about it on 27 May, 2021.⁷⁹ The US stated publicly that reversing its decision would send the wrong signal to the world and would weaken the US position in the broader arms control agenda, especially if Russia continued to violate the Treaty.⁸⁰ Moscow described it as a “political mistake”,⁸¹

⁷⁵ A. Mehta, “US can’t continue tolerating Russian ‘noncompliance’ on Open Skies Treaty – says Esper,” *Defence News*, (February 2020), <https://www.defensenews.com/pentagon/2020/02/21/us-cant-continue-tolerating-russian-noncompliance-on-open-skies-esper-says/>.

⁷⁶ A. Bell, W. Richter and A. Zagorski, “How to fix,” 3.

⁷⁷ A.F. Wolf, “The Open Skies Treaty: Background and Issues,” 1.

⁷⁸ Ibid. 23 May 2020 Georgia supported the US withdrawal plan, pointing to the notorious Russia’s breach of the Treaty and Moscow’s continuous politicization of its provisions. “Georgia accuses Russia of violating conditions of Open Skies Treaty,” *Agenda.ge* (27 May 2020), <https://agenda.ge/en/news/2020/1655>.

⁷⁹ M. Lee, “US tells Russia it won’t rejoin Open Skies arms control pact,” *AP News* (27 May 2021), <https://apnews.com/article/donald-trump-europe-russia-government-and-politics-69038e96de8488f2c759b126c27d1366>.

⁸⁰ J. Gould and A. Mehta, “Rejoining Open Skies would send ‘wrong message’ to Russia, State tells partners,” *Defence News*, (7 April 2021), https://www.defensenews.com/breaking-news/2021/04/07/rejoining-open-skies-would-send-wrong-message-to-russia-says-us-state-department/?utm_source=Saillthru&utm_medium=email&utm_campaign=Exclusive%204.7.21&utm_term=Editorial%20-%20Breaking%20News.

⁸¹ M. Rodionov and A. Marrow. “Russia says U.S. decision not to rejoin Open Skies arms pact is ‘political mistake,’” *Reuters*, 28 May, 2021, <https://www.reuters.com/business/aerospace-defense/russia-calls-us-decision-not-rejoin-open-skies-arms-pact-a-political-mistake-2021-05-28/>.

and “pointed accusatory fingers at the US and Georgia, among others, over alleged treaty violations and ‘non-constructive positions’”.⁸² In reaction to the US decision, Russia launched the internal process of its withdrawal from the Agreement. Moscow notified all state parties of its decision to withdraw on 18 June, 2021.⁸³ The six-month notice required by the treaty means that Russia’s withdrawal is effective as of 18 December, 2021.

There were several attempts to mitigate the growing tension and uncertain future of the Treaty. As already mentioned, in reaction to the US withdrawal, 10 EU member states expressed their readiness to continue implementation of the Treaty.⁸⁴ The future participation of Belarus, which formed a group with Russia under the Treaty until recently and does not have its own flying equipment, is still unknown.⁸⁵ Apart from the US and Russia, no other party to the Agreement has decided to withdraw so far.

Consequences of the US and Russian withdrawals for Georgia’s and the South Caucasus’ security

The US and Russian withdrawals from the Treaty contribute to the further weakening of instruments of confidence-building put in place since the 20th century. It constitutes the erosion of the system of arms controls and has an impact on the security of the South Caucasus. Since only Georgia – of the three states in the region – is a party to this Treaty, the current situation might lead to different consequences for Tbilisi than for Baku and Yerevan. It is estimated that some signatories, including Georgia, have rarely conducted observation flights,⁸⁶ which may indicate that the Agreement has not been of importance to them. However:

- As of today, Georgia remains a signatory to the Treaty and has not declared any intention to withdraw from it. If the Agreement continues to be implemented by its parties, Tbilisi will continue to profit from its provisions. The quantity of information gathered this way – especially due to the withdrawal of Russia – may be reduced if no new potential signatories emerge or additional sources of information are not identified.

⁸² “Russia Withdraws from ‘Open Skies,’ Points Fingers at Georgia, US,” *Civil.Ge* (8 June 2021), <https://civil.ge/archives/425900>.

⁸³ Ministry of Foreign Affairs of the Russian Federation, “Foreign Ministry’s statement following the Russian Federation’s sending notifications to the states parties to the Treaty on Open Skies,” 18 June, 2021, https://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4790770.

⁸⁴ “10 krajów europejskich deklaruje trzymanie się traktatu o otwartych przestrzozach,” *Dziennik Gazeta Prawna*, 22 May, 2020, <https://serwis.gazetaprawna.pl/transport/artykuly/1478655,traktat-o-otwartych-przestworzach-kraje-unii-europejskiej.html>.

⁸⁵ A. Bell, W. Richter and A. Zagorski, “How to fix,” 4.

⁸⁶ K. Kertysova, “Closing the Open Skies,” *The Wilson Quarterly*, summer 2021, 13, <https://www.wilsonquarterly.com/quarterly/conflict-resolution/closing-the-open-skies/>.

- Considering the development of technology in recent years, the signatories may shift towards an increased use of satellites to obtain information.⁸⁷ However, there are several positive characteristics to the formal setup offered by the Agreement. It is easier to steer an aircraft than to operate a satellite that circulates in pre-set orbits. Moreover, aerial flights can occur during cloudy weather while taking photos remain unreachable through the conventional surveillance satellites in similar conditions.⁸⁸ It must be noted, however, that there are more sensitive and more expensive surveillance satellites (i.e., electromagnetic-monitoring military technology) that are effective in all types of weather.⁸⁹ They are known to be operated only by four nations (the US, France, China, and Russia).⁹⁰ Such a use of the most advanced technology may negatively impact interest to apply tools offered within the framework of the Treaty.
- The data gathered and circulated within the framework of the Treaty remains unclassified, making them more accessible than satellite imagery.⁹¹ The data's transparency permits for timely disclosure of noncompliance with the Treaty's provisions and identifies hostile military displacement.
- The Treaty contributes to the perception of Georgia as a pro-Western state, fulfilling its foreign policy objectives. In this context, the process of "dismantling" the Treaty, by gradual withdrawal of its major parties, impacts significance of platforms to pursue foreign and security objectives of its signatories.

Although since 2012, Georgia has unilaterally suspended its implementation vis-à-vis Russia, the Treaty could be a platform for communication in times of crisis. Its provisions call for representatives from both states – observing and being observed – to fly in the same aircraft during the observation overflights,⁹² allowing for direct contact between otherwise antagonistic parties. The objective of the Treaty has been clear: to ensure communication among military personnel, leading to the establishment of a valuable source of information both for intelligence and diplomacy,⁹³ in addition to being an instrument for confidence building, transparency,

⁸⁷ One may not exclude that Georgia has not been already using alternative sources of intelligence.

⁸⁸ S. Pifer, "Is this the end of the Open Skies Treaty?" Brookings (9 March 2020), 2, <https://www.brookings.edu/blog/order-from-chaos/2020/03/09/is-this-the-end-of-the-open-skies-treaty/>.

⁸⁹ V. Lamigeon, "CSO, gros plan sur le nouveau satellite espion francais," Challenges (17 December 2018), https://www.challenges.fr/entreprise/aeronautique/cso-gros-plan-sur-le-nouveau-satellite-espion-francais_632334.

⁹⁰ AFP, "France boosts space surveillance capabilities with military satellite launch," *Global Times*, (17 November 2021), <https://www.globaltimes.cn/page/202111/1239202.shtml#:~:text=France%20boosts%20space%20surveillance%20capabilities%20with%20military%20satellite%20launch%20%2D%20Global%20Time&text=France%20on%20Tuesday%20boosted%20its,operate%20this%20kind%20of%20technology>.

⁹¹ Ibid.

⁹² K. Kertysova, "Closing the Open Skies," 9.

⁹³ A. Bell, W. Richter and A. Zagorski, "How to fix," 2.

and openness among its signatories. In a time of increased tensions, limitations on access to information and on the type of data gathered may impact the decision-making process both in Moscow and in Tbilisi. The withdrawal of Russia from the Agreement will eliminate this platform for communication.

The dispute between Georgia and Russia within the framework of the implementation of the Treaty has not been resolved, becoming a part of political agenda of both states. The two key issues behind it – namely, Russia's pointing to Georgia's noncompliance with international commitments, as well as Moscow's recognition of the independence of two separatist regions of Georgia – will contribute to the rising tensions in the region. The withdrawal of Russia from the Treaty will not improve its relations with Georgia.

While two separatist regions are considered by other signatories as territories of Georgia, the current situation (namely Russia's withdrawal and Georgia's continuing implementation of the Treaty provisions) may cause additional tensions with observation flights occurring over Tskhinvali and Abkhazia (which, according to international law, should be approved only by Georgia). The question of Russia's reaction to such activities remains open, but clearly it may further ignite an already tense atmosphere in this conflict.

On the other hand, the withdrawals of the US and Russia may give new impetus to the Treaty, which remains open for any state to apply to it. For the time being, Armenia and Azerbaijan are not among its signatories. Their accession to this Agreement could mitigate future tensions, as both Turkey and Russia will remain engaged in the South Caucasus. Over nearly two decades of the Treaty remaining in force, Turkey undertook 14 flights over Georgia, while Georgian aircraft flew over Turkish territory only once. Ankara made 53 flights over Russia, while Moscow gathered data on Turkey 29 times.⁹⁴ Each of these flights deepened knowledge about the intention of the other side, impacting their policy and actions. Both Russia and Turkey will want to gain (one way or another) a narrow access to data (about each other and about the region) resulting from Moscow's withdrawal from the Treaty. It remains unclear how this will happen.

As mentioned, the sharing of unauthorized data obtained during the flights is not allowed. Yet, considering the relations between Baku and Ankara as well as between Moscow and Yerevan (especially in the context of the Nagorno-Karabakh conflict), such cooperation could happen occasionally. From that perspective, it would be of value added for the other two states of the South Caucasus to join the Treaty. If Armenia joined the Treaty, it would gain access to data on Georgian and Turkish territories. Azerbaijan could monitor Georgia and potential Russian military movements towards its borders. In the current situation, when neither Baku nor Yerevan is a party to the Treaty, the ramifications of the withdrawals of the US and

⁹⁴ A. Graef and M. Kütt, "Visualizing the Open Skies Treaty."

Russia remain unknown, which will lead to increased tensions in the Caucasus Region.

The Treaty on Open Skies, despite its technical nature, has become a political symbol. As rightly pointed out by Katarina Kertysova, “the remaining parties to the agreement can (and should) keep the treaty alive and continue its implementation”,⁹⁵ despite the costs associated with it.

The current, high level of satellite intelligence capability that already exists in the hands of some states around the world may prove that the Treaty on Open Skies has been deemed to be limited to merely a political declaration of willingness to contribute to international security. However, in a broader context, the withdrawals of the US and Russia from the Treaty may have a negative impact on international arms control. Preserving the treaty would enable the remaining members to conduct observation flights, thus contributing to “greater openness and transparency in their military activities” in accordance with the preamble to the Treaty. This would act as a mechanism for conflict prevention and crisis management.⁹⁶ For this reason, the signatories should acknowledge the value and relevance of the Treaty even without the US and Russia.⁹⁷

The South Caucasus remains a playfield for power struggles among all those interested in the region. With the weakening role of the Treaty on Open Skies, there may be more attempts to take over space created by it while underlining the increasing role of Turkey, Russia, and Iran in the region. The concept of the format ‘3+3’ recently announced by Ankara and Baku in the aftermath of the Nagorno-Karabakh war (including Iran, Russia, Turkey, as well as Armenia, Azerbaijan, and Georgia) provides a good example of a shift in the balance of power in the region.⁹⁸ Although it remains unclear what type of cooperation and in what domain it would encompass, if accepted by all participants, it would be considered “a diplomatic victory of Russia over the West”.⁹⁹ However, Georgia opposes it, and Armenia “still studies the issue” as it goes against their national interests and foreign policy course,¹⁰⁰ making the likelihood of changing their mind very small.

The signatories may also consider “reconversion” of the regime, or rather an adaptation to the changing environment the Treaty is deemed to operate nowadays. As remarked by Luic Simonet, the preamble of the Treaty envisages “the possible extension of the Open Skies regime into additional fields, such as the protection of the environment”, giving possibility to evaluate trans-border environmental

⁹⁵ K. Kertysova, “*Closing the Open Skies*,” 12.

⁹⁶ *Ibid.*, 9.

⁹⁷ *Ibid.*, 13.

⁹⁸ B. Belkania, “The platform of the 3+3 Format: A Review,” 4.

⁹⁹ *Ibid.*, 7.

¹⁰⁰ *Ibid.*, 6.

damage.¹⁰¹ Such “reconversion” may change the character of the Treaty (from military to non-military) – yet it would continue to offer a platform for cooperation. As provided in the Treaty (Annex L to the Treaty (Section III)) the regime could also be used for conflict prevention and crisis management with flights undertaken in a stable security environment. Issues such as combatting trafficking in human beings, arms and drugs, observing the movement of refugees as well as combating clandestine immigration or monitoring border regions could also be considered.¹⁰²

Conclusion

The COVID-19 pandemic has underlined the imperative of working together to mitigate global challenges; “It takes a lot less time to destroy an agreement than it takes to negotiate and conclude one, particularly arms control agreements, which often take months or years”.¹⁰³

The ongoing Russia’s aggression against Ukraine and its outcome, will have a major impact on Treaty regimes already in place and on a process of designing new legal mechanisms on i.e. aerial inspection aimed at disengagement and confidence building among the nations. The Treaty of Open Skies may undergo an assessment within this framework, and as of today, its future remains unclear.

The outcome of the Russia’s aggression against Ukraine may impact geopolitics in the South Caucasus and Georgia’s future political and security path. In this context, Georgia’s decision on its future membership in the (current, or revised) Treaty regime may not be foreseen, just like its role in the process of the Treaty revision, if ever it occurs.

The Treaty on Open Skies has been the result of a compromise among different actors, becoming a valuable instrument to contribute to preventing a global arms race. “It has a clear added value for (...) conventional arms control architecture and cooperative security”.¹⁰⁴ Although technology has advanced, the relevance of the provisions of this Agreement is far from being outdated. It has been a significant source of military and strategic information and has promoted a culture of co-operation,¹⁰⁵ despite its limits.

With the Treaty being questioned, there is a growing threat that the system of arms control will become de-fragmented and subjected to renationalisation of individual security policies. The withdrawals of the US and Russia from the Treaty on

¹⁰¹ L. Simonet, “Open Skies: successes and uncertainties of an iconic post-Cold war instrument,” *OSCE Magazine*, 2012, 18–21.

¹⁰² Ibid.

¹⁰³ B. Jenkins, “A farewell to the Open Skies Treaty,” 3.

¹⁰⁴ A. Mehta and L. Cook, “European states vow to stay.”

¹⁰⁵ L. Simonet, “Open Skies: successes and uncertainties of an iconic post-Cold war instrument,” *OSCE Magazine*, 2012, 18–21.

Open Skies will impact the effectiveness of the international community in mitigating some regional tensions and will weaken global stability.

The Agreement has remained in force for nearly 20 years, becoming a valuable tool for confidence building. Considering geography, close relations, and existing tensions among various actors, the Agreement remains important to the security of the South Caucasus and of Georgia, especially from political perspective. Due to advances in technology, military data gathering is no longer as difficult as it once was. However, transparency, regularity of meetings, and direct communication - all foreseen by this Treaty - add immense value and may not be easily replaced by other means.

Data availability

All data underlying the results are available as part of the article and no additional source data are required.