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Working Session 1 – Review and Evaluation of Treaty Implementation Accession to the Treaty on Open Skies Background and Procedure

The entry into force of the Treaty on Open Skies on 1 January 2002 opened up the regime for accession. These questions are contained in Article XVII, *paragraphs 3 to 5* and by the relevant *Annexes* with respect to particular technical questions. The first requests after entry into force highlighted the need to summarize the provisions of the Treaty in a coherent document and to amend existing procedures to facilitate the process. For these reasons the Open Skies Consultative Commission (OSCC) adopted Decision 8/02 on 22 April 2002 which addressed most of the questions raised. Today it is Revision One of the document that is in force.

The Treaty established three tiers of acceding states to the Treaty with different application procedures:

- Tier one contains successor states of the USSR that are not original signatories to the Treaty: Armenia, Azerbaijan, Kazakhstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan. The procedure is the simplest for states falling into tier-one, as they only need to deposit their instruments of accession with one of the depositaries, Canada or Hungary. This procedure requires no decision of the States Parties.
- Tier two contains any other OSCE participating State that is not a State Party or does not fall into tier one. For the first six months following entry into force only these countries could apply for accession by submitting a written request to one of the depositaries.
- Tier three: six months after entry into force any other state could apply for accession similarly to tier two, by submitting a request to one of the depositaries. As we have well passed the six-month deadline, currently any state can apply for accession.

While there are no formal requirements as to the information to be provided when the request is made, the *OSCC chairman's statement of 7 April 2003* encouraged states wishing to accede to the Treaty to submit "all useful information which may include the level of passive quota, the designation of point(s) of entry/exit, Open Skies airfields and their maximum flight distances, as well as any intention that may exist to form a group with any other State Party" to facilitate the accession process.

In the case of applications from tier-two or tier-three states, the requests for accession are considered by the States Parties at the next regular meeting of the OSCC following the application. It is important to note that the OSCC decides by consensus. While the Treaty contains no guidance on tier-two states, in the case of tier three states, only applications of states that are “able and willing to contribute to the objectives of the Treaty” will be considered. In the case of OSCE participating States, States Parties will take into account the *1992 CSCE Declaration on Open Skies* which calls upon the States Parties to allow the accession of such States as soon as possible and to act in the spirit of cooperation.

Following the approval of the OSCC and completing the necessary internal procedures, which in most countries means ratification by Parliament, the acceding state has to deposit its instrument of accession with one of the depositaries. The acceding state gains State Party status sixty days following the deposit, which also constitutes the starting date for her legal obligations under the Treaty.

Following the deposit of the instrument of accession the OSCC has to make several decisions relating to the implementation of the Treaty, most importantly on the allocation of a passive quota, the number of observation flights a State Party has to accept each year. This also determines the active quota of that state.

The decision on the passive quota is taken by consensus of the Parties on the basis of the request of the acceding state, or in case there is no specific request, in cooperation with that state. As the Treaty provides little information on how to determine the level of the quota, in some cases it took some time to reach a compromise. To this end, the OSCC adopted a *chairperson’s statement on 11 November 2002* that provides indications on some of the elements that should be considered when submitting a request. These are the given country’s geographical size, location and military capabilities as well as the size of her armed forces. It has to be noted and regarded as a guiding principle that except for one country, each State Party has four or more passive quotas. However the level of the passive quota is not a determining factor in itself and it should be examined in the context of Open Skies airfields and their associated maximum flight distances.

If there is an agreement on the level of the passive quota, the OSCC should agree on its distribution among the States Parties. At the same time, the active quota of the acceding state may be distributed. These two issues are regulated by amendments to the OSCC decision on the quota distribution for the appropriate year.

The OSCC also has to make three technical decisions amending 1) the OSCC scale of distribution, 2) the list of flight reference numbers and 3) call sign codes. These decisions are rather automatic. Even determining the financial contribution, which in other fora may generate extensive debates, falls in this category, as it is based on OSCE scales of contribution.

The OSCC, through the Communications Group and the Network Management Team, expert bodies responsible for the operation of the OSCE communications network, will arrange that the acceding state receives the appropriate software and that changes are made to the OSCE network so that the new member can participate in the exchange of notifications required by the Treaty no later than sixty days after deposit. Finally, also no later than sixty days after deposit the acceding state should submit information on the appropriate formats to all other States Parties on the following topics:

- designation of personnel,
- designation of points of entry and exit, Open Skies airfields and refuelling airfields,
- maximum flight distances,
- information on airspace and flights in hazardous airspace,
- diplomatic clearance numbers and languages to be used.

No later than sixty days after deposit the acceding state should receive the same information from other States Parties. This information exchange is preferably done through the OSCE communications network. It is important to underline that the Open Skies airfields and associated maximum flight distances should not be regarded as simple technical information as they are fundamental to transparency and the implementation of the Treaty.

Since entry into force the OSCC has agreed on a number of chairperson's statements that require States Parties to submit information, among others, on visa regulations as well as on duty day and rest periods, which should also be taken into account.

In conclusion, the Treaty and the relevant OSCC decisions and chairperson's statements give a comprehensive, step-by-step guide to the accession of new States Parties that has stood the test of time and served well during the numerous accession processes since entry into force of the Treaty. Well elaborated decisions and appropriately phrased documents have made a significant contribution to making the Open Skies regime a dynamically enlarging family of countries.