

Congress of the United States
Washington, DC 20515

May 22, 2020

The Honorable Mike Pompeo
Secretary
U.S. Department of State
2201 C St. NW
Washington, DC 20520

The Honorable Mark T. Esper
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Pompeo and Secretary Esper:

We are deeply troubled that the Administration plans to submit a notice to withdraw the United States from the Treaty on Open Skies tomorrow without consultation with or notification to Congress, which is in direct violation of Section 1234 of the Fiscal Year 2020 National Defense Authorization Act. From the start, this process has been flawed and dismissed congressional oversight. Exercising Congress's constitutional duty, we are writing to demand an explanation for this intended illegal action and insist that the Administration comply with Section 1234. Furthermore, we continue to strongly oppose any withdrawal from the Open Skies Treaty.

This provision of law stipulates that you must notify Congress not later than 120 days before the intent to withdraw from the treaty is presented to either treaty depository. This notification must be based on your joint conclusion that withdrawal is in the best interests of the United States and that other states parties to the Treaty have been consulted. To date, this requirement has not been fulfilled. The Administration has provided no convincing evidence or reasoning for why the Treaty is no longer in the interest of the United States, and Congress and our allies who are states parties to the Treaty have not been consulted in such a decision.

This much is also evidenced by the several letters we and others have sent to you and others in the Administration over the past eight months—letters which have yielded no response from the Administration. This egregious stonewalling flies in the face of constitutional

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requirements. It is further evidence that the misguided and dangerous personal agendas of current and former influential Administration officials, not the security of the American people, dictate this President's policy directions, and that they have come at the expense of abiding by the law.

To reiterate the analysis we have offered in our previously unacknowledged correspondence, the Treaty has brought unprecedented openness and transparency between participating countries and is highly valued by our allies and partners, who consistently express to us that U.S. withdrawal would be a major blow to U.S. leadership and to the international order that the United States has worked to construct. This latest action would specifically negatively impact U.S. leadership in NATO and the transatlantic relationship with its allies and partners. We are also deeply concerned that the Administration has reportedly decided to end U.S. participation in the Treaty through a closed process that not only dismissed Congress but also dismissed the views of our allies.

The Open Skies Treaty has played a critical role in advancing transatlantic security by providing transparency and concrete, shareable, unclassified intelligence and is an important demonstration of the United States commitment to security in Europe and to collectively hold Russia accountable. This is especially true in the context of Russia's ongoing aggression in Ukraine. In our conversations with our NATO allies and partners on both sides of the Atlantic, it is clear that they strongly supported the United States continued participation in the OST—and have warned of what our withdrawal would mean for our mutual security and for strategic stability across the transatlantic space.

To be clear, we recognize ongoing concerns about Russia's conduct when it comes to flights over Kaliningrad and occupied territories in Georgia—and the U.S. government should continue to exercise diplomacy and press Moscow on these disagreements both bilaterally and through the Open Skies Consultative Commission. However, these concerns do not overshadow the value of the Treaty to America's national security. The United States and its allies and partners have flown three times as many surveillance flights over Russian territory than the Russians have flown over U.S. territory since Open Skies entered into force, providing the United States and its allies with significantly more tangible intelligence.

Senior military officials and experts who have served and continue to serve in the Administration, in a variety of capacities, have come out publicly in recognition of the value of the Open Skies Treaty. In 2018, then-Secretary of Defense James Mattis told Congress that remaining in the Open Skies Treaty is "in our nation's best interest." In 2019, then-Deputy Secretary of State and now-U.S. Ambassador to Russia John Sullivan echoed this position and

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stated that there would need to be substantial evidence that the Treaty was no longer in our national security interest to support withdrawal. He also stated that Congress and our allies would need to be consulted if the Administration were considering withdrawing from the Treaty. These benchmarks laid out by Ambassador Sullivan have not been met.

We offered on several occasions to work closely with you and others in the Administration on the future of the Open Skies Treaty and other critical national security issues. Yet these overtures were ignored and now you are flouting legal requirements to consult and notify Congress. It appears that short-sighted interests and partisan politics prevailed over reason and good foreign policy. This is a regrettable decision that will have lasting consequences. We will continue to press this Administration and hold it accountable to ensure decisions are made with the best interest of the American people, and our allies and partners, in mind.

Sincerely,



ELIOT L. ENGEL
Chairman
House Committee on Foreign Affairs



ADAM SMITH
Chairman
House Committee on Armed Services

CC: President Donald J. Trump
Vice President Mike Pence
National Security Advisor Robert C. O'Brien
Deputy National Security Advisor Matthew Pottinger