

# United States Senate

WASHINGTON, DC 20510

June 22, 2020

The Honorable Mike Pompeo  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

The Honorable Mark T. Esper  
Secretary of Defense  
U.S. Department of Defense  
1000 Defense Pentagon  
Washington, D.C. 20310

Dear Secretary Pompeo and Secretary Esper:

We are writing to you in response to your May 22 letter declaring the administration's intent to immediately begin the process for the United States' withdrawal from the Open Skies Treaty. This decision to unilaterally withdraw from a longstanding multilateral arms control agreement will damage U.S. national security and further impair relations with our allies in Europe. This decision, which was taken without any meaningful consultation with or advance notice to the Senate, also contravenes U.S. law by failing to provide Congress with a notification of the intent to withdraw from the Open Skies Treaty 120 days in advance of beginning the withdrawal process, as required under the National Defense Authorization Act for Fiscal Year 2020 (NDAA).

The Open Skies Treaty is an important, multilateral agreement that provides the United States and its allies critical information about Russian military forces via flights over Russian territory. The United States relies on the Treaty to attain important, real-time information on Russian military activities, including Russian activities in Ukraine. Furthermore, our Treaty partners view our participation as a gauge for our commitment to ensuring the security of their respective nations. By withdrawing from the Open Skies Treaty, the United States is leaving an agreement our partners have repeatedly communicated they value and believe improves their security.

We are aware that implementation of the Open Skies Treaty has been imperfect, and we remain concerned about these issues, such as Russian limitations on flights over Georgia and Kaliningrad. The issues presented, however, do not negate the positive impact of the Open Skies Treaty, and the United States has in fact taken action to counter Russia's violations by limiting overflights of the Pacific Fleet in Hawaii and Fort Greely in Alaska. Instead of withdrawing from the treaty the United States should diplomatically engage Russia to resolve these issues as it has done successfully in the past, for example when Russia imposed limitations on flights over Chechnya.

As you are aware, in 1992, the U.S. Senate provided its advice and consent to the Open Skies Treaty without a single vote in opposition. Since then, a bipartisan Senate has spoken on a number of occasions about the value of the Open Skies Treaty, seeing it as a key element of the

Euro-Atlantic security architecture and as an important contributor to a more stable and secure European continent. In fact, this past year, Congress appropriated funding for new surveillance aircraft to replace our aging fleet which was previously requested by the Department of Defense.

As a reaffirmation of bipartisan Congressional support for the Open Skies Treaty, Section 1234 of last year's NDAA expressly mandates that, 120 days before the notification of any intent to withdraw is sent to either Treaty depository, the Secretary of State and Secretary of Defense provide to the Foreign Relations and Armed Services Committees of both Chambers a justification for the decision. The letter sent to Congress dated May 22 obviously does not satisfy the law. Moreover, your repeated failure to engage the Senate, much less secure its approval, with regard to treaty withdrawals is completely inconsistent with the constitutional framework of shared responsibility for treaties between the Senate and the executive branch.

The timing of your decision – less than five months before an election – is also suspect. Beginning the U.S. withdrawal from the Open Skies Treaty, without complying with U.S. domestic law or constitutional practice, is an obvious political maneuver in an attempt to bind a future administration. As such, we demand that you immediately discontinue your efforts to initiate the withdrawal process until Congress is provided with the requisite notification under the NDAA, and the Senate has had an opportunity to weigh in on the withdrawal.

Sincerely,



Robert Menendez  
United States Senator



Charles E. Schumer  
United States Senator



Mark R. Warner  
United States Senator



Jack Reed  
United States Senator