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May 22, 2020

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

Dear Secretary Esper:

We write to you today to express our deep concern regarding the Administration's decision to formally submit the notice of intent to withdraw from the Open Skies Treaty without the legally-required notification to Congress, and the negative impact this will have on our national security and the security of our transatlantic allies and partners in Europe.

We are particularly troubled with the Administration's blatant violation of the law in providing the intent to withdraw from the Treaty without prior notification to Congress, as required by Section 1234 of the Fiscal Year 2020 National Defense Authorization Act (FY20 NDAA). Section 1234 is a legally-binding requirement for a joint certification from the Secretary of State and yourself that "(1) such withdrawal is in the best interests of national security; and (2) the other state parties to the Treaty have been consulted with respect to such withdrawal" 120 days prior to the notice of intent being submitted to either Treaty depository. We demand an explanation for why we received neither the notification nor the certification required under the law.

In a bi-partisan manner, current and former senior administration officials have supported the Open Skies Treaty as a key component to strategic stability in the European region, and the importance of U.S. leadership in the Treaty. The Treaty offers a way for the United States in cooperation with our European allies to hold Russia accountable. It provides a unique forum, including overflights and data sharing, for cooperating on verification overflights and sharing unclassified imagery with our allies and partners that do not have access to the same level of national technical means such as the United States and Russia. These allies are subject to aggressive Russian action in the region. Our allies greatly value the joint partnership with the United States to counter Russia and many rely on U.S. leadership in the Treaty to counter Russian malfeasance, as highlighted in the December 2018 extraordinary overflight over the

Kerch Straight demonstrating U.S. support to Ukraine. A decision to withdraw blatantly dismisses views from our closest allies.

In addition to continued strong allied concerns with U.S. withdrawal and the negative impacts that could have on allied relationships, there are operational considerations that the Department of Defense (DoD) must take into consideration in the context of withdrawal from the Treaty, and the lack of U.S. leadership within the Open Skies Consultative Commission. Understanding that flights over the U.S. would no longer be conducted, the United States has over 35,000 forward deployed troops and critical military equipment deployed in countries that will remain subject to Russian overflight under the Treaty. DoD officials have stated that there are currently no agreements in place with each of our partners that establish notification requirements in the event of a Russian overflight of U.S. forces and equipment, which the United States would receive should they remain in the Treaty.

Further, Russia has indicated intent to upgrade their sensors to Synthetic Aperture Radar (SAR) cameras for Open Skies aircraft. As briefed by various DoD officials, these sensors would present significant concerns with regards to operational security, and the ability to mitigate against their imaging capabilities would be difficult. The United States has been a strong opponent of Russian requests to upgrade to SAR cameras, and without U.S. leadership against these types of sensors it is likely the Open Skies Consultative Commission would grant approval of their use, and further endanger forward deployed troops and assets subject to continued Russian overflight under the Treaty.

In addition to an explanation of why the legally-binding requirements of FY20 NDAA Section 1234 were not met prior to the notice of intent to withdraw from the Treaty, we request written responses to the below questions on the impacts this withdrawal will have on our military-to-military relationships with our European partners, DoD intelligence gathering, and protection of our forces and assets in Europe that would be subject to future no-notice Russian overflights. We request these responses not later than June 1, 2020.

- 1) How will DoD replace imagery gathered from Open Skies flights and what are the risks and costs of the alternative methods of gathering the data?
- 2) How will DoD ensure proper mitigations are in place to protect deployed forces and assets in Europe that will continue to be subject to Russian overflight without notifications provided through Treaty participants?
- 3) What are the risks of SAR sensors being used to collect overhead data on U.S. deployed forces and equipment in host countries that will remain in the Treaty? What mitigations would need to be in place to protect U.S. forces and equipment, including costs, for those types of sensors?
- 4) What are the national security interests of withdrawal which benefit the United States that are unique to the Open Skies Treaty, particularly with regards to Department of Defense equities?

- 5) From the Department of Defense's perspective, what specific national security risks existed that prevented the Administration from exercising the legal requirement to provide 120-day notice to Congress before withdrawal?

We look forward to your prompt responses and future engagement on this issue to advance U.S. national security, and ensure the mutual security of our transatlantic partners.

Sincerely,



Adam Smith
Chairman



Jim Langevin
Chairman
Subcommittee on Intelligence, Emerging
Threats and Capabilities



Jim Cooper
Chairman
Subcommittee on Strategic Forces



Joe Courtney
Chairman
Subcommittee on Seapower and Projection Forces



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