



Treaty on Open Skies: Could International Observation Flights be Canceled?

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Introduction

The Treaty on Open Skies (OS) has been a source of tension between Russia and Georgia since 2010. While the issue is serious, the Treaty on Open Skies and the problems related to it are rarely publicly discussed since the agreement is confidential and very technical. It is worth noting that, in recent years, the Russian media has been actively discussing violations of the terms of the agreement, however, particularly allegations that Georgia has violated and politicised it.

The main problem started in 2010 when Russia requested a 10-km restriction at the Abkhaz section of Georgian –Russian state border. Russia’s move was prompted by the Kremlin’s decision to recognize Abkhazia and South Ossetia/Tskhinvali region as “independent states” after Russo-Georgian five days war in 2008. In response, in 2012 Georgia decided not to allow observational flights that involved the Russian Federation and to not participate in observational flights on the Russian territory.²

This issue remains unresolved, and has become further complicated by Russia’s insistence to renew flights over Georgian sovereign territories.³ Russia’s request is outlined in the draft of the annual planning document. Georgia has refused to support the document and, since the draft agreement on observation

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² Georgia Ceases Open Skies Treaty Vis-à-Vis Russia, Civil.ge, April, 2012. Available at: <https://old.civil.ge/eng/article.php?id=24634>

³ Russia presented similar request in 2016. Russia addressed the Consultative Commission with the request in December 2017 the last time.

flights must be unanimously agreed upon by all signatory states, this stalemate threatens all the flights in 2018. The Russian Federation has tried to put blame on Georgia for the cancellation of 2018 flights and, in the absence of counter-arguments, it seems that the Kremlin's narrative is the only source of information for those who are interested in the topic. That means it is very important to analyze facts and events objectively and make sure discussions about the Treaty on Open Skies do not rely on one party's narrative.

The Idea Behind “Open Skies” and the Origins of the Georgian-Russian Dispute Concerning the Agreement

In 1955, then US President Dwight Eisenhower proposed the idea of Open Skies in order to facilitate legal military intelligence gathering between the USA and the Soviet Union. The idea was aimed at reducing fears on both sides and was supposed to guarantee mutual trust among parties.⁴ The Soviet Union refused to sign the agreement, however. Thirty years later, then US President George Bush reinitiated the proposal and the Treaty on Open Skies was signed in Helsinki in 1992. It went into force in 2002.⁵

According to the agreement, 34 signatory states are able to conduct observation flights over each other's territories, gather intelligence on military potential and immediately enter the data in a joint database, which can be accessed by every member state, according to interest and the relevant financial contribution. Georgia and the Russian Federation are among the signatories.

It is worth noting that, according to subparagraph two of Article six of the agreement, the signatories are not allowed to conduct flights above areas that are ten kilometers from the border of an adjacent state that does not participate in the agreement. The restriction is intended to ensure that a signatory state does not access the territory of a non-member state. This specific paragraph was used by Russia in 2010 to limit the access of other signatory states within 10 kilometers of the so-called borders of the occupied territories of Georgia – Abkhazia and Tskhinvali Region.

⁴[Aric Jenkins](#), Times, August 11, 2017, Why Russia Was Allowed to Fly a Surveillance Plane Over the Capitol and Pentagon.

⁵ Open Skies Consultative Commission, OSCE. Available at: <https://www.osce.org/oscc>

Despite the fact that Russia's reaction was not appropriate, Georgia still hoped to find a solution that would be in line with international legal norms and continued to fulfill its obligations under the agreement in relation to Russia in a good faith. However, Georgia's efforts to break the stalemate did not bear satisfactory results".

Statement of the Ministry of Foreign Affairs of Georgia

For two years, Georgian officials urged Russia to act constructively. However, Russia continued to present Abkhazia and South Ossetia as independent states and, in 2012, Georgia responded to Russia's move.⁶

In 2012 the Georgian government decided to not allow observation flights involving the Russian Federation on Georgian territories. Likewise, in accordance to the principle of equality, Georgia ceased to conduct observation flights on Russian territories. Technically, due to Russia's breach of the agreement, Georgia's decision was legal.⁷ Moreover, the 2012 decision allowed Georgia to remain a signatory state of the Treaty on Open Skies and to continue to fulfill its obligations to all other members of the agreement.

It is important to note that prior to the 2008 August war – and for two years following the conflict, until 2010 – Russia and Georgia did not have any problems concerning the agreement. While there have not been any public statements from Russia about why it decided to use the agreement to pursue political gains two years after the war, its actions could be part of the Kremlin's ongoing strategy against Georgia's sovereignty: Russia uses existing instruments against Georgia in order to maintain the urgency of the issue of the so-called independence of Abkhazia and South Ossetia/Tskhinvali Region (Russia uses similar strategy in the so-called borderisation process, which includes gradually putting up barbed wire fences across the occupation line).⁸

⁶ Georgia Ceases Open Skies Treaty Vis-à-Vis Russia, Civil.ge, April, 2012. Available at: <https://old.civil.ge/eng/article.php?id=24634>

⁷ Vienna Convention on the Law of Treaties 1969, available at: http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

⁸ Korneli Kakachia, Levan Kakhishvili, Joseph Larsen, Mariam Grigalashvili, "Mitigating Russia's Borderisation of Georgia: A Strategy to Contain and Engage", Policy Paper, Georgian Institute of Politics, December 2017.

How Real is the Threat of Cancelling the Flights?

The Open Skies Consultative Commission(OSCC)⁹ meetings are closed to the public, so there is no information about what happens at the meetings. However, based on the information provided by Russian sources, it is possible to assume that abandoning the 10-kilometer restriction and the possible cancellation of 2018 flights were the major topics of discussion at the OSCC meetings. Additionally, it is important to note Russia's statement to the commission on April 23, 2018, when the Kremlin requested to be allowed to conduct observation flights in Georgia within the framework of the Treaty on Open Skies.¹⁰ Procedurally, the request is part of the document that sets out all of the flights in 2018 (allocating active quotas, etc.). A schedule cannot be set if no consensus is reached on all the flights; all parties to the agreement must approve of the entire document, not separate states' flights.

According to Polish military advisor Marek A. Sobotka, Russia told the commission that it is ready to withdraw its 10-km restriction demand,¹¹ which has caused some members of the agreement to criticise Georgia over its position.¹² That rumor has put pressure on Georgia: if Moscow fulfilled Georgia's request to remove the limitations set in 2010, there will be no reason for the Georgian government to ban Russian observation flights over Georgian territories.

At first sight, that argument seems logical. However, it is important to note that on April 24, the day after the meeting of the Consultative Committee, the Ministry of Foreign Affairs of Russia published a document titled "Russia's assessment of the US Department of State's Report on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments."¹³ In addition to other issues, the document includes a sub-chapter on the Treaty on Open Skies, where Russian Federation responds to the US State Department's criticism of Russia.

⁹ The Open Skies Consultative Commission (OSCC) is the implementing body for the Open Skies Treaty. It consists of representatives from each of the 34 States Parties to the Treaty on Open Skies.

¹⁰ Interview with the expert in arms control field.

¹¹ Marek, A. Sobotka, "Problem is now more complex...Russia is ready to withdraw from 10 km limitation ... but Georgia continue to block the decision on OS flights in 2018. If the situation is prolonged it bodes badly for #OpenSkiesTreaty, 20 June, 2018. 3:30 Am. Tweet.

¹² Ibid.

¹³ Minister of Foreign Affairs of Russia, 24 April, 2018. Russia's assessment of the US Department of State's Report on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments, Available at:

http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/ckNonkJE02Bw/content/id/3192916

Unlike the statement sent to the OSCC concerning Russia's withdrawal from the 10-km restrictions, the assessment published by the ministry states that "Restrictions for the OS flights along Russia's border with the independent states of Abkhazia and South Ossetia have been introduced under the treaty provision that prohibits flights within ten kilometers of a border with a non-party state."¹⁴

A day later Russia confirmed its intention to continue its policy of using the 10-km restriction in order to reassert the independence of Abkhazia and South Ossetia/Tskhinvali Region in one of the most important security documents in Europe. Therefore, the Georgian government's refusal to approve the document on 2018 observation flights, which include Russia's request to conduct flights on Georgian territory, is a natural reaction to Russia's two-sided game: on the one hand, Russia seems to be responding to Georgia's request, while on the other hand, as evident in the statement issued by the Ministry of Foreign Affairs, the Kremlin argues in support of the legitimacy of the restriction set in 2010.

There is a risk that, following Georgia's refusal to approve the document, Russia will not withdraw the restriction and will use this agreement to represent Abkhazia and South Ossetia/Tskhinvali Region as independent states. If Georgia approves the document, however, Tbilisi would no longer have the right to restrict Russian observation flights on Georgian territory.

Request to Conduct Flights Over Georgian Territory: What Does Russia Want?

After Georgia restricted Russian flights, Moscow addressed the OSCC with the request to conduct flights in 2016. However, the Kremlin withdrew its request during the committee meeting. Therefore, there were no impediments to conducting the Open Skies flights in 2016.¹⁵ Russia repeated the request in October 2017 and since then it has been actively trying to accuse Georgia of violating the terms of the agreement.

¹⁴ The author's translation. Minister of Foreign Affairs of Russia, 24 April, 2018. Russia's assessment of the US Department of State's Report on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments, Available at: http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/ckNonkJE02Bw/content/id/3192916

¹⁵ Interview with the expert in arms control field.

A number of Western researchers¹⁶ argue that, by restricting Russian flights, Georgia is threatening European security architecture because its actions give Moscow a reason to suspect Tbilisi trying to hide its military development.¹⁷ However, despite the fact that Georgia has specifically restricted Russian observation flights over its territory, Russia still has an access to a joint database, which includes information on the results of the observation flights¹⁸ conducted by other member states. Therefore, if it wanted to, Russia could dispell its doubts by studying the information on Georgia compiled by other signatory states, which have conducted observation flights over Georgian territory. Hence, the argument that Georgia has given the Kremlin a reason to suspect Tbilisi's military intentions by restricting Russian observation flights on its territory, seems less grounded.

With its policy, Russia achieved two objectives:

- (1) It created disagreement among allies around the ongoing processes.
- (2) The cancellation of 2018 observation flights are now on the agenda.

Considering the ongoing developments, while the document could have been approved if Russia withdrew its request, as it did before, it seems clear that 2018 observation flights are not vitally important for Russia. Moreover, there are other problematic issues under the framework of the Treaty on Open Skies between the USA and Russia (for instance the issue of US-implemented restrictions on Kaliningrad that obstruct Russian flights).¹⁹ That means that, if observation flights are cancelled in 2018, it is not only due to the disagreement between Russia and Georgia; issues between Russia and the US should be taken into consideration.

¹⁶ Thomas Frear, Open Skies: A Status Neutral Approach for Georgia and Russia, August, 2017. Available at:

<https://www.europeanleadershipnetwork.org/policy-brief/open-skies-a-status-neutral-approach-for-georgia-and-russia/>

¹⁷Ibid.

¹⁸ See Table 1, flights conducted in Georgia between 2002 and 2017. Information is based on the table received from the Ministry of Defense of Georgia after submitting the request on public information.

¹⁹ For more information about these topics, see: Россия и США разлетаются все дальше, Available at:

<https://www.kommersant.ru/doc/3635736>

Conclusion

The Treaty on Open Skies remains to be a problematic issue in wider discussions on European security. There is a perception that sometimes decisions are based on the political interests of the parties: The Russian Federation still tries to blame Georgia for the possible cancelation of 2018 observation flights, while Moscow's request is unequivocally directed against the sovereignty and territorial integrity of Georgia and threatens the country's vital interests.

Russia's request to conduct flights on Georgian territories, according to the agreement, should be related to its desire to use the Treaty on Open Skies to gather military intelligence. However, it is worth noting that despite Georgia's 2012 decision to restrict observation flights for the Russian Federation, Russia still has access to the information gathered from the observation flights conducted on Georgian territories by other signatory states. Therefore, it is plausible to assume that putting the topic on the agenda once again is not aimed at gaining information and is not related to the desire to dispel concerns about the Georgian military. Instead, it looks like that it is a part of Kremlin's geopolitical game. It is important to note that flights on Georgian territory are still conducted every year and Georgia has never restricted observation flights on its territories as part of the Treaty on Open Skies.

Georgia's decision to request the withdrawal of the 10-km distance restriction is based on the principles of international law. Abkhazia and South Ossetia/Tskhinvali Region are part of Georgia under the Treaty on Open Skies and, therefore, the chapter regulating the flying distance between signatory and non-party states of the agreement should not pertain to these territories. Russia, on the other hand, is disseminating misleading interpretations in an effort to use the agreement to achieve a political objective. As part of its efforts, Russia is attempting to reassign the blame for its own violations to Georgia.

Table 1. Flights conducted in Georgia between 2002 and 2017²⁰

Country	Place	Date
		2003
Russia	Georgia	November 11-14
		2004
UK/Russia	Georgia	February 16-20
Turkey-Germany	Georgia	August 09-12
Belgium-Luxemburg-The Netherlands (Benelux)	Georgia	October 25-28
		2005
Spain-Benelux-Greece	Georgia	November 21-25
UK-Russia	Georgia	August 22-26
Turkey-Germany	Georgia	July 25-29
		2006
Russia-UK	Georgia	June 13-17
Greece-Benelux-Spain	Georgia	November 1-3
Turkey-Germany-France	Georgia	November 6-10
Canada-Italy-Sweden	Georgia	November 27-30
		2007
UK-Russia	Georgia	April 23-27
Turkey-Germany-France	Georgia	September 24-28
Benelux-Greece-Spain	Georgia	October 15-19
Hungary-Canada-Italy	Georgia	November 5-9
		2008
Italy-Canada-France	Georgia	April 1-4
		2009
France-Canada	Georgia	May 4-8
Turkey-Germany	Georgia	August 3-7
UK-Russia	Georgia	September 28 - October 2
Spain-Greece-Benelux	Georgia	October 19-23

²⁰ The table is based on information received from the Ministry of Defense of Georgia after submitting a request for public information.

		2010
Turkey-Germany	Georgia	April 12-16
Canada-France-Italy	Georgia	May 24-28
		2011
Italy-Canada-France	Georgia	April 11-15
Turkey-Germany	Georgia	May 16-20
Greece-Spain	Georgia	June 27-1
UK-Russia	Georgia	September 19-22
		2012
France-Canada-Italy	Georgia	April 2-6
Turkey-Germany	Georgia	April 17-20
UK	Georgia	August 20-24
		2013
Ukraine	Georgia	May 27-31
Turkey-Germany	Georgia	August 20-23
France-Canada-Italy	Georgia	September 9-13
Sweden	Georgia	October 1-4
		2014
France-Canada-Italy	Georgia	June 16-2
Turkey-Germany	Georgia	August 13-15
Ukraine	Georgia	Cancelled
		2015
France-Canada-Italy	Georgia	April 14-18
Turkey-Germany	Georgia	June 8-12
Ukraine	Georgia	August 3-7
		2016
Italy-Canada-France	Georgia	April 25-29
Ukraine	Georgia	September 19-23
Germany-Turkey	Georgia	November 1-4
		2017
UK-Germany	Georgia	June 19-23

Canada-France-Italy	Georgia	September 11-15
Turkey-Bosnia Herzegovina	Georgia	October 2-6

Georgian Institute of Politics (GIP) is a Tbilisi-based non-profit, non-partisan, research and analysis organization. GIP works to strengthen the organizational backbone of democratic institutions and promote good governance and development through policy research and advocacy in Georgia.

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