

Trump Exits Open Skies Treaty, Moves to Discard Observation Planes

Without specialized aircraft and equipment, Biden administration would have difficult time re-entering post-Cold War pact

By Michael R. Gordon

The Trump administration formally shut the door on the Open Skies treaty Sunday, exiting the agreement while moving to get rid of the U.S. Air Force planes that have been used to carry out the nearly three-decade-old accord.

President Trump had served notice in May that the U.S. would withdraw in six months from the accord, which was intended to reduce the risk of war by allowing Russia and the West to carry out unarmed reconnaissance flights over each other's territories. U.S. officials, however, have long complained that Moscow hasn't fully complied with its terms.

In a move that could complicate President-elect Joe Biden's options if he sought to re-enter the agreement, the Trump administration is taking steps to dispose of the two specially equipped OC-135B planes the U.S. has used to carry out Open Skies flights.

A senior U.S. official said the planes are being designated as "excess defense articles," which means they can be given to foreign partners at reduced or no cost.

"We've started liquidating the equipment," the official said. "Other countries can come purchase or just take the airframes. They are really old and cost-prohibitive for us to maintain. We don't have a use for them anymore."

As part of the disposal, the old wet-film cameras on the aircraft are likely to be given to European allies. New digital cameras that the Pentagon had planned to install on the planes used for Open Skies flights will instead be transferred to other units in the Air Force.

The moves follow a July decision by then-Defense Secretary Mark Esper to cancel the program to buy newer planes to replace the OC-135Bs, eliminating the option of replacing the aircraft with more-modern variants as well.

Mr. Biden has been sharply critical of Mr. Trump's decision to withdraw from the Open Skies treaty, saying that the accord had strong allied support and that problems with Russian compliance should be addressed by using the treaty's dispute procedures.

In a May statement, Mr. Biden said, "I supported the Open Skies Treaty as a senator, because I understand 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 forces."

Mr. Biden, however, hasn't indicated whether he will try to re-enter the multilateral accord and has higher priorities, including extending the New Start nuclear weapons treaty and trying to salvage and build on the 2015 Iran nuclear deal. Spokesmen for the Biden transition didn't respond to questions about his intentions on the Open Skies accord

The senior U.S. official insisted that the goal in disposing of the OC-135B planes isn't to tie the hands of the incoming Biden administration, but rather to provide allies with access to aircraft and cameras the U.S. military no longer needs. Nor is the schedule for handing off the equipment clear, he added.

Still, the decision could add to the legal and budgetary hurdles Mr. Biden would face if he opted to reverse Mr. Trump's withdrawal.

It also follows other steps the Trump administration has taken that may constrain Mr. Biden's foreign-policy options. Trump officials have sought to make their economic pressure campaign against Iran politically difficult to reverse by imposing sanctions under authorities used to punish terrorist-related groups.

Last week the Trump administration also said it would reduce troops in Afghanistan and Iraq to 2,500 in each country, cuts due to be completed days before Mr. Biden takes office.

The Open Skies treaty was negotiated during the George H.W. Bush administration as the Cold War drew to a close. Thirty-four countries have joined the agreement, including the U.S., Canada, European nations, Russia and Ukraine.

In May 2018, then-Defense Secretary Jim Mattis told Congress that staying in the treaty was “in our best interest.” But after Mr. Mattis left the Pentagon over disagreements with Mr. Trump, the administration’s opposition to the agreement hardened.

Trump officials complained that the Russians were using their flights over the U.S. to gather targeting information on sensitive American infrastructure while limiting access for Western flights over Russian territory. Improvements in satellite technology, they said, made the flights less useful for Washington.

The question of whether a Biden administration might opt to rejoin the accord has already sparked a legal debate. Trump administration officials say the legal obstacles would be insurmountable because **the Senate would need to approve any bid to rejoin the treaty by a two-thirds vote.**

Some arms-control proponents have questioned whether the withdrawal was properly carried out, saying that the administration ignored legislation requiring it to consult with Congress four months before withdrawing.

“It is possible and advisable that the Biden administration declare that it will continue to participate in Open Skies,” said Daryl Kimball, executive director of the Arms Control Association, a private group that supports the treaty.

Jean Galbraith of the University of Pennsylvania law school has offered a third view: If a president leaves a treaty without getting input from Congress, a future president could unilaterally rejoin it.

Even if the legal issues could be sorted out, former officials say, a Biden administration would likely confront Republican resistance in Congress over funding to restore and operate Open Skies planes, which have been based at Offutt Air Force Base in Nebraska.

Russian officials have expressed their own concerns about how the treaty might work without U.S. participation.

Russian Foreign Minister Sergei Lavrov said recently European nations that remain in the treaty should sign a legally binding document affirming they would allow Russian planes to fly over U.S. bases on their territory and wouldn't share the data they collect on their flights over Russian territory with Washington.

The senior U.S. official said the administration has obtained assurances from European nations in the treaty that they would give Washington advance notice of any Russian flights that are scheduled to fly over American bases on their territory after the Russian government files its flight plans.

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