

House of Commons

Defence Committee

**ARMS CONTROL AND
DISARMAMENT
(INSPECTIONS) BILL**

Third Report of Session 2002–03

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(INSPECTIONS) BILL**

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*Report, together with
Proceedings of the Committee,
Minutes of Evidence and an Appendix*

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated by the page number as in 'Ev 12'.

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THIRD REPORT

The Defence Committee has agreed to the following Report:

ARMS CONTROL AND DISARMAMENT (INSPECTIONS) BILL

SUMMARY

The 1990 Conventional Forces in Europe (CFE) Treaty set limits on the numbers of combat aircraft, tanks, attack helicopters, armoured vehicles and artillery pieces which could be held within Europe (from the Atlantic to the Urals) by NATO and the Warsaw Pact. Following the break up of the Soviet Union and the collapse of the Warsaw Pact, an Adapted Treaty was agreed in 1999. At that time the UK made it clear that it would not ratify the Adapted Treaty until Russia (which had failed to comply with the 1990 Treaty) was in compliance with its new commitments.

Both treaties provided for an inspection regime so that the parties could check each other's compliance. The Arms Control and Disarmament (Inspections) Bill gives inspection teams visiting the UK the rights of access which the Treaty requires. The UK cannot ratify the Treaty until the Bill has been passed.

As well as introducing a new type of inspection, the Adapted CFE Treaty increases the number of the existing types of inspection that each country is liable to host. However, in practice it seems unlikely that the position for private owners and operators will be significantly different under the Adapted Treaty. This is for a number of reasons: in the past less than half of the existing liability has been taken up; inspecting states will bear the cost of conducting additional inspections, and as new members join NATO the pool of other states who might wish to inspect UK forces is likely to diminish.

Although Russia still has significantly more armoured combat vehicles in Europe's 'flank zone' (which includes Chechnya) than permitted under the 1990 Treaty, it would be in compliance with the ceilings for that area that would be introduced under the Adapted Treaty. However, Russia must also withdraw the remainder of its forces from Georgia and Moldova because those forces are there without the agreement of the respective host nations, and it agreed to do so when it signed the Adaptation Agreement. That withdrawal has been beset by delays and is incomplete, in part at least because of the existence of local separatists (in Abkhazia in Georgia, and in Transdniestria in Moldova) and how these have impinged upon the wider relationships between Russia and Georgia and Moldova.

Because the Bill would give the Government the ability to ratify the Treaty without further Parliamentary proceeding, consideration of the Bill itself needs to be focused on the question of ratification of the Treaty. Russia has a pivotal role not only in respect of its own compliance but also in creating the conditions that could encourage Georgia and Moldova to ratify the Treaty. The UK and the other state parties should encourage Russia to provide sufficient security to allow an inspection of its base at Gudauta in Georgia, for example, and should maintain pressure on Moldova and the Transdniestrian authorities to reach a settlement that would allow the train shipments needed to reduce Russia's presence at Colbasna.

At the same time, now that Russia's holdings of treaty-limited equipment appear to be at acceptable levels, care will be needed not to allow the differences between Russia and its two neighbours to hold the Adapted Treaty hostage. The Treaty promises real benefits in terms of increased security across Europe. Its implementation must not be allowed to be delayed longer than is genuinely necessary.

We recommend that the House should pass this Bill, not least to send a clear message that the UK sees the conditions for ratification now beginning to fall into place. It would allow timely UK ratification once that is appropriate, but the Government should also give a specific undertaking in the Second Reading debate on the Bill to notify the House at least 21 days in advance of its intention to proceed to ratification. This would allow Parliament to re-examine the issues at the time that that decision is taken, in its contemporary context.

REPORT

Introduction

1. The Arms Control and Disarmament (Inspections) Act 1991 allowed the UK to ratify the 1990 Conventional Forces in Europe (CFE) Treaty, which set limits on military equipment based in Europe and introduced a verification inspection regime. A new Arms Control and Disarmament (Inspections) Bill [*Lords*] now seeks to amend that 1991 Act to allow the UK to be able to ratify an Agreement made in 1999 to adapt the Treaty. The original 1991 Act made the necessary changes to UK legislation to permit the Treaty's ratification, and was therefore largely confined to giving the MoD the powers it needed to ensure other state parties to the Treaty could conduct military inspections at sites in the UK and at our bases in Germany. The thrust of the current Bill is to amend those provisions.

2. The Bill arrived in the House of Commons and was given its First Reading on 30 January 2003, having completed its stages in the Lords (where it had been introduced) between November 2002 and January 2003.¹ It is expected to have its Commons Second Reading after Easter. Our aim in undertaking this brief inquiry is to inform the debate on the Second Reading of the Bill, by examining its main provisions and updating a report by our predecessor Defence Committee on the *Adaptation of the Treaty on Conventional Forces in Europe* which examined the issues at the heart of this Bill.² Indeed, those considering the Bill might refer also to that report, much of which remains valid.

The main provisions of the Arms Control and Disarmament (Inspections) Bill

Clause 1 and Schedule 1; providing additional rights of entry to private land and property for inspection purposes, reflecting changes in the inspection regime introduced by the 1999 Adaptation Agreement:

- adding new rights of entry for inspections of 'declared sites' under Section VII of the Treaty's *Protocol on Inspections*, and under Section IX (inspections of 'designated areas' holding equipment in excess of ceilings introduced by the Adaptation Agreement).
- replacing specific references to Section VIII inspections ('challenge inspections') in the 1991 Act with more general references to all types of inspections.
- amending the 1991 Act to reflect amendments to the Protocol on Inspections that are introduced by the Adaptation Agreement.

Clause 2; allowing for any further future amendments concerning inspections under the CFE Treaty to be made, by Order of Council. This would avoid the need for further primary legislation for that purpose.

Clause 3; permitting the Foreign Secretary to determine a date at which the new Act would come into force, and the Adaptation Agreement to be ratified.

¹ The Bill completed its House of Lords Second Reading on 25 November 2002 (HL Deb, cols 606–613), Debate in Committee on 7 January (HL Deb, cols 843–897) and Third Reading on 30 January 2003.

² Twelfth Report of Session 1999–2000, *The Adaptation of the Treaty on Conventional Forces in Europe*, HC 295

3. As with the existing CFE Treaty, the 1999 Agreement will come into force only when all of its state parties—now 30 countries—ratify it. Until then, the provisions and equipment ceilings of the current Treaty remain in force. UK practice is not to ratify treaties without first having any necessary legislation enacted. The Bill therefore amends the provisions in the 1991 Act (principally concerning access rights for verification inspections in the UK) to reflect changes introduced by the Adaptation Agreement, which would then allow the UK government to ratify the Agreement, by Statutory Instrument not subject to parliamentary procedure,³ “when the time is right”.⁴

4. The 1990 CFE Treaty, borne out of nearly two decades of negotiations during the Cold War, put limits on NATO and Warsaw Pact holdings of five types of conventional equipment—tanks, armoured combat vehicles, heavy artillery, combat aircraft and attack helicopters—in Europe between the Atlantic coast and the Ural mountains. The aim was to make it impossible for one or other bloc to launch a large-scale surprise attack within Europe,⁵ by setting verifiable limits on the numbers of such equipments and by preventing concentration of forces within particular areas or ‘zones’—mainly along the boundary between each bloc and in the northern and southern flank areas.⁶

5. When the Treaty emerged, however, it was into a changing post-Cold War world, and in the years that followed it had to accommodate the collapse of the Soviet Union and Warsaw Pact, the unification of Germany and the division of Czechoslovakia.⁷ As a result, in place of the original 22 countries that signed the Treaty in Paris in 1990, there are now some 30 state parties.⁸ The security environment within which the Treaty was constructed also changed significantly in the Caucasus, as previous Soviet republics and other separatist areas sought to assert their independence.

6. It was against that background that the parties to the Treaty negotiated an Agreement to adapt it to reflect the post-Cold War world. The Agreement, reached at the OSCE summit in Istanbul in November 1999, introduced changes in three main areas:

- Individual countries (rather than the two Cold War blocs) were given equipment ceilings for the five types of conventional equipment—‘national’ ceilings (for a country’s equipment irrespective of where in Europe it is held) and ‘territorial’ ceilings (equipment held within a country, of whatever nationality, to accommodate the stationing or deployment of one country’s forces on another’s territory).
- Russia was given a more generous (territorial) sub-ceiling for armoured vehicles in the Flank Zone (whose southern element includes Chechnya), where it had consistently held equipment at levels in excess of those permitted by the existing Treaty.
- The verification regime, within which the parties could inspect one another’s equipment to check their declarations of equipment holdings, was extended and adjusted to reflect the new types of equipment ceilings.

7. As the previous Committee’s report described, Russia in particular had had a long history of obfuscation and breaches of the terms of the existing 1990 Treaty.⁹ When the Agreement to adapt the 1990 Treaty was signed in 1999, the UK made it clear that it would

³ Clause 3(2) of the Bill (see Explanatory Notes accompanying the Bill, para 20)

⁴ Further Explanatory Memorandum accompanying the Bill, para 2

⁵ *The Adaptation of the Treaty on Conventional Forces in Europe*, para 4

⁶ These were set out in a map reproduced in *The Adaptation of the Treaty on Conventional Forces in Europe*, page ix. The northern and southern flank areas, though discontinuous, together form the ‘flank zone’.

⁷ *The Adaptation of the Treaty on Conventional Forces in Europe*, para 5

⁸ *ibid*

⁹ *The Adaptation of the Treaty on Conventional Forces in Europe*, paras 13-27

not ratify the Agreement until Russia had fulfilled its undertakings made at the Istanbul summit to withdraw its forces from Georgia and Moldova, and had complied with its Treaty obligations (its main breach was having excess equipment in the southern part of its Flank Zone—mainly in Chechnya). A similar line was adopted by our NATO allies and other states, and to date only Belarus and Ukraine have ratified the 1999 Adaptation Agreement.¹⁰

8. In this report we examine the changes to the inspection regime introduced by the 1999 Adaptation Agreement (and the consequential amendments in that area introduced by the current Bill). We then consider the conditions under which the UK should ratify the Agreement (ratification depends on enactment of the Bill, and would subsequently require no further parliamentary procedure), including Russia's progress in reducing excess levels of equipment in Chechnya and meeting its commitments to Georgia and Moldova.

9. We obtained joint MoD/FCO memoranda, including updated information on Russia's non-compliance on which our predecessors reported in 2000. We also took oral evidence from Dr Bryan Wells and Col Philip Rouse of the MoD's Arms Control Secretariat, and Kate Smith, the deputy head of the Foreign Office's Security Policy Department.

Changes to the inspection regime

10. The existing CFE Treaty includes provisions for states regularly to exchange data on their equipment holdings, and for inspections by other states to verify those holdings. The Treaty provides for two main types of inspection:

- Inspections of '*declared sites*' under Section VII of the Treaty's Protocol on Inspections.¹¹ These are sites—training areas, ranges, maintenance and storage areas, airfields and so on¹²—that each state notifies as holding treaty-limited equipment.
- '*Challenge*' inspections under Section VIII of the Protocol on Inspections to the Treaty. The inspecting state or states may delineate any area for such inspections of up to 65 square kilometres, provided that this excludes declared sites and that no two points lie more than 16 km apart.¹³

11. The liability of any state to host inspections under Section VII or Section VIII of the Protocol is determined by a formula that takes account of the size of declared forces and the number of military units (or 'objects of verification') which hold treaty-limited equipment. Our predecessors heard that the Adaptation Agreement would increase such inspection liabilities by a third,¹⁴ as the annual inspection liability increases from 15% of objects of verification to 20%.¹⁵ For the UK, with its 119 objects of verification, its liability to host inspections will rise from 18 to 24 a year (Figure 1 on the next page).

¹⁰ Ev 2, para 9

¹¹ The Protocol on Inspections is set out in Article 27 of the *Agreement on Adaptation*, which is available on the OSCE website (www.osce.org/docs)

¹² *Protocol on Inspections*, Section I, para 1(M)

¹³ *Protocol on Inspections*, Section I, para 1 (N)

¹⁴ *The Adaptation of the Treaty on Conventional Forces in Europe*, para 41

¹⁵ Q 96

Figure 1: UK liability to host inspections ¹⁶		
	Under existing 1990 CFE Treaty	Under the 1999 Adapted Treaty
In UK (incl. Northern Ireland, Cyprus and Gibraltar)	13 Section VII inspections (of which up to 3 may be replaced by Section VIII inspections)	18 Section VII inspections (of which up to 4 may be replaced by Section VIII inspections)
In Germany	5 Section VII inspections	6 Section VII inspections
TOTAL	18 Section VII inspections (of which up to 3 may be Section VIII inspections instead)	24 Section VII inspections (of which up to 4 may be Section VIII inspections instead)

12. The Adapted Treaty would introduce a further type of inspection—of ‘*designated areas*’—under a *Section IX* to be introduced to the Protocol on Inspections. Unlike the quotas of Section VII and Section VIII inspections, a state’s liability to host Section IX inspections only arises when military exercises and temporary deployments cause equipment holdings to exceed its territorial ceiling under the Adapted Treaty:

- ‘Exercises’, which cause a territorial ceiling to be exceeded, will need to be notified to the Treaty’s ‘Joint Consultative Group’ in Vienna 42 days in advance. Those exercises which are planned to exceed the ceiling for 21 days or more will be subject to a multi-national inspection. If the exercise continues to exceed the ceiling for more than 42 days, it will be considered a ‘temporary deployment’ (see below).
- ‘Temporary deployments’ which exceed territorial ceilings will also be liable to multi-national inspection at regular intervals. The host and deploying states will have to notify the purpose, area and estimated duration of the deployment and the numbers of treaty-limited equipments involved. If the size of a temporary deployment were to be greater than a ‘basic’ brigade level—153 tanks, 241 armoured combat vehicles and 140 artillery systems—the states would have to explain the circumstances, and other states could if they wished call a conference to discuss the issue.¹⁷

The designated areas in which equipment for ‘exercises’ or ‘temporary deployments’ is held could be up to 10,000 square kilometres.¹⁸

13. Clause 1 of the Bill amends the provisions of the 1991 Act to provide access rights for the MoD hosting a foreign inspection team undertaking any of the three types of inspection. That Act already gives such access powers for Section VIII challenge inspections, but further legislation is now needed because foreign inspection teams might also wish to visit ‘declared’ (Section VII) or ‘designated’ (Section IX) sites in the UK which include properties or land owned or operated by third-parties. **The 1990 Treaty, however, already provides for Section VII inspections, and so for these particular**

¹⁶ Ev 6, para 37; Q 51

¹⁷ *The Adaptation of the Treaty on Conventional Forces in Europe*, para 40

¹⁸ *Protocol on Inspections*, Section I, para 1(O)

inspections the current Bill appears to remedy an omission (or at least a lack of far-sightedness) in the 1991 Act. The Bill's Explanatory Notes state that—

Inspections of [Section VII] declared sites ... are not new to the Agreement on Adaptation. However, the view was taken when drafting the 1991 Act that rights of entry were not required for this type of inspection because the sites in question were wholly or mainly owned and operated by the Ministry of Defence. Since then, the involvement of private companies in the ownership or operation of parts of the sites in question has increased to the extent that it is now appropriate to provide for rights of entry, so as to ensure that an inspection could be complied with if requested.¹⁹

The inspection burden for the UK

14. We examined the likely impact of the prospective inspection regime for private owners or operators. During inspections (of whatever type), all doors to buildings, portacabins and containers wider than two metres must be able to be opened to allow the inspection team to verify whether they contain treaty-limited equipment.²⁰ All 'declared sites' subject to *Section VII* inspection are on MoD-owned land, we were told, but additional rights of entry are required to these sites because they have civilian organisations on them where a contractor leases or hires an area or building.²¹ Although all of the UK's 94 declared sites (including UK bases in Germany) have contractors of one sort or another located on them,²² we were told that many contractors' facilities would not have doorways of two metres or more.²³ The extent to which private owners might be effected by *Section VIII* inspections, on the other hand, depends entirely on whether other countries choose to conduct challenge inspections, and if so how they might define the areas they wish to cover. Since private owners are already liable, as is the MoD itself, to be inspected under Section VII and Section VIII of the Protocol, the key question is whether the extension of the inspection liability under the Adaptation Agreement will have any effect in practice.

15. Despite the existing potential for 13 Section VII/VIII inspections a year of sites in the UK (Figure 1), historically less than half that liability has been taken up (although all of the potential inspections of our bases in Germany are taken).²⁴ Over the last two years, there have been only 12 inspections—six in the UK itself and six in Germany—undertaken by Russia, Ukraine, Belarus and Slovakia.²⁵ Although the Adaptation of the Treaty will increase the UK's overall inspection liability to 24 a year (Figure 1), the MoD did not expect the number actually undertaken to increase. This was because under the new arrangements the cost of undertaking those inspections that fell within the last 25% of the inspection liability will be met by the inspecting states rather than the host.²⁶ Another factor that may come increasingly into play is the expansion of NATO. NATO members do not inspect one another,²⁷ so as new members join the Alliance the pool of states who might wish to inspect UK forces is likely to diminish. Slovakia, for example, which inspected UK units in Germany in 2001,²⁸ hopes to join NATO in May 2004 (as one of the states invited to do so at the Prague summit).

¹⁹ 'Explanatory Notes' for the Lords consideration of the Bill, para 9 (the Commons 'Explanatory Notes' (para 10) are more concise on this matter).

²⁰ Ev 7, para 42; *Protocol on Inspections*, Section VI, para 27

²¹ Ev 7, para 42; Ev 21, paras 14-16

²² Ev 21, para 14

²³ Ev 21, para 16

²⁴ Ev 7, para 39

²⁵ Ev 6, para 36

²⁶ Ev 7, para 39; *The Adaptation of the Treaty on Conventional Forces in Europe* (Ev 24, para 26)

²⁷ Q 96

²⁸ Ev 6, para 36

16. In considering the burden of inspections for private owners and operators, we should differentiate between those liable to Section VIII inspections and those to Section VII inspections—contractors operating on MoD sites might reasonably be expected to be less perturbed about the latter type of inspection. Since the CFE Treaty came into force a decade ago there have been 192 such Section VII inspections.²⁹ But, significantly, over that time there have been only four Section VIII challenge inspections, which can only cover areas outside declared MoD sites.³⁰

17. The Adaptation Agreement does however add a new category of potential inspection, under *Section IX* of the Protocol. The new Section IX inspections could be triggered when a state increases treaty-limited equipment on its territory, either when allies deploy equipment into its territory for exercises or for peace-support operations—both of which are permitted, within limits, under the Adaptation Agreement.³¹ It would appear, however, that Section IX inspections would be unlikely in the UK. As with all state parties in Europe, the UK could not exceed its territorial ceilings if it repatriated all of its equipment held overseas, unless it also already held significant quantities of equipment from other countries.³² And exercises in the UK, which involved allies deploying their equipment to the UK, would be unlikely to be of a scale that would breach the UK territorial ceilings (Figure 2).

Figure 2: UK ceilings under the Adapted CFE Treaty, and its equipment holdings as at January 2003 ³³			
	Tanks	Armoured Combat Vehicles	Heavy Artillery
Territorial Ceiling ³⁴	843	3029	583
National Ceiling		3017	
Actual Holdings ³⁵	560	2361	441
'Headroom' before territorial ceilings would be breached	283	668	142

18. **It is clear that whatever the prescribed liability to inspections in the UK, in aggregate terms the real burden of inspections for private owners and contractors has so far been much less significant, and particularly so for those outside military bases. And where the main burden of such inspections has actually fallen, on MoD 'declared sites', it seems unlikely that the position for private operators will be significantly different after the Adaptation Agreement is implemented than before.**

19. But there may be circumstances when private organisations or individuals would have to allow inspections of their properties. We wanted to establish what their rights

²⁹ Ev 21, para 17

³⁰ *ibid*

³¹ see *The Adaptation of the Treaty on Conventional Forces in Europe*, para 34

³² Except for the US and Canada, the states' territorial ceilings are at least equal to their national ceilings, to allow repatriation of equipment deployed abroad (see *The Adaptation of the Treaty on Conventional Forces in Europe*, paras 28–31 and Figure 4).

³³ *The Adaptation of the Treaty on Conventional Forces in Europe* (Ev 22); Ev 22, para 22

³⁴ Territorial ceilings do not cover combat aircraft or attack helicopters because of their easy mobility which would make territorial constraints impractical and difficult to verify (see *The Adaptation of the Treaty on Conventional Forces in Europe* (para 29)).

³⁵ 'Actual Holdings' include UK equipment based within the European area covered by the CFE Treaty; data reported each year in *Defence Statistics*.

would be in such cases. Inspection teams, up to nine strong for Section VII/VIII inspections,³⁶ need only give 36 hours' notice, and only when they arrive give details of where they want to visit, leaving the host just six hours to prepare those sites for inspection.³⁷ To ensure inspections run smoothly, the MoD has had to set up a dedicated team—the Joint Arms Control Implementation Group (JACIG)—of 77 specially trained personnel.³⁸ Although there have been few Section VIII challenge inspections, with their greater uncertainty those that do take place could be more difficult to manage. These inspections are intended to check for equipment being kept outside 'declared' military sites,³⁹ and could potentially cover large areas of a non-military nature. It is clear from the revised Protocol on Inspections, however, that the intrusiveness of the inspection regime is intended to be constrained by the purpose of the inspections—that is, to verify the presence or absence of tanks, helicopters and other large items of military equipment. Section VI of the Protocol, which deals with the rules for conducting inspections, gives rights of access only to structures with doors wider than two metres and “within which tanks [etc] ... are permanently or routinely present”,⁴⁰ and then “only in so far as necessary to confirm visually [the equipments'] number and type, model or version”⁴¹ and with photography of interiors only with the escort team's permission.⁴² And private operators on MoD (declared) sites might be further reassured by the Protocol's stipulation that—

In discharging their functions, inspectors shall not interfere directly with ongoing activities at the inspection site and shall avoid unnecessarily hampering or delaying operations at the inspection site or taking actions affecting safe operation.⁴³

20. While inspection teams have in the past confined themselves to military installations, a police officer accompanies the inspection escort team with a warrant drawn up under the 1991 Act in order to ensure access to private property when it is permitted by the Protocol.⁴⁴ Under the existing Act it is a criminal offence to refuse or obstruct an inspection in an area covered by a warrant.⁴⁵ We were told, nevertheless, that the escort team leader himself could refuse inspectors' access to private sites to avoid any potentially “unwelcome situation” developing.⁴⁶ Specifically, the Protocol on Inspections permits the escort team to designate ‘sensitive points’, and such a designation need not be made before the inspectors arrive at a site.⁴⁷ However, such a designation is not intended as a way of smoothing the objections of private owners, and “discretion” would be used in applying it in such cases.⁴⁸ Similar arrangements would operate under a new Act, covering all three types of inspection.⁴⁹ The rights of private owners to refuse inspections would be heavily constrained in such circumstances, but no more so than under the existing inspection regime.

21. To date, there have been no reports of any refusal of access to civilian owned or operated facilities,⁵⁰ which is perhaps not surprising given the so far limited number of Section VIII challenge inspections and the restrictions conveyed in the guidance on inspections in the Protocol. If the number of such Section VIII inspections remains

³⁶ *Protocol on Inspections*, Section VI, paras 4 and 5

³⁷ Qq 56, 63

³⁸ Q 60

³⁹ Q 65

⁴⁰ *Protocol on Inspections*, Section VI, para 27

⁴¹ *ibid*, para 29

⁴² *ibid*, para 39

⁴³ *ibid*, para 25

⁴⁴ Q 68

⁴⁵ Ev 20, paras 9–10

⁴⁶ Q 74

⁴⁷ Ev 20, para 12

⁴⁸ Ev 20, para 13

⁴⁹ Ev 20, para 11

⁵⁰ Ev 21, para 17

low, and (as we anticipate) Section IX inspections are not triggered, it might reasonably be expected that the demands placed on individual private owners, such as they are, will not be significantly increased by the enactment of the Bill.

Compliance with the Treaty

22. In considering when the UK should ratify the Adaptation Agreement, our predecessor Committee examined the level of compliance with the existing CFE Treaty. They found a number of breaches, and in particular a long-standing pattern of consistent breaches of the Treaty by Russia. These were in terms of: incomplete information disclosures, excess holdings of equipment, inappropriate designations of equipment as falling outside the Treaty, and refusals to allow some inspections.⁵¹ That inquiry found that by the time of the January 2000 annual data exchange, only Russia remained in breach of its equipment obligations under the existing Treaty.⁵² According to the UK MoD's assessment, Russia *overall* had exceeded its limits only in respect of artillery pieces (of which it had 21 too many⁵³), but in its southern flank zone (which included Chechnya) it had significant excess equipment—400 excess tanks, 2,600 excess armoured combat vehicles and 600 excess artillery pieces.⁵⁴

23. Russia's flank territory was central to the negotiations on the Adaptation Agreement. Under it the number of armoured combat vehicles⁵⁵ which Russia can deploy in the Russian part of the southern flank area (the existing flank ceilings also cover holdings in Armenia, Georgia and Moldova⁵⁶) rose from 1,380 to 2,140. Our predecessors noted at the time, however, that without significant further equipment reductions Russia would continue to breach both its equipment ceiling in the original Treaty and the new limits of the Adaptation Agreement.⁵⁷

24. In this current inquiry we examined what progress Russia has made in reducing its flank equipment holdings. The OSCE's conference to review the operation of the Treaty in 2001 concluded that "in general [it] was operating and being implemented in a satisfactory manner". However, the Treaty's 'Joint Consultative Group' and its working group responsible for compliance are, as the MoD described them, "more philosophical than judgemental",⁵⁸ and it would appear to fall to individual states (and NATO) to provide more analytical judgements about states' compliance. That means that differences of interpretation are sometimes not resolved.

25. Accordingly, at the time of our predecessors' inquiry in 2000, the UK MoD had a different view of Russia's holdings to that declared in Russia's statistical returns. That is still the case. Faced with continued Russian refusals to permit inspections in Chechnya on security grounds,⁵⁹ the MoD's (and NATO's) current assessments have been informed by indirect measurement: they have undertaken inspections of units *outside* the flank zone targeted on units which have been known to have provided treaty-limited equipment 'temporarily located' *inside* the zone, to provide a guide to current dispositions in Chechnya.⁶⁰ On both UK and Russian counts, Russia still has significantly too many armoured combat vehicles in the flank zone, but it would satisfy the ceilings that would be introduced with the Adapted Treaty, as Figure 3 shows.

⁵¹ *The Adaptation of the Treaty on Conventional Forces in Europe*, paras 13-27

⁵² *ibid*, para 23

⁵³ *ibid*, para 23

⁵⁴ *ibid*, para 25

⁵⁵ The numbers of tanks and artillery permitted will remain the same.

⁵⁶ Ev 4, paras 26, 27

⁵⁷ *The Adaptation of the Treaty on Conventional Forces in Europe*, para 46

⁵⁸ Ev 22, para 24

⁵⁹ Ev 21, paras 18-20; Qq 6, 10, 109

⁶⁰ Ev 4, para 28

Figure 3: Russian holdings of Armoured Combat Vehicles in the Flank Zone, as at January 2003⁶¹		
Against the 1990 CFE Treaty:		
Current Treaty limit	1380	
Russian declared holdings	2256	(An excess of 876)
UK assessment of Russian holdings	2059	(An excess of 679)
Against the 1999 Adapted Treaty:		
Adapted Treaty limit	2140	
UK assessment of Russian holdings	2084	(56 within the ceiling)

26. When the Adaptation Agreement was signed in 1999, the then Foreign Secretary set conditions for the UK's ratification of the Agreement, as follows—

... It is crucial that the CFE Treaty remains credible. Entry into force of the adapted Treaty, if its limits were still being breached, would undermine this credibility. We trust that the credibility of the CFE Treaty will soon be restored. It is on that basis that the UK has signed the [adapted] Treaty. We would hope to ratify it early, but the time at which we do so will depend on the levels of all parties' compliance with the limits that have been agreed.⁶²

On the basis of the obligations of the Adaptation Agreement, the MoD/FCO told us that the current position was that “Russia can be said to be in compliance with its commitments in the Flank”.⁶³ We clearly welcome that improved position. On this particular test, UK ratification need not be delayed. In reaching such a conclusion, we make no observation on the wider conflict in Chechnya, or the prospect of its settlement after the recent referendum there on a new constitution. The conflict should not in itself prevent the implementation of the Adaptation Agreement, whose provisions may in fact act to reduce instability by constraining the deployment of forces in the region.

Russia's commitments to Georgia and Moldova

27. When the Adaptation Agreement was signed in 1999, the UK and other states indicated that their ratification would also depend on Russia meeting its obligations made at the Istanbul summit towards Georgia and Moldova. Russia had treaty-limited equipment stationed in Moldova and Georgia, in contravention of the original CFE Treaty, which requires host states to have given their agreement to such deployments.⁶⁴ The negotiation of the Adaptation Agreement presented these countries with an opportunity to get firmer commitments from Russia to withdraw its forces. At the insistence of Georgia, Ukraine, Azerbaijan and Moldova, the Agreement emphasised the need for a host state to give its “express consent” for foreign forces being deployed in its territory. In last-minute negotiations at the Istanbul summit, Georgia also extracted a Russian agreement to: cut its equipment stationed there to the level of a ‘basic temporary deployment’ under the Treaty—153 tanks, 241 armoured combat vehicles and 140 artillery systems—by 31

⁶¹ Ev 5, para 34

⁶² FCO Explanatory Memorandum on the Adaptation Agreement, 1 February 2000 (available on the FCO website: www.fco.gov.uk)

⁶³ Ev 2, para 13

⁶⁴ Article IV

December 2000; to close two of its four bases (Vaziani and Gudauta) by 1 July 2001; and to complete negotiations during 2000 about the future of the Russian bases at Batumi and Akhalkalaki.⁶⁵ Russia also agreed to remove or destroy all its treaty-limited equipment from Moldova by the end of 2001, and to completely withdraw its forces by the end of 2002.⁶⁶

28. In the Bill's debate in Committee in the Lords, the Foreign Office Minister Baroness Symons reported that as well as complying with its treaty limits on equipment in the flank, Russia had removed its treaty-limited equipment from Moldova and Georgia.⁶⁷ But, as she described, Russia's withdrawal of its forces from Georgia and Moldova had been beset by delays and was incomplete. Progress with withdrawals is tied, in part at least, to the existence of local separatists (in Abkhazia in Georgia, and in Transdniestria in Moldova) and how these have impinged upon the relationships between Russia and Georgia and Moldova.⁶⁸

Georgia

29. With the end of the Cold War, Georgia became independent in 1991, but within two years it had lost control of its Abkhazia region to separatists after a prolonged period of fighting. Since 1994, a Russian peacekeeping force has operated on the internal Georgian/Abkhaz boundary (along the Inguri River), together with a UN observer force. More recently, tensions in the region increased when Chechen and Georgian rebel armed groups entered Abkhazia, with Georgia accusing Russian forces of strikes on its territory and Russia accusing Georgia of aiding Chechen fighters. To help ease such tensions the OSCE has deployed monitors along the Chechen/Georgian border.

30. It was against that background that Russia agreed to withdraw its forces from its bases in Georgia at the Istanbul summit in 1999. Since then, Russia has reduced the size of its deployment of treaty-limited equipment as promised, although it has not been possible to verify its decommissioning of Gudauta, one of the bases to be closed.⁶⁹ Despite such progress, Russia and Georgia appear to remain far from resolving their differences. President Putin told the UN Secretary-General in September 2002 that—

... unless the Georgian leadership takes practical action to liquidate terrorists, and if bandit raids continue to originate from its territory, Russia ... shall take adequate measures to resist the terrorist threat.⁷⁰

And the strength of Georgia's continuing concerns was made clear by their Deputy Foreign Minister in December 2002—

... Istanbul commitments... have been only partially implemented. The disbanding and withdrawal of the Russian military base from Gudauta should have been completed by July 2001, but is not yet fully carried out. The negotiations regarding the duration and modalities of the termination of the functioning of the Russian military bases in Batumi and Akhalkalaki, which should have been to be completed by the end of 2000, have still not been completed due to the irresponsible termination of the negotiation process by the Russian Federation ... We call on the Russian Federation for the immediate resumption of negotiations, respect of the sovereign rights of Georgia and the basic principle of ... free consent of the host state on any foreign military deployment on its

⁶⁵ Ev 2, para 14

⁶⁶ Ev 3, para 19

⁶⁷ HL Deb 7 January 2003, col 896

⁶⁸ Ev 2, paras 14-23

⁶⁹ Ev 3, paras 15-18

⁷⁰ OSCE Press Release, 13 September 2002 (OSCE website: www.osce.org/news)

territory, and expect that it will allow us to finalise in a constructive manner the resolution of this problem. Otherwise Georgia reserves the right to act according to its national interests ...

The Russian Federation ... spurs on [the Abkhaz side] to intransigence, with a view to protracting the conflict... The Russian authorities, in addition to imposing a discriminatory visa regime and granting citizenship to Abkhaz and Ossetian nationals, which we view as just another attempt at annexation, have been frequently supporting Abkhaz and Ossetian separatists.⁷¹

31. In this stalemate, Russia has not felt able (or perhaps willing) to host full verification inspections of its base at Gudauta, located in the separatist area of Abkhazia, including one requested by the UK.⁷² At the same time, Georgia maintains that it too cannot protect an inspection team, but insists that only a full verification will satisfy it.⁷³ This state of affairs is clearly tied up with wider issues of the Russian/Georgian relationship, as our witnesses made clear—

We see [these differences] very much in the context of the overall nexus of bilateral relations between Russia and Georgia. There are a lot of outstanding problems between the two countries. The issues of the bases have become wrapped up in all of those issues and are seen as bargaining chips on both sides. That has complicated the progress towards fulfilment of the [Istanbul] commitments.⁷⁴

And talks between Russia and Georgia about the future of other bases, at Batumi and Akhalkalaki, have remained bogged down.⁷⁵

Moldova

32. Like Georgia, Moldova became independent in 1991 and was soon faced with separatist challenges; in their case mainly in Transdniestria which has sought to maintain closer ties with Russia.⁷⁶ After clashes in 1992, Russia provided peacekeeping forces while the status of Transdniestria could be negotiated.⁷⁷ A decade later its status is still unresolved, and the conflict has lapsed into stalemate.

33. We were told that, since our predecessors' inquiry, Russia has withdrawn treaty-limited equipment from Moldova, as promised at Istanbul.⁷⁸ Russian forces still guard an ammunition dump at Colbasna, however, located in the separatist area of Transdniestria. The Transdniestrian leader, Igor Smirnov, had used his control over the local railways to wring concessions from Russia before allowing the withdrawal of ammunition and equipment from Colbasna.⁷⁹

34. While most of those not directly involved in the Russian/Georgian dispute have remained neutral in their calls for a settlement, that is not the case in regard to Moldova's dispute with Transdniestria, where the international community has been putting its pressure on the Transdniestrian leadership to give ground.⁸⁰ An OSCE Ministerial Council last year

⁷¹ Statement of the Head of the Georgian Delegation, Deputy Minister of Foreign Affairs of Georgia, HE Mr David Aptsiauri, at the Tenth Meeting of the Ministerial Council of the OSCE, December 2002 (OSCE website: www.osce.org/docs).

⁷² Ev 21, para 21

⁷³ Ev 3, para 16; Q 19

⁷⁴ Q 20

⁷⁵ Ev 3, para 18; Qq 12, 13

⁷⁶ Transdniestria's population is 23% Russian.

⁷⁷ Negotiations have progressed under the auspices of the OSCE, with lead roles taken by Russia and Ukraine.

⁷⁸ Ev 3, para 20

⁷⁹ Ev 3, paras 22–23

⁸⁰ Q 26

highlighted the continued obstruction in the negotiations by the Transnistrian side, and attributed the delay in the Russian withdrawal of ammunition and equipment from Moldova, in part at least, to “the Transnistrian authorities [who] have systematically created difficulties and obstacles ...”⁸¹ The EU Danish Presidency, in similar vein, last year criticised the “lack of co-operation by the Transnistrian side in the negotiation process”.⁸²

35. As a result of Transnistrian obstruction, Russia indicated last year that it will need until the end of 2003, rather than 2002, to withdraw its forces from Moldova.⁸³ The pace of train shipments has been so slow, however, that some of the equipment and ammunition at Colbasna might need to be destroyed, rather than removed, in order to meet even that new deadline.⁸⁴ Indeed, recent OSCE negotiations with Russia have highlighted that with some 80 trainloads still at the base, Russian authorities anticipate three-quarters being destroyed rather than removed.⁸⁵

36. Since March this year, however, Moldova and Transnistria appear to be getting closer to agreeing a solution to this conflict. They have begun negotiations about a possible federal structure of tiered central and local governmental responsibilities, with both sides expressing confidence that the proposals will be acceptable. If successful, a referendum on a new constitution would be held by February 2004, with national elections by February 2005.⁸⁶ Of particular relevance for the Adaptation Agreement, the negotiations specifically link the constitutional initiative to Russia’s withdrawal from Moldova, eased by the co-operation of the Transnistrian authorities and a prospective Russian credit for Transnistria’s outstanding gas supply debts. The OSCE now see these developments as greatly increasing the chances of Russia meeting its revised 2003 deadline for withdrawal.⁸⁷

Conclusions on ratification

37. The Adaptation Agreement enters into force when all of the current 30 parties to the 1990 CFE Treaty have ratified it. So far, two countries have ratified the Agreement—Ukraine and Belarus.⁸⁸ The UK cannot ratify the Agreement without amending the 1991 Act to reflect the new inspection obligations introduced by the Agreement. **Because the Act would give the Government the ability to ratify the Agreement by Statutory Instrument, consideration of the Bill itself needs to be focused on the question of ratification.**

38. In considering the case for ratification, it is important to consider the benefits secured by the Treaty and those in prospect from its adaptation. The CFE Treaty, though a product of the Cold War, has contributed to the continued security of the countries of Europe covered by the Treaty, through the reduction of 59,000 conventional armaments, the regular exchange of detailed information and 3,300 inspections and visits to verify compliance with the Treaty.⁸⁹ As our predecessors noted, although Russia had not kept fully to its obligations under the Treaty, it had reduced its equipment holdings by tens of thousands, significantly reducing its capacity for aggression. Its incomplete compliance, indeed, had been a symptom of how painful it had found the cuts required by the Treaty.⁹⁰

⁸¹ Statement by the OSCE Ministerial Council, 7 December 2002, part (3) paras 2 and 5 (MC(10) JOUR/2, Annex 3) (available on OSCE website: www.osce.org/docs)

⁸² OSCE Ministerial Council papers, *ibid*, MC(10) JOUR/2, Annex 3, Attachment 4

⁸³ Ev 3, para 22

⁸⁴ Ev 3, paras 21–23; Qq 21, 25

⁸⁵ documents provided to the Committee by the OSCE (not printed)

⁸⁶ documents provided to the Committee by the OSCE (not printed)

⁸⁷ *ibid*

⁸⁸ Ev 2, para 9

⁸⁹ Formal Conclusions of the Second Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe, 28 May–1 June 2001 (available on OSCE website: www.osce.org/docs).

⁹⁰ *The Adaptation of the Treaty on Conventional Forces in Europe*, para 24

39. **The Adaptation Agreement brings important further benefits as a Treaty adapted to the post-Cold War world.** It reduces the maximum number of conventional equipments that can be positioned in Europe; particularly tanks, armoured combat vehicles and heavy artillery.⁹¹ Its country-specific equipment ceilings will help prevent destabilising concentrations of forces—in our predecessors’ inquiry the MoD cited the example of Belarus, where the number tanks that could be deployed would be reduced from 10,300 to 2,254 under the Adaptation Agreement.⁹² Its confidence-building nature is attested also by the desire of Balkan and Baltic countries to accede to the adapted Treaty.⁹³ At the same time it accommodates the stationing of allied forces on each other’s territory,⁹⁴ and thereby allows NATO to reinforce its new members.⁹⁵ Indeed, as our predecessor Committee noted, for NATO the facility within the adapted Treaty to be able to deploy up to two heavy armoured divisions outside the Flank Zone was key to providing security guarantees to new members of the Alliance.⁹⁶

40. Given its benefits, our predecessors were in favour of ratification of the Adaptation Agreement, but they also agreed with the Government’s position at that time that this should be conditional on Russia’s compliance with the agreed ceilings and their bilateral agreements with Georgia and Moldova.⁹⁷ Russia is now meeting the obligations which it would have under the Adaptation Agreement, in terms of its equipment held in the Flank Zone. As our witnesses told us, “the remaining issue [on ratification] is the outstanding commitments to Moldova and Georgia”.⁹⁸ Baroness Symons summed up the UK position as follows—

...The principle on which Her Majesty’s Government are operating is one of host nation consent. The views of Georgia and Moldova will be of key importance in deciding whether the conditions for ratification are in place.⁹⁹

41. The prognosis is improving in regard to Moldova, but for the moment there are no signs that the conditions laid down at Istanbul will satisfy such conditions of ‘consent’ to Georgia’s satisfaction. While the signatories of the CFE Treaty will have to make their own judgements, this is primarily a test for these two countries to assess. As with any of the parties to the Treaty, they can determine the fate of the Adaptation Agreement because it only comes into force when ratified by all states. Our witnesses told us that “once we reach the judgement that the Istanbul commitments have been met, we want to be in a position to ratify as quickly as possible”.¹⁰⁰ We detected from our witnesses, however, some potential flexibility in how that judgement might be reached—

The position is that we would like to see [Russia’s] commitments [towards Georgia and Moldova] fulfilled in full, as agreed as Istanbul in 1999. The basis for that is the principle of host nation consent ... Should there come a time when Russia and the two states concerned, Georgia and Moldova, can come to an agreement which respects that principle but perhaps is not to the letter of the commitments agreed at Istanbul, we would consider favourable ratification in that situation. It is because we cannot

⁹¹ *The Adaptation of the Treaty on Conventional Forces in Europe*, Figure 1 (page vi)

⁹² *The Adaptation of the Treaty on Conventional Forces in Europe* (Ev 21, para 6(b))

⁹³ Ev 2, para 12

⁹⁴ *The Adaptation of the Treaty on Conventional Forces in Europe*, paras 31, 53

⁹⁵ *ibid*, para 53

⁹⁶ *ibid*, para 53

⁹⁷ *ibid*, paras 56-57

⁹⁸ Q 28

⁹⁹ HL Deb 7 January 2003, col 896

¹⁰⁰ Q 35

envisage exactly what those circumstances might be that we could not set out precisely what would trigger ratification.¹⁰¹

The UK and its NATO partners need not be idle spectators in this. They have to consider whether they should proceed to ratification when they judge that the Istanbul commitments have been effectively met, not least in order to encourage Georgia and Moldova to take a constructive and flexible approach to their own ratification. Georgia and Moldova's responsibilities need to be made clear to them, not needlessly to hinder the adaptation of the CFE Treaty. It should be made clear that the benefits of the Adaptation Agreement will not be left on one side indefinitely; benefits which for most state parties outweigh those of settling Georgia's and Moldova's separatist disputes.

42. **Russia has the pivotal role, however, in bringing about conditions that could encourage Georgia and Moldova to ratify the Agreement (or at least to signal their 'consent' for others doing so). The UK and the other state parties should encourage Russia to find the wherewithal to provide sufficient security to allow an inspection of its base at Gudauta in Georgia, for example, and should maintain pressure on Moldova and the Transdniestrian authorities to reach a settlement that would allow the train shipments needed to reduce Russia's presence at its base in Colbasna. At the same time, now that Russia's flank zone holdings appear to be at acceptable levels, care will be needed not to allow the differences between Russia and its two neighbours to hold the Adaptation Agreement hostage. Accordingly, with the provisos on continued opportunities for Parliamentary scrutiny which we set out below, we recommend that the House should pass this Bill, not least to give a clear message that the UK sees the conditions for ratification now beginning to fall into place.**

Further parliamentary scrutiny

43. If the conditions for ratification are not yet quite present, however, enacting the Bill may prevent the House considering the question of ratification at an appropriate time, particularly if the UK does not ratify the Agreement for some time yet. Once enacted, Clause 3 of the current Bill will give Ministers the ability to ratify the treaty "when the time is right",¹⁰² by a Statutory Instrument subject to no further parliamentary proceedings.¹⁰³ This contrasts with the provision in Clause 2 of the Bill, which allows any future further amendments to the CFE Treaty to be implemented by secondary legislation (Order in Council) *but subject to affirmative procedure*. Indeed, amendments to this part of the Bill debated in Committee in the Lords were withdrawn after peers noted the acceptance by the Delegated Powers and Regulatory Reform Committee, which was based in part on such powers being subject to affirmative procedure.¹⁰⁴

44. The previous Committee signaled its intention to examine the Adaptation Agreement, which it covered in its Twelfth Report of 1999-2000, by tabling an Early Day Motion under the 'Ponsonby Rule'. Although not set down as a formal code, the Ponsonby Rule is intended to give the House an opportunity to consider a signed treaty or other legally binding commitment before it is ratified, with the Government giving the House 21 days to indicate that it wishes to consider it. The Procedure Committee examined the Parliamentary scrutiny of treaties in 2000,¹⁰⁵ when they were told by the FCO that the Ponsonby Rule would apply to Statutory Instruments (even those subject to the silent

¹⁰¹ Q 49

¹⁰² see 'Further Explanatory Memorandum' accompanying the Bill, para 2

¹⁰³ Q 38

¹⁰⁴ Select Committee on Delegated Powers and Regulatory Reform, First Report of Session 2002-03, HL 9, paras 14-21

¹⁰⁵ Procedure Committee, Second Report of Session 1999-2000, *Parliamentary Scrutiny of Treaties*, HC 210

procedure) that amended international agreements.¹⁰⁶ As the Statutory Instrument that would be made under the prospective new Arms Control and Disarmament (Inspections) Act would ratify an agreement *already made*, it is unclear whether the Rule would on its own give the House sufficient notice to be able to register its interest beforehand. **Passing the Bill would allow timely UK ratification of the Adapted Treaty once that is appropriate. We call upon the Government, nevertheless, to give a specific undertaking in the Second Reading debate on the Bill to notify the House at least 21 days in advance of its intention to proceed to ratification, to allow a re-examination of the issues at the time that that decision is taken, in its contemporary context.**

¹⁰⁶ *Parliamentary Scrutiny of Treaties* (Ev 27, para 10)

LIST OF CONCLUSIONS AND RECOMMENDATIONS

- (a) The Arms Control and Disarmament (Inspections) Bill amends the military inspection regime of the 1990 Conventional Forces in Europe Treaty, by providing access rights for a foreign inspection team undertaking any of three types of inspection. The 1990 Treaty already provides for one type ('Section VII' inspections), however, and so for these the current Bill appears to remedy an omission (or at least a lack of far-sightedness) in the 1991 Act (paragraph 13).
- (b) Whatever the prescribed liability to inspections in the UK, in aggregate terms the real burden of inspections for private owners and contractors has so far been much less significant, and particularly so for those outside military bases. And where the main burden of such inspections has actually fallen, on MoD 'declared sites', it seems unlikely that the position for private operators will be significantly different after the Adaptation Agreement is implemented than before (paragraph 18).
- (c) To date, there have been no reports of any refusal of access to civilian owned or operated facilities, which is perhaps not surprising given the so far limited number of (Section VIII) 'challenge inspections' (which must not cover MoD sites) and the restrictions conveyed in the guidance on inspections in the Protocol. If the number of such Section VIII inspections remains low, and (as we anticipate) the newly introduced 'Section IX' inspections are not triggered, it might reasonably be expected that the demands placed on individual private owners, such as they are, will not be significantly increased by the enactment of the Bill (paragraph 21).
- (d) The Adaptation Agreement brings important further benefits as a Treaty adapted to the post-Cold War world (paragraph 39).
- (e) Because the Act would give the Government the ability to ratify the Agreement by Statutory Instrument, consideration of the Bill itself needs to be focused on the question of ratification (paragraph 37).
- (f) We welcome Russia's compliance with its Adaptation Agreement commitments in the Flank Zone (which includes Chechnya). On that particular test, UK ratification need not be delayed (paragraph 26).
- (g) The UK and its NATO partners have to consider whether they should proceed to ratification when they judge that the Istanbul commitments (including Russia's commitment to withdraw its forces from Georgia and Moldova) have been effectively met, not least in order to encourage Georgia and Moldova to take a constructive and flexible approach to their own ratification. Georgia and Moldova's responsibilities need to be made clear to them, not needlessly to hinder the adaptation of the CFE Treaty. It should be made clear that the benefits of the Adaptation Agreement will not be left on one side indefinitely; benefits which for most state parties outweigh those of settling Georgia's and Moldova's separatist disputes (paragraph 41).
- (h) Russia has the pivotal role, however, in bringing about conditions that could encourage Georgia and Moldova to ratify the Agreement (or at least to signal their 'consent' for others doing so). The UK and the other state parties should encourage Russia to find the wherewithal to provide sufficient security to allow an inspection of its base at Gudauta in Georgia, for example, and should maintain pressure on Moldova and the Transdniestrian authorities to reach a settlement that would allow the train shipments needed to reduce Russia's presence at its base in Colbasna. At the same time, now that Russia's flank zone holdings appear to be at acceptable

levels, care will be needed not to allow the differences between Russia and its two neighbours to hold the Adaptation Agreement hostage (paragraph 42).

- (i) We recommend that the House should pass this Bill, not least to give a clear message that the UK sees the conditions for ratification now beginning to fall into place. It would allow timely UK ratification once that is appropriate. But the Government should also give a specific undertaking in the Second Reading debate on the Bill to notify the House at least 21 days in advance of its intention to proceed to ratification, to allow a re-examination of the issues at the time that that decision is taken, in its contemporary context (paragraphs 42, 44).

PROCEEDINGS OF THE COMMITTEE

TUESDAY 8 APRIL 2003

Mr Bruce George, in the Chair

Mr James Cran
Mr Mike Hancock

Syd Rapson
Rachel Squire

The Committee deliberated.

Draft Report (The Arms Control and Disarmament (Inspections) Bill), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 44 read and agreed to.

Annex [Summary] agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That an Appendix to the Minutes of Evidence taken before the Committee be reported to the House.

The Committee further deliberated.

[Adjourned till Wednesday 7 May at half-past Two o'clock.]

LIST OF WITNESSES

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Dr Bryan Wells, Director of Proliferation and Arms Control Secretariat and Colonel Philip Rouse, Assistant Director of Proliferation and Arms Control Secretariat, Ministry of Defence and Ms Kate Smith, Deputy Head of Security Policy Department, Foreign and Commonwealth Office	9
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DEFENCE COMMITTEE REPORTS IN THE CURRENT PARLIAMENT**Session 2001–02**

FIRST REPORT: *Ministry of Defence Police: Changes in jurisdiction proposed under the Anti-terrorism, Crime and Security Bill 2001*, HC 382, published on 6 December 2001

SECOND REPORT: *The Threat from Terrorism*, HC 348–I, published on 18 December 2001.

THIRD REPORT: *The Ministry of Defence Reviews of Armed Forces' Pension and Compensation Arrangements*, HC 666, published on 9 May 2002.

FOURTH REPORT: *Major Procurement Projects*, HC 779, published on 10 July 2002

FIFTH REPORT: *The Government's Annual Report on Strategic Export Controls for 2000, Licensing Policy and Prior Parliamentary Scrutiny*, HC 718, published on 19 July 2002

SIXTH REPORT, *Defence and Security in the UK*, HC 518, published on 24 July 2002

SEVENTH REPORT, *The Future of NATO*, HC 914, published on 31 July 2002

Session 2002–03

FIRST REPORT: *Missile Defence*, HC 290, published on 29 January 2003

SECOND REPORT: *Annual Report for 2002*, published 3 February 2003

MINUTES OF EVIDENCE

TAKEN BEFORE THE DEFENCE COMMITTEE

THURSDAY 27 FEBRUARY 2003

Members present:

Mr Bruce George, in the Chair

Mr James Cran
Jim Knight

Rachel Squire

Joint Memorandum submitted by the Ministry of Defence and the Foreign and Commonwealth Office

INTRODUCTION

1. The Committee requested a memorandum that updates some of the material that was available to the previous Committee when it examined the Adaptation of the Conventional Armed Forces in Europe (CFE) Treaty in 2000, as well as information on the likely implications of the Bill (and ratification of the Adaptation Agreement) for verification inspections.

2. This memorandum has been prepared jointly by the Ministry of Defence and the Foreign and Commonwealth Office.

BACKGROUND

3. The Secretary of State for Foreign and Commonwealth Affairs has responsibility for the policy relating to the Agreement on Adaptation of the Conventional Armed Forces in Europe Treaty. The Secretary of State for Foreign and Commonwealth Affairs also has overall responsibility for the conclusion and implementation of treaty obligations and responsibility for their application, as appropriate, in Overseas Territories. The Secretary of State for Defence has responsibility for ensuring that the provisions of the Agreement on the Adaptation of the CFE Treaty are implemented in relation to the UK's armed forces.

4. The Agreement on the Adaptation of the Treaty on Conventional Armed Forces in Europe (Adapted Treaty), signed at the OSCE summit in Istanbul in November 1999, updates the 1990 CFE Treaty to reflect changes in the European security structure following the end of the Cold War. The CFE Treaty was signed by NATO and Warsaw Pact member States and limits holdings in five categories of conventional armaments and equipment¹ on an Eastern bloc to Western bloc basis. The Adapted Treaty limits the same categories of weapon, but replaces the bloc to bloc limits with national and territorial ceilings.

5. The 1991 Arms Control and Disarmament (Inspections) Act implemented certain provisions of the CFE Treaty and allowed the UK to ratify it. The Arms Control and Disarmament (Inspections) Bill amends the 1991 Act to take into account the new provisions of the Adapted Treaty. It is a short technical bill with three clauses:

- (a) Clause 1 (Schedule 1) provides for the additional rights of entry to private land, which are needed because of the enhanced inspection regime in the Adapted Treaty, and makes various consequential amendments to refer to the Adapted Treaty not the CFE Treaty.
- (b) Clause 2 allows for any further amendments concerning inspections under the CFE regime to be made by Order of Council.
- (c) Clause 3 states that the Act will come into force on such a day as the Secretary of State may appoint. This is because the conditions under which the UK would be able to ratify are not yet in place.

6. The current CFE Treaty includes two types of inspections: the Section VII (Declared site) inspection and the Section VIII inspection (challenge inspection into a specified area). The Adapted Treaty introduces a new type of inspection; the Section IX (designated area) inspection which may take place if a State Party gives notification that its territorial ceiling for weapons limited by the Treaty is temporarily exceeded (for example by a military exercise).

7. The Arms Control Bill allows for the additional rights of entry to private land that are necessary for international inspectors to carry out inspections in the UK. The 1991 Act provided for rights of entry to private land to allow inspectors to carry out challenge inspections to a specified area (Section VIII). But additional rights of entry are required under the Adapted Treaty to allow inspectors to carry out inspections of declared sites (Section VII) and the inspection of a designated area (Section IX). Section VII inspections were part of the 1990 CFE Treaty but the decision was taken when drafting the 1991 Act that additional rights of entry were not required for this type of inspection because the sites in question were wholly or mainly owned by the Ministry of Defence. Since then, however, the involvement of private companies in the

¹ Tanks, armoured combat vehicles, artillery, combat aircraft, attack helicopters.

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[Continued

operation of parts of military sites has increased to the extent that additional rights of entry are now necessary. It would be rare for a Section IX inspection (of a designated area) to take place in the UK, but if it did, the area in question would be a minimum of 1,000 sq km and would not necessarily be limited to military bases. Additional rights of entry are therefore required. We are content that granting of these additional rights of entry is compatible with the European Convention on Human Rights.

8. The general procedures for CFE inspections (undertaken by one State party on the forces of another) are largely unchanged in the Adapted Treaty. The Adapted Treaty and its enhanced inspection regime can come into force only when it has been ratified by all States Parties. Up to that point, the 1990 CFE Treaty and the inspection regime laid out under it remains in force.

Which States Parties have ratified the Adapted Treaty, or set out a clear timetable for doing so?

9. Only two States Parties (Ukraine and Belarus) out of the 30 CFE signatories have ratified the Adapted Treaty. We are not aware that any other States Parties have plans to do so.

10. Russia has introduced legislation into the Duma and is currently at Committee stage. However there are no signs that Russia will ratify in the near future.

11. As the CFE Treaty was signed on a bloc to bloc basis between NATO and the Warsaw Pact, NATO has taken a united position on CFE issues. NATO allies have told Russia that they consider adherence to the Flank limits², and to the political commitments to Moldova and Georgia³, to be important steps on the road to ratification. Allies now consider Russia to be in compliance in the Flank, although continued compliance will be carefully monitored. But Russia has not fulfilled its commitments to Georgia and Moldova in full. At the Prague summit in November 2002, Allies urged "swift fulfilment of the outstanding Istanbul commitments on Georgia and Moldova, which will create the conditions for Allies and others States Parties to move forward on ratification of the Adapted CFE Treaty".

What states outside the Treaty have indicated a desire to be covered by the terms of the Adapted Treaty?

12. Croatia has expressed an interest in joining CFE. The four new NATO invitees who are not part of the current CFE Treaty (Slovenia, Estonia, Latvia and Lithuania) have indicated their intention to request accession to the Adapted Treaty, upon its entry into force. The Adapted Treaty will enter into force when all existing States Parties have ratified it. Only at this point will new states be able to apply to join. After this, existing members and states wishing to join would need to agree national and territorial ceilings for Treaty Limited Equipment (TLE). We hope that when the Adapted Treaty has come into force, all countries in the European area will become parties to it.

What is the latest position on Russia's compliance with terms of the CFE Treaty and with its undertakings made to Georgia and Moldova at the Istanbul OSCE summit in November 1999? This should include details of the level of Russia's forces in Georgia and Moldova, and the level of Russian treaty-limited equipment against its Flank zone limits (including an updated version of the data in Table 2 of the July 2000 report).

13. As part of the Adapted Treaty, signed at Istanbul in 1999, Russia committed itself to reduce its holdings of conventional armaments and equipment in the Flank region, and, in addition, made political commitments to Georgia and Moldova (appendices to the Final Act). Russia can be said to be in compliance with its commitments in the Flank, but has not fulfilled its commitments to Georgia and Moldova in full.

COMMITMENTS TO GEORGIA

14. At Istanbul in 1999 Russia made the following commitments to Georgia:

- (a) By 31 December 2000, to reduce the levels of TLE in Georgia to 153 battle tanks (BT), 241 armoured combat vehicles (ACV) and 140 artillery systems.
- (b) By December 2000, to withdraw or dispose of all TLE held at the military bases in Vaziani and Gudauta and the repair facility at Tblisi.
- (c) By July 2001, to disband and withdraw from the Russian bases at Vaziani and Gudauta and resolve their future utilisation.
- (d) During 2000 to complete negotiations regarding the duration and modalities of the functioning of the Russian bases at Batumi and Akhalkalaki and the Russian military facilities within the territory of Georgia.

² See Paragraph 25–35.

³ See Paragraph 14–24.

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[Continued

PROGRESS ON COMMITMENTS TO GEORGIA

15. Russia reduced the levels of TLE in Georgia to agreed levels by December 2000. As of 1 January 2003, Russia had 82 BT, 216 ACVs and 140 artillery systems. These forces come under the command of the Group of Russian Forces in Transcaucasus.

16. Russia's January 2001 data showed no TLE at Vaziani, Gudauta and the repair facility at Tblisi. These sites have been removed as declared sites from subsequent data exchanges. However, while it has been possible to confirm the removal of TLE from Vaziani and Tblisi, verification of Gudauta has proved problematic. Gudauta is located within the separatist area of Abkhazia and the authorities in Georgia have said they are unable to guarantee the safety of inspecting teams or to deliver them to Gudauta. An OSCE team visited Gudauta in June 2002. But this inspection was short and was not carried out according to either CFE or Vienna Document 99 verification criteria. Georgia has insisted that only an inspection carried out under these procedures will suffice. A UK inspection team attempted a CFE inspection in June 2001 just before the official closure of the declared site in Gudauta, but was unable to get there because Georgia was unable to guarantee their safety. Moreover, while insisting that they would welcome any inspecting team, Russia argued that the security outside the base is the responsibility of the host government, and refused to negotiate the security of the inspecting team with the Abkhaz. Consequently, the inspection had to be aborted.

17. Russia has not listed either Vaziani or Gudauta in its CFE data after January 2001. But while the Vaziani base was handed over to the Georgian military on 1 July 2001, that at Gudauta remains occupied by Russian CIS peacekeeping and security troops and has not been handed over to Georgia. As already stated, inspection at Gudauta has proved difficult. The legal transfer of the base in Gudauta and the status of the infrastructure remain subject to negotiation. Russia and Georgia have not been able to agree modalities.

18. Negotiations on the duration and modalities of the functioning of the Russian bases at Batumi and Akhalkalaki have not been resolved. Russia claims it would take 10 years to remove all its remaining forces from Georgia and hand over the facilities to the Georgian authorities. Georgia contends that three years is a reasonable time scale. There were reports in January that some progress had been made on smaller Russian facilities in Georgia, but expert talks expected at the end of January did not take place and no future talks have yet been announced.

POLITICAL COMMITMENTS TO MOLDOVA

19. At Istanbul in 1999 Russia made the following commitments to Moldova:

- (a) By 31 December 2001, to withdraw and/or destroy Russian conventional armaments and TLE in Moldova.
- (b) By the end of 2002, to withdraw all forces from Moldova.

PROGRESS ON COMMITMENTS TO MOLDOVA

20. Russia completed the withdrawal or destruction of all TLE (108 BTs, 131 ACVs, 125 artillery pieces) by November 2001.

21. However a stockpile of ammunition and equipment (approximately 42,000 tonnes) remains at Colbasna, in the separatist area of Transdnestr and Russian forces remain in Transdnestr to guard this stockpile. Three trainloads of ammunition were removed from Transdnestr in late 2001 but then the Transdnestrian authorities closed the border and refused to allow further departures. The presence of the ammunition stockpile is a factor in the Transdnestrian leader Smirnov's negotiations with the Moldovan government. Negotiations between Smirnov and Russia to remove the ammunition eventually culminated in an agreement that trains would be allowed to leave in exchange for cancellation of a gas debt reported worth around US \$100 million.

22. However although train departures started towards the end of 2002, the 31 December deadline for withdrawal was not met. At the December 2002 OSCE Ministerial at Porto, there was some acknowledgement that Smirnov's position was making it difficult for Russia to fulfil its commitment to Moldova. Russia's commitment to the withdrawal of its forces as early as possible and its intention to do so by December 2003, providing necessary conditions are in place, was welcomed.

23. The OSCE have assessed that a further 102 trainloads (75 for ammunition and 27 for other equipment) would be required to complete withdrawal. Three trainloads have departed so far this year but these have contained only equipment and no ammunition. However, the equivalent amount of equipment of a non-military nature (eg engineering vehicles and field kitchens) is reportedly being given to the Transdnestrians. It is possible that Russia will destroy some of the ammunition in situ.

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[Continued

EQUIPMENT LEVELS IN MOLDOVA

24. While Russia no longer declares any TLE in Moldova and therefore has no declared sites on Moldovan territory, it does declare equipment not limited by the Treaty and personnel at four locations within Tiraspol in Transdnestr under the command of the Operational Group of Russian Forces Dniestr Region Moldova.

The current force levels, based on Russian 2003 CFE Data are as follows:

<i>Personnel</i>	<i>ACV look-alikes (not limited)</i>	<i>Helicopters (not limited)</i>
1,777	68	7

RUSSIAN COMPLIANCE IN THE FLANKS

25. In the CFE Treaty, separate limits for the areas bordering NATO states in the Northern and Southern regions of the former Soviet Union were included in the overall equipment levels. These areas are known as the Flank. The original Flank Zone is set out in Article V of the CFE Treaty. At the First Review Conference held in Vienna in May 1996 the Flank was revised and part of the original Flank Zone removed. The resulting Revised Flank, including the areas removed, is shown on the map at Annex A.

26. The first CFE review conference also led to a revision of Russia's Flank limits to those shown in the table below. These Revised Flank limits include Russian forces stationed in Armenia, Georgia and Moldova:

Russian Revised Flank Limits

	<i>BT</i>	<i>ACV</i>	<i>Artillery</i>
In Active Units	700	580	1,280
In Designated Permanent Storage Sites (DPSS)	600	800	400
Total	1,300	1,380	1,680

27. Under the Adapted CFE Treaty, the Flank limits apply only to Russian territory and the limits for ACVs were significantly increased. Although the limits for tanks and artillery do not change, the Designated Permanent Storage Sites⁴ (DPSS) are converted to "active" units, thus increasing the "active" ceiling as shown below:

Russian Territorial Sub-ceilings (or Adapted Flank limits)

	<i>BT</i>	<i>ACV</i>	<i>Artillery</i>
In Active Units	1,300	2,140	1,680
In Designated Permanent Storage Sites (DPSS)	0	0	0
Total	1,300	2,140	1,680

VERIFICATION OF RUSSIAN FLANK HOLDINGS

28. Since 2000, in addition to the mandatory annual data exchanges⁵, NATO has asked Russia to provide figures for TLE "temporarily located" in the Flank area. ("Temporarily located" TLE is not an additional category either under the current CFE or the Adapted CFE Treaty; NATO offsets these figures against Russia's total Flank limits). However, verification of "temporarily located" TLE has been very difficult because inspections into certain parts of the Flank (specifically Chechnya) have been refused on security grounds. NATO has asked Russia to provide additional information on the origin of such equipment in order, to increase transparency and aid verification. But Russia has refused.

29. At the beginning of 2002, NATO started to follow an inspection programme, which targeted units outside of the Flank known to have had TLE "temporarily located" in the Southern Flank during 2001. Although this was not fully satisfactory as a means of verification, the inspection regime established that Russia was unlikely to have TLE "temporarily located" in the Flank in excess of its total Flank limits.

⁴ DPSS covers equipment held under special CFE storage conditions and was introduced to account for large reserves of equipment held at the end of the Cold War.

⁵ Russia is the only CFE State Party required to issue, in addition to the yearly exchange of data as of 1 January, a further exchange of information in July of each year. This additional exchange covers its Flank holdings only.

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[Continued

TLE DECLARED AS “TEMPORARILY LOCATED” IN THE REVISED AND ADAPTED FLANK

	<i>BT</i>	<i>ACV</i>	<i>Artillery</i>
January 2000	281	1,377	553
January 2001	55	663	193
January 2002	2	185	42
July 2002	2	180	42
January 2003	2	159	41
<i>NATO Assessed figures</i>			
July 2002	2	163	22

“NON-COMBAT CAPABLE” EQUIPMENT

30. In the commentary accompanying its January and July Data exchanges, Russia stated that it held BTs and ACVs at St Petersburg (in Revised and Adapted Flanks) and Kuschchevskaya (removed from the Flank) that were “non-combat capable” and therefore not subject to the Treaty. The definition “non-combat capable” does not appear in the Treaty; and therefore these BT were deemed to be TLE by NATO and accountable towards Russia’s Flank limits.

31. While Russia has not retracted the “non-combat capable” label, it instigated a BT reduction programme so that by July 2002 it had reduced all the “non-combat capable” BT at St Petersburg, in accordance with criteria laid down in the Treaty.

RUSSIAN COMPLIANCE WITH ITS ADAPTED FLANK LIMITS

32. Following Russia’s gradual removal of TLE “temporarily deployed” in the Southern Flank (see above) and the final reduction of 11 BT at ST Petersburg, Allies agreed in January 2003 that Russia was compliant with Adapted Flank limits.

33. However, Russia no longer declares equipment in Designated Permanent Storage Sites (DPSS) but declares all holdings in active units. Therefore Russia exceeds the Revised Flank limits under the current CFE Treaty, but remains within the Adapted CFE ceilings.

34. An updated version of the data provided in Table 2 of the July 2000 report (HC 295, page 28), as requested by the Committee, is provided below:

Russian Holdings Against CFE Flank Limits as at 1 January 2003:

	<i>BT</i>	<i>ACV</i>	<i>Artillery</i>
Current Treaty Limit Total	1,300	1,380	1,680
(in active units and in DPSS)	(700 + 600)	(580 + 800)	(1280 + 400)
Declared Holdings ⁶ (all in active units)	1,293	2,256	1,608
UK MOD Assessment of Holdings (all in active units)	1,163	2,059	1,511
Excess in Declared Holdings	-7	876	-72
Difference between UK MOD Assessment of Holdings and Treaty total limits (in all units)	-137	679	-169

Russian Holdings Against “Adapted Flank” or Territorial Sub-Ceiling Limits as at 1 January 2003:

	<i>BT</i>	<i>ACV</i>	<i>Artillery</i>
Adapted Treaty Limit (all units)	1,300	2,140	1,680
UK MOD Assessment of Holdings	1,234	2,084	1,511
Difference between UK MOD Assessment of Holdings and Treaty total limits	-66	-56	-169

⁶ These figures do not include numbers of equipment removed from the Original Flank that were included in the 2000 figures.

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[Continued

When the previous Committee examined the matter, they were told that Russia had refused six verification inspections (see HC 295, paragraph 39). What has Russia's performance been since then on refusing inspections?

35. The Russian Federation has never refused a verification inspection notified by the UK. But France, Germany and Turkey notified Russia for inspections into the North Caucasus Military District. These inspections were aimed at declared sites in Chechnya and were turned down by Russia on security grounds. This is in line with Treaty provisions as the inspected State is responsible for ensuring the safety of the inspection team (Protocol on Inspection, Section VI, Paragraph 7), which Russia declared they could not provide. Otherwise, Inspections pursuant to Section VII can not be refused.

How many inspections has the UK hosted in the last two years, and what has been the nature/scale of these?

36. The UK has hosted a total of 12 CFE inspections over the last two years. Six have been in the UK (Op REBECCA) and six in Germany (Op SHANDAGAN). The following provides the details of these inspection activities:

<i>Operation</i>	<i>Inspected OOV</i>	<i>Inspecting State Party</i>	<i>Time</i>
REBECCA 1/01	1. RAF Coltishall 2. RAF Lakenheath (US) 3. 100 Regt RA(TA), London	Russian Federation	26-29 Mar 01
REBECCA 2/01	1. DSDC Ashchurch 2. DSDC Donnington	Ukraine	23-27 Apr 01
SHANDAGAN 1/01	1. QRL, Osnabrueck 2. 1 RRF, Celle	Belarus	23-28 Apr 01
SHANDAGAN 2/01	1. QRL, Osnabrueck 2. 21 Engr Regt, Osnabrueck	Russian Federation	25-28 Jun 01
REBECCA 3/01	1. 2 PWRR, Aldershot 2. Welsh Guards, Aldershot 3. SAAVn, Middle Wallop	Russian Federation	02-07 Jul 01
SHANDAGAN 3/01	1. 1 RRF, Celle	Slovak Republic	08-11 Oct 01
REBECCA 1/02	1. RAC Trg Regt, Bovington 2. KRH, Tidworth	Russian Federation	14-18 Jan 02
SHANDAGAN 1/02	1. RDG, Munster 2. 26 Regt RA, Gutersloh 3. 2 RGJ, Paderborn	Russian Federation	24-29 Mar 02
SHANDAGAN 2/02	1. 2 LI, Paderborn	Belarus	17-20 Jun 02
SHANDAGAN 3/02	1. 1 RRW, Paderborn	Ukraine	19-21 Jun 02
REBECCA 2/02	1. RAF Lossiemouth 2. RAF Leuchars 3. 105 Regt RA (V)	Russian Federation	19-23 Aug 02
REBECCA 3/02	1. SAAVn, Middle Wallop 2. HCR, Windsor	Russian Federation	08-12 Dec 02

Under the terms of the Adapted Treaty, how many inspections might the UK be liable to host (of each of the three types under the Agreement)? If different, how many does the UK actually expect to host once the Adapted Treaty is ratified?

37. The number of inspections the UK will have to accept annually under the terms of the Adapted CFE Treaty under Sections VII and VIII is calculated on the basis of the number of Objects of Verification (OOV). Currently the UK declares 119 OOVs. Their breakdown and the resulting annual inspection liability for both the current CFE Treaty and the Adapted Treaty is as follows:

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[Continued

Location	Number of OOVs	Liability under current CFE Treaty		Liability under Adapted CFE Treaty	
		Sect VII	Sect VIII ⁷	Sect VII	Sect VIII ⁷
UK (including Northern Ireland, Cyprus and Gibraltar)	88	13	3	18	4
Germany	31	5	0	6	0
Total	119	18	3	24	4

38. The UK would only have a liability to host an inspection under the new Section IX of the Adapted Treaty if the UK territorial ceiling was temporarily exceeded, for example as a result of a military exercise on the territory of the UK. There is no annual liability for Section IX inspections.

39. Historically, on average, about 45% of the inspection liability in the UK has been taken up. In recent years, all the inspection possibilities on UK stationed forces in Germany are used. As 25% of the inspection liability under the Adapted CFE treaty is at the inspecting State's expense, we assume the number of inspection activities on UK's armed forces will not increase.

How many "declared sites" would there be in the UK for the purposes of possible Section VII inspections? The Committee would welcome an indication of the range of scale and type of sites that might be involved, as well as an indication of how many would encompass private property/land.

40. There are 75 declared sites (DS) on UK territory⁸ and an additional 19 occupied by UK Armed Forces stationed in Germany. All these sites are liable to host Section VII inspections. The breakdown is as follows:

Serial	Location	Army Sites	RAF Sites	Total Sites
1.	UK Mainland	56	14	70
2	Northern Ireland	1	1	2
3	Cyprus	2	0	2
4	Gibraltar	1	0	1
5	Total UK	60	15	75
6	Germany	19	0	19
7	Total	79	15	94

41. The term "declared site" (DS) means a facility or precisely delineated geographic location which contains one or more "objects of verification" (OOV). Regularly, OOVs are the units holding TLE within an airfield or barracks. The breakdown of single/multiple OOV sites of the 94 DS is as follows:

Serial	Location	Number of OOVs in a DS					Total Sites
		1	2	3	4	6	
1	UK Mainland	63	4	2		1	70
2	Northern Ireland	2					2
3	Cyprus	1	1				2
4	Gibraltar	1					1
5	Total UK	67	5	2		1	75
6	Germany	13	3	1	2		19
7	Total	80	8	3	2	1	94

42. All Declared Sites are on MoD land but additional rights of entry are required to these sites because some have civilian organisations in them where a contractor leases or hires an area or building. Ownership of this land remains with MoD but entry may be required to some of these privately leased premises. During CFE Section VII inspections, all doors to buildings, portacabins, containers etc wider than 2 metres must be able to be opened to allow the inspection team to verify that they do not contain Treaty limited equipment.

⁷ The liability to host inspections under Section VIII is included in the overall liability under Section VII inspections for both the current and the Adapted CFE Treaty.

⁸ Under the provisions of the CFE Treaty this includes Gibraltar and the Sovereign Base Areas in Cyprus.

Revised CFE Flank Zone with Current and Adapted Treaty Limits



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[Continued

Examination of Witnesses

DR BRYAN WELLS, Director of Proliferation and Arms Control Secretariat, MoD, COLONEL PHILIP ROUSE, Assistant Director of Proliferation and Arms Control Secretariat, MoD, and Ms KATE SMITH, Deputy Head of Security Policy Department, FCO, examined.

Chairman: Thank you for coming. You may wonder why. The explanation is, as we are a legislature shorn of most powers bestowed upon other committees, we have no role formally in the legislative process. To substitute for this appalling inadequacy in our rules, we have decided over recent years to scrutinise legislation whether we have any power or not. This is an important piece of legislation, particularly interesting for me as I am president of the OSCE Parliamentary Assembly and one of the four people in the country who has ever heard of Gadauta airbase, upon which you will have very detailed questions. This is significant for us, for the OSCE and for relations with Russia and Georgia, etc. Thank you for giving us your time and expertise.

Jim Knight

1. When the adaptation agreement was signed in 1999, the Government made it clear that it would not ratify it until Russia complied with its treaty obligations. Your memorandum, for which we thank you, indicated that Russia still has too many armoured combat vehicles in the flank zone. Have they indicated if or when they might bring these into line with their obligations under the CFE Treaty, as it currently stands?

(Dr Wells) The verification of the numbers in the flank zones is something that NATO has looked at very carefully. Since 2000, it has been able to undertake verification in the flanks. The position in Chechnya is difficult because it has not been possible to undertake proper verification there. There are uncertainties in the numbers there but taking the flanks in the round NATO has come to the judgment that Russia is in compliance with the flank limits under the adapted treaty and we are now looking to move forward. We are trying to push on compliance on the Istanbul commitment so that all states' parties can move ahead and ratify. That is why NATO has attached importance to compliance by Russia of the new limits in the flanks.

2. You said they were satisfied with the adapted treaty but you would agree that it has too many in the flank zones for the existing CFE Treaty?

(Dr Wells) That is the position, yes.

3. Is it the Government's intention that the UK will ratify the adaptation agreement while Russia still breaches its obligation under the existing treaty?

(Dr Wells) Because we wish to move forward.

4. Is that a relaxation of the UK policy on ratification as announced immediately after it was signed in 1999?

(Dr Wells) With respect, it is not. The UK has adopted along with NATO an alliance-wide position on ratification. We believe it is important to comply with the new limits that were agreed at Istanbul and with the political statements that were made in the final Act at Istanbul. All NATO allies are now in compliance with the adapted CFE limits and with the

statements in the final Act. We believe it is right that we should adopt the same criteria for other Member States. Consequently, NATO have been able to make this agreement in January this year.

5. It is a perfectly honourable position to say that you want to move forward and therefore you are relaxing your position. I just want to make it clear that you are relaxing your position from where it was in 1999.

(Dr Wells) We have not altered our position. The Foreign Secretary made clear when he signed the Istanbul commitment that the timing of ratification depended upon the level of all parties' compliance with the limits that had been agreed at Istanbul and that remains the position.

6. Has Russia continued to refuse inspections of its forces? You talked about verification but, as I understand it, they are obliged under the CFE Treaty to allow inspections. Are they allowing those to go ahead or are they refusing them?

(Dr Wells) There are examples where inspections have been refused. France, Germany and Turkey have all requested inspections in Chechnya and those have been refused on security grounds.

Chairman

7. From the agreement in 1991 in Istanbul, does one distinguish between tanks held by the army and tanks held by interior forces or the militia? Is a tank a tank, whoever drives it and owns it?

(Dr Wells) The tank is defined as treaty limited equipment irrespective of ownership.

(Colonel Rouse) In Russia's data exchange, they produce details of the number of tanks they have but they also provide supplementary information on the number of tanks and other treaty limited equipment in, for example, naval infantry and coastal defence forces, so they supplement their mandatory data exchange requirements with additional information.

8. You said that they refused access for inspections on security grounds. How does the treaty or the Istanbul agreement describe security grounds?

(Dr Wells) There are a number of provisions laid out in the treaty that provide states to refuse inspections, by exception. One of them is *force majeure*. If the host state feels it is not possible to undertake an inspection for circumstances outside its own control, security could be one of those or indeed in some parts of Europe adverse weather might prevent an inspection team getting to a site. There are other provisions. For example, the operational security of deployed forces or inspections which might touch on particularly sensitive sites. These are provisions that are set out in the treaty that can allow a state to refuse an inspection. As we all recognise, the fundamental principle of this treaty is transparency between all Member States and

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DR BRYAN WELLS, COLONEL PHILIP ROUSE
AND MS KATE SMITH

[Continued

[Chairman Cont]

consequently discretion is exercised by all states when refusing inspections and they are very much the exception.

9. How many times can you recall when anybody has declined an inspection?

(*Dr Wells*) The UK has never refused an inspection.

10. We do not have very many tanks, do we, to inspect? They could do that in half a morning, I would have thought.

(*Dr Wells*) Last year, Ukraine did request an inspection which exceeded the quota so we judged that that was not a legitimate request. Russia has refused inspections six times since 1991.

(*Colonel Rouse*) Plus the three in Chechnya.

11. When you go back to the office at some stage, could you check your figures to make sure that they are right?

(*Dr Wells*) Of course.

12. I was at the Istanbul Summit and I can recall waiting a number of hours for the comunique to be issued because Georgia were playing quite a strong game and wished for concessions. At that summit, as I recall, there were obligations imposed upon Russia to withdraw their forces from a number of air force bases in what I believe legally is Georgia and one in Abkhazia. Can you tell me what you believe the present situation is about the status of the Russian agreement to withdraw? Are the OSCE, the Foreign Office or any other parties involved satisfied that Russia has adhered to the obligations imposed upon it?

(*Dr Wells*) I will start by outlining the position on the Istanbul commitments made by Russia in respect of Georgia in the round. There were four commitments that Russia made to Georgia. The first was to reduce treaty limited equipment to specified levels by December 2000. That has been done. The second commitment was to withdraw or dispose of treaty limited equipment at the bases in Vaziani, Gudauta and also the repair facility at Tblisi by December 2000. Russia had declared that it had complied with this and this has been verified in the case of Vaziani and Tblisi but it has not been possible to verify that at Gudauta.

13. Why?

(*Ms Smith*) The problem with the verification of Gudauta is essentially to do with the security inspection teams. Neither Georgia nor Russia has been able to guarantee the security of inspection teams to Gudauta so there has not been a possibility for an inspection that can verify that.

14. I can understand why Georgia cannot guarantee inspection in Abkhazia but I am a little intrigued why Russia cannot because Russia has exceptionally good relations with Abkhazia, including the issuing it is alleged, of Russian passports to citizens of Georgia who reside in Abkhazia. Let me rephrase that: to people living in Abkhazia who do not accept they are part of Georgia. Why cannot Russia guarantee that an inspection team should be allowed on those air bases to ascertain whether they are compliant with that Istanbul agreement? People could be helicoptered in.

They would not need to be in Abkhazia other than the air base. Is this a plausible explanation or is this just an excuse that they are giving?

(*Ms Smith*) There are security concerns that we all share about going into that area but the fact remains that Russia has not been able to give that commitment.

15. What have we said about it? Have we accepted that explanation?

(*Ms Smith*) I think we have had to accept it but we continue to talk to the Russians about ways to go forward on these problems at the remaining bases and we will continue to raise these issues in bilateral dialogue with them.

Chairman: That is a good answer from your perspective but not the complete answer.

Jim Knight

16. What section are those inspections under in the Act?

(*Colonel Rouse*) That would be under section VII of the Act, a "declared" site inspection.

17. The understanding I have is that section VII inspections cannot be refused and section VIII can be refused if there are *force majeure*, poor weather or other practical problems for the host. Are they refusing them or are you taking a balance of risk judgment on their advice?

(*Ms Smith*) My understanding is that they refuse to guarantee the safety of inspectors and therefore it has not been possible.

(*Colonel Rouse*) The security of the inspecting teams applies equally to section VIII and to section VII. The inspected state could deny an inspection on security grounds for section VII as well as section VIII.

18. Does that apply to all sections?

(*Colonel Rouse*) I believe so, yes.

Chairman

19. How do we see the status of Abkhazia? Do they have any rights as a state to forbid inspections or to have any influence on OSCE decisions or agreements?

(*Ms Smith*) They are not a state party to OSCE or to the treaty, so they would not have any status.

(*Dr Wells*) We have looked at the first two of the commitments that Russia made to Georgia at Istanbul. The third commitment concerns Vaziani and Gudauta and that was the commitment to disband or withdraw from Vaziani and Gudauta and resolve the issue of the further use of those bases by July 2001. Vaziani has been handed over to the Georgian authorities on time, but the transfer and status of Gudauta are still under negotiation. That commitment has not been fulfilled. The final commitment was that during the year 2000 Russia would complete negotiations on the duration of modalities of the use of Batumi and Akhalkalaki bases and the military facilities at Georgia and this commitment also has not yet been resolved.

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DR BRYAN WELLS, COLONEL PHILIP ROUSE
AND MS KATE SMITH

[Continued

[Chairman Cont]

20. Could you hazard a guess as to why Russia really is being difficult with Gudauta? I hear arguments from a variety of sides. One is they simply do not want to give up this facility for one reason or another. Therefore, they are using what methodologies they wish in order to remain. How do you perceive the Russian intentions on that air base?

(*Ms Smith*) We see it very much in the context of the overall nexus of bilateral relations between Russia and Georgia. There are a lot of outstanding problems between the two countries. The issues of the bases have become wrapped up in all of those issues and are seen as bargaining chips on both sides. That has complicated the progress towards fulfilment of the commitments.

21. We must know what aircraft are there. I would be amazed if satellite imagery is not able to tell at least one of the participants of NATO and the OSCE exactly how many and what type of aircraft are operating from Gudauta. I would not expect you to comment on that but it does seem to me a pretty implausible argument that they are using of security as the main pretext for avoiding any inspections. Moving on to Moldova, what can you do to avoid a ratification of the adaptation agreement being held hostage by local differences between Russia and its neighbours in Moldova?

(*Dr Wells*) I will start again by outlining what the Istanbul commitments are. Russia made two commitments to Moldova in the final Act at Istanbul. The first was to withdraw or destroy Russian conventional armaments and treaty limited equipment by December 2001. The destruction and withdrawal of the treaty limited equipment was completed in November 2001 so that has been done, but there remains a stockpile of ammunition and other equipment at Colbasna in Transdniestr. The second commitment was to withdraw all forces by the end of 2002. That deadline has passed and the withdrawal has not been completed but Russia has now committed to that withdrawal by the end of 2003.

22. What forces do they have there?

(*Colonel Rouse*) They have, I believe, slightly in excess of 2,000 infantry guarding the stockpile of ammunition and equipment.

23. Any heavy equipment?

(*Colonel Rouse*) No.

24. Any heavy military equipment?

(*Colonel Rouse*) Engineering type equipment but no treaty limited equipment.

25. What is the government of Moldova saying about this in terms of Transdniestr and where that fits in?

(*Ms Smith*) The Russian troops and ammunition that remain in Transdniestr are one of the principal problems in the relationship between Moldova and Russia on the whole issue of Transdniestr and it is the Moldovan government's position that Russia must withdraw them. At the OSCE summit in Porto in December last year, the OSCE agreed to give Russia an extension to the end of this year, which Russia agreed to subject to the right conditions being there for them to complete the withdrawal.

26. Are you in a position to comment more politically, to give us a perspective of the situation between Russia, Transdniestr and Moldova? Can you explain more fully why it might affect what we are talking about? Can you see any resolution of the problems? What are we doing by way of trying to minimise the problems or bring about some sort of solution?

(*Ms Smith*) I am not an expert on Moldova but I can talk broadly about what the United Kingdom is doing. We have been working very actively with the OSCE and the EU towards trying to find a resolution to that problem, particularly on bringing pressure to bear on the Transdniestrian leadership. I think today the Justice and Home Affairs Council in the EU is due to sign off travel restrictions on the Transdniestrian leadership. We are taking forward the issue in a number of other contexts as well.

27. Is there any anxiety that somebody might use the issues that we have been talking about in Georgia, Abkhazia, Moldova or Transdniestr to block anything that we have been talking about? Will there be difficulties, not in ratification in this country and passing legislation but in the OSCE? Have you had any indications? The OSCE operates on a consensual basis where anyone in Belarus or Moldova could play hard ball with this. Have you had any indications of threats to delay the whole process?

(*Ms Smith*) Not that I am aware of. The fulfilment of the Istanbul commitments is an issue in all states' parties ratification processes but other than that I am not aware of anything.

Chairman: Obstreperous behaviour on the OSCE will not necessarily be confined to the issue at hand. It could be directed at any issue at hand.

Rachel Squire

28. We will come on to the detail of the Arms Control Bill later but its main purpose seems to be to make the changes in legislation needed to allow the UK to ratify the adaptation agreement. When do you envisage the UK ratifying the agreement, particularly given that so far only two other countries have done so, Ukraine and Belarus? You need all 30 CFE signatories to put it into force?

(*Dr Wells*) Yes. All 30 need to ratify the treaty before it enters into force. There has been progress made over the last three years since Istanbul in moving towards ratification. All NATO allies are in compliance with the adapted limits and with the Final Act of Istanbul. NATO has now agreed that Russia is in compliance with the adapted flank limits and it is in the process of verifying compliance of the other states parties to the adapted limits and the Final Act. Essentially, the remaining issue is the outstanding commitments to Moldova and Georgia that we have already discussed. NATO has adopted a common position on this. We are making alliance statements, for example, at the Prague summit, on the importance of meeting those commitments to allow all states parties to move swiftly to ratification. We are emphasising that the adapted treaty is a good one for all states parties. It enhances transparency on a number of fronts so we hope that all states parties

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can see the benefits in moving swiftly through the meeting of the Istanbul commitments so that we can get this treaty ratified and into force.

29. You sound as though you are making every effort to dovetail the UK's timetable with that of other states. It is not that we are streets ahead and everybody else is still at the starting point.

(*Dr Wells*) Although no NATO ally has yet ratified the treaty—you said that Ukraine and Belarus have indeed ratified—in January of this year Poland and Germany told us that they were considering ways of introducing legislation so that they would be in a position to ratify swiftly once conditions were met. That is very much the position that the UK is in.

30. Can you tell us what the attitude of the United States is towards ratification?

(*Ms Smith*) The United States takes a very similar position to ourselves, that ratification must be seen in the context of consistency with the Istanbul commitments. That is the NATO position to which we are all signed up.

31. That sounds like a very diplomatic answer. The United States is somewhat choosy about which treaties it ratifies and which it does not. The United States is not known for swift ratification of treaties and agreements. I am asking for a little more clarification on just what their attitude is.

(*Dr Wells*) The United States is a signatory of Istanbul. It is a member of the NATO alliance which has agreed the statements on the importance of meeting Istanbul commitments to allow swift ratification. As with all other states parties, the United States gets a good deal out of the adapted treaty: enhanced transparency of troop deployments, of holdings of treaty limited equipment. And I think it is worth remembering that there are no inspections on the land of the United States.

Jim Knight

32. You would be confident that, at the point at which we are ready to sign it, they would sign it?

(*Dr Wells*) I cannot deliver the United States for you. I can merely say that they get a good deal out of it.

Chairman

33. The US Senate does not necessarily have views that are coterminous with those of the US administration. If they wish to play difficult they will play difficult and much of this could be caught up in the post-Iraq crisis, as to whether the US thinks the Russians have been behaving properly. This is something which is a complicated factor. Is there any urgency? If it goes on for two years, is anybody going to have any sleepless nights over delaying ratification?

(*Dr Wells*) It is fair to say that whilst ratification is still pending we have the current CFE treaty which does allow inspections so we can continue to inspect and verify holdings of treaty limited equipment. It is just that the adapted treaty is better.

34. The treaty has been working well now for 12 years and relations are infinitely better now than they were when it was signed originally. Whilst it is important for us to ratify, no government needs to ratify at break neck speed. We need to be careful to see if anybody is trying to exploit any domestic, political difficulty they have, in which case it might be more difficult. In terms of numbers, how many have to ratify before it becomes operational?

(*Dr Wells*) It is all.

(*Ms Smith*) That means Moldova and Georgia also have to ratify. There is not much point in others going ahead if they are still reluctant because of the outstanding commitment issues.

Chairman: I am really glad the OSCE parliamentary assembly allowed Belarus back into the assembly; otherwise Belarus might have played dirty pool.

Rachel Squire

35. The reason we are going ahead and introducing this Bill before others have ratified it is because we think the adaptation agreement has real benefit?

(*Dr Wells*) Yes. Once we reach the judgment that the Istanbul commitments have been met, we want to be in a position to ratify as quickly as we can.

Chairman

36. On the question of NATO doing a deal amongst itself, is there a public document? You did mention the agreements and documents in Prague. Could we have a look at any documents agreed within NATO about the pace and the content of any ratification of this update?

(*Dr Wells*) We can certainly undertake to do that, yes.

Chairman: If it is sensitive, we do have facilities to keep those documents under close supervision.

Mr Cran

37. I wonder if I can come on now to the adaptation agreement which may be signed in the light of this Bill at some point in the future. The question arises in our minds as a Committee, how Parliament fits into this particular process, because the last time this occurred in February 2000 in relation to the 1999 adaptation agreement some device was cobbled together that allowed us to consider the adaptation agreement. What would happen this time, particularly if quite a period of time elapses between the Bill and the signing of the adaptation agreement?

(*Dr Wells*) Clause Three of the Bill provides that the substantive provisions of the Act will come into force on such a date as the Secretary of State appoints by statutory instrument. It is standard practice for commencement orders for Bills that there will be no formal requirement for parliamentary proceedings on that statutory instrument, but I recognise that if there is a significant passage of time we would need to consider that. Although it is a matter for the Committee, it would be open to the Committee to call for further evidence at that point. It would also be open to ministers, subject to pressures of the

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parliamentary timetable, to make time for a debate when we have reached the point when we want to move ahead and ratify. That would be a matter for ministers and business managers at the time.

38. Those were very carefully chosen words. Is there a clear commitment there that when an adaptation agreement is going to be signed the House of Commons would be consulted or that Parliament would be consulted?

(*Dr Wells*) The Secretary of State can appoint the day of entry into force by statutory instrument and there is no requirement for parliamentary proceedings.

Chairman: Unlike the European Union agreements.

Mr Cran

39. You did indicate that it would be open to ministers to make the time available if they so chose?

(*Dr Wells*) It would be open and that would be a matter for ministers and business managers at the time.

Mr Cran: So we have no commitment there, have we?

Chairman: It is very much up to us. We have interposed ourselves in the process on a number of occasions and there is no reason we should not again.

Mr Cran

40. The second part of the Bill it seems allows for any further amendments to the CFE treaty to be implemented by secondary legislation. Am I correct about that? Secondly, does that not also limit the ability of the House of Commons or Parliament generally to consider the amendments?

(*Ms Smith*) Yes, you are right. Clause Two allows further amendments relating to inspections to be carried out by Order in Council. In the House of Lords we sent a memorandum on this to the Delegated Powers and Regulatory Committee and their reply concluded: "In view of the limited nature of the power and the fact that it would be subject to affirmative procedure, we consider that this level of delegation and control is appropriate."

41. All opposition in the House of Lords dissipated?

(*Ms Smith*) Yes.

42. Why was it that FCO ministers were not originally able to put the human rights certificate on the Bill? I understand it was subsequently rectified but why did that occur?

(*Ms Smith*) As far as I am aware, I think it was just a procedural matter. It was not a problem with the substance at all.

43. No malice aforethought?

(*Ms Smith*) No.

Chairman

44. Would you check that out for us?

(*Ms Smith*) Certainly.

Rachel Squire

45. Picking up on some of your comments about NATO, can you first of all say what are the prospects of the adapted treaty being extended to cover the countries of the Balkans and the Baltics?

(*Dr Wells*) One of the benefits of the adapted treaty is that it does provide for new members to join the treaty provisions. First of all, we must get compliance to the Istanbul commitments. Then the existing 30 Member States can ratify the new treaty and the treaty can enter into force. Then we can start to consider collectively any applicants who wish to join the adapted treaty. The Baltic states have indicated that they would wish to join the treaty and there would have to be a negotiation between the countries individually and the existing 30 Member States on national ceilings to treaty limited equipment and territorial ceilings. There is quite a process to go through but we do recognise that this provision in the adapted treaty to bring on members is very attractive.

46. Was there discussion with the applicants to NATO from the Balkans and the Baltic states prior to confirmation of who was going to be invited to join at the Prague summit?

(*Dr Wells*) NATO has consistently said that there is no linkage between enlargement of the alliance and membership of the CFE or adapted CFE because that would in effect give a power of veto to non-NATO members in terms of NATO membership. Consequently, there is no linkage between membership of the alliance or of the treaty.

47. It sounds as though those countries like Romania, Bulgaria and the Baltic states will now be part of the process of working towards their final membership.

(*Dr Wells*) Romania and Bulgaria are already members of the current CFE treaty. The position is really in relation to the three Baltic states. It would be beneficial for the Baltic states to be members of the adapted CFE treaty in its own right because of the transparency that that would provide on the use of treaty limited equipment in that area. That would be of benefit to all Member States.

48. How would further, additional countries be accommodated in the adapted treaty? Would their equipment ceilings have to be taken from those of the existing parties?

(*Colonel Rouse*) The equipment ceilings of new states joining the adapted CFE treaty would have to be negotiated by the adapted CFE treaty members with the joining states at the time. A judgment would be made about the ceilings and the limits of the various categories of equipment, based on circumstances at the time. It will be done on a case by case basis as each state joins the adapted CFE treaty.

Jim Knight

49. Was there any consideration given to some kind of sunset clause or a requirement to renew the legislation in some way because of the possibility that this could drag on for ever? It is an international treaty and perhaps we should make sure that it is properly scrutinised if time has dragged on for so long. I wondered if there was any consideration

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given, when you were putting the Bill together, to some kind of mechanism that allows the legislation to form a renewal requirement so that we can enshrine on the face of the Bill the guarantee that we can have another look at it if too much time has elapsed.

(*Ms Smith*) The consideration that we had to bear in mind was about the outstanding Istanbul commitments. The position is that we would like to see these commitments fulfilled in full as agreed at Istanbul in 1999. The basis for that is the principle of host nation consent and that is what is really important to us and why we have attached so much emphasis to the fulfilment of those commitments. Should there come a time when Russia and the two states concerned, Georgia and Moldova, can come to an agreement which respects that principle but perhaps is not to the letter of the commitments agreed at Istanbul, we would consider favourable ratification in that situation. It is because we cannot envisage exactly what those circumstances might be that we could not set out precisely what would trigger ratification.

50. Let us say it is 10 or 15 years hence. This legislation is on the statute books. We achieve a position whereby we can ratify it but it is a long time since Parliament had a look at it and it may be that Parliament would think it is worth having something on the Bill that allows us to have certainty that the minister has to come back and test opinion in Parliament.

(*Ms Smith*) I would have thought that if that sort of period of time had elapsed that would be more reason for ministers to consider it favourably.

51. In terms of inspection obligations currently for us, under the CFE treaty states are already liable to host inspections. Can you tell us a little about what sort of burden it is for the MoD and other agencies when we host an inspection here in the UK and how closely do the inspectors look? How disruptive are they and so on?

(*Dr Wells*) Under the current CFE treaty, inspections come in two sorts, a section VII inspection of a declared site and a section VIII inspection, which is called a challenge inspection. Under a section VII or a declared site inspection, a declared site is a site that is declared by states parties that contains one or more Objects of Verification, as we term it. The site could be a garrison, a barracks, an air base or depot that contains treaty limited equipment. Under a section VII inspection, there is a team of nine inspectors and it can last up to 10 days during which the inspection team, which can in turn be divided into three sub-teams, can conduct a series of declared site inspections. Each of these declared site inspections may last up to 48 hours and can be undertaken from the ground or the air. The section VIII or challenge inspection is an inspection within a specified area on the territory of a states' party to a maximum size of 65 square kilometres. Specified area inspections can last no longer than 24 hours. Any declared sites that are within the specified area are specifically excluded from the inspection. In terms of our liability to host such inspections, we declare a total of 119 Objects of Verification and we are liable to host inspections of 15% of those Objects of Verification in any one year. That currently comes to 18 inspections of which three can be section VIII.

That is our total liability. It is fair to say that that liability has not been taken up to the full in the UK in recent years, although it has been in Germany.

52. Why has it not been taken up here? Is that because there is nothing to worry about?

(*Dr Wells*) I would expect that Member States' priorities are on verifications elsewhere in the CFE area.

53. Is Germany the only one you can think of where they have been fully taken up?

(*Dr Wells*) For the UK forces, that is correct, yes.

Chairman

54. Who do they report to when they have completed an inspection if they wish to complain?

(*Colonel Rouse*) When the inspection takes place, they produce a report and that report is then filed with the OSCE at the Joint Consultative Group. If there was a complaint or a query, it would be raised at the Joint Consultative Group in Vienna.

55. How many times has that process been activated and what happens afterwards? Is it just a slap on the wrist or do they have to explain why the treaty limited items have suddenly appeared?

(*Colonel Rouse*) To my knowledge, it happens relatively frequently that there is an observation of some sort. It is normally a fairly minor observation, something to do, for example, with denial by the inspected state on the use of photography or some minor infringement of the treaty protocol. To my knowledge, recently there has not been a major objection resulting from either a section VII or a section VIII inspection.

Jim Knight

56. I have scan read the protocol. You are informed by an inspecting state that they want to have a look. They let you know who is coming and you facilitate the visit, give them a helicopter if they need one and they come and take some photographs and poke their noses around?

(*Colonel Rouse*) It is a little more formal than that but broadly speaking yes. They have to give us a minimum of 36 hours' notice before they come. There are quite strict point of entry regulations and there is a strict protocol in terms of getting the inspection underway. Before they arrive, we do not know where they want to inspect. That is only announced at the time of their arrival. Under the treaty, we have six hours to prepare the site for their inspection. They go along; they do the inspection within the time frame described by Dr Wells and then they produce their report.

57. They can look at anything?

(*Dr Wells*) Subject to the caveats that I mentioned earlier about where inspections could be refused for *force majeure* or for sensitive site reasons, yes.

58. The MoD can cope with the current level of inspection because they are not fulfilling all 21 that they could do, but it is not an undue burden on you to go up to the 21?

(*Dr Wells*) It is 18 under the current treaty, of which three are section VIII inspections.

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Chairman

59. The time available gives any country ample time to get its iffy material well off site. If they cannot, there is something wrong with their organisation. Is there any way you can get round that or any way you can guard against somebody pulling a fast one by shifting a number of tanks if there is an excess? You can get most tanks, bar Challenger Is, a long distance inside 36 hours.

(*Dr Wells*) The declared sites that are inspected will have a time of six hours before the inspection¹. The whole philosophy of the CFE treaty is transparency. It is also trust. It is a confidence and security building measure so we trust Member States. We are verifying the holdings of treaty limited equipment that they have already declared.

60. How are the personnel trained to do these kinds of inspections?

(*Colonel Rouse*) The personnel who escort inbound inspections into this country and undertake the outbound inspections to other states' parties are part of the Joint Arms Control Implementation Group, JACIG, at Henlow. It is a tri-service organisation, 77 strong, I think. They are organised into four inspecting flights or teams, each of nine strong, each flight or team headed up by a Lieutenant Colonel or Wing Commander equivalent. They have a linguistic section as well so they have Russian speakers there. JACIG is tasked and organised to undertake both the inbound inspections and the outbound inspections. Training takes place at JACIG. They train themselves both on the detail of the treaties and also on the protocols and the conduct of inspections. It has been running for 10 years and it works extremely well. They are a very professional organisation.

61. What happens if they find something outside their treaty responsibilities? If you are looking for something hidden and suddenly you come across something and you think this may not be within the CFE treaty but it must come under some other treaty that we are a signatory to, has that ever cropped up?

(*Dr Wells*) To my knowledge, that has not cropped up. If such items were found it could be reported to the appropriate international body that monitored compliance with the relevant treaty.

62. Would they be empowered to do that?

(*Dr Wells*) I believe so.

Rachel Squire

63. Picking up on the section VIII challenge inspections, you have already mentioned some of the restrictions and the maximum size of the area has to be 65 square kilometres. What is the notice period? You say it has to be 36 hours' notice for section VII; is it the same notice period for section VIII?

(*Dr Wells*) Yes, it is.

64. What constraints are there on other states in trying to define the specified areas in the UK that they wish to inspect? You have said it must be a

maximum of 65 square kilometres and take no more than 24 hours. What other constraints are there on another state coming in to do a section VIII challenge inspection, about where they can go and the sites they can choose?

(*Dr Wells*) There have been no recent section VIII inspections on the UK. There have been section VIII inspections in Germany, I believe. Those criteria that I have laid out are essentially the criteria that a visiting state must undertake and fulfil together with various stipulations on the points of entry and so on.

65. Do the challenge inspections come about because another state tries to imply that there is some non-compliance and therefore asks to visit a particular site to check that out?

(*Dr Wells*) Yes. The issue would be whether there was treaty limited equipment outside of the declared sites. A specified area that would be subject to a challenge inspection could be anywhere on the territory, but the declared sites would be excluded from a section VIII inspection. The objective there is to see whether there is any treaty limited equipment that is not being held in a declared site.

66. On that basis, could they say, for instance, that they want to visit Westminster or an inner city area, as opposed to somewhere like Salisbury Plain, where there is military activity constantly?

(*Dr Wells*) In theory they could do but equally in terms of the access they can have they can only enter buildings which have doors wider than two metres. That clearly limits some of the places that could be inspected in inner cities.

Rachel Squire: What is the significance of wider than two metres? Is that the smallest size?

Chairman: I am sure that is going to appear in the next edition of *The Officer*!

Rachel Squire

67. Is that the smallest size of an armed vehicle?

(*Dr Wells*) The thinking behind it is to do with dimensions of treaty limited equipment, yes.

68. In respect to the section VIII regime, have you had to exercise your powers? You say there has not been a section VIII challenge inspection in the UK for some time but in the past when you have had to exercise your powers to insist that private owners make their land and property available for inspection—for instance, a private owner could be a company running a dockyard or a workshop or private individuals with a large expanse of land—have you ever had to deal with private owners and how have you managed that?

(*Dr Wells*) Under section VIII inspections, the original Arms Control Bill, the Act of 1991, did provide for access to private properties in the UK. Inspection teams in the past have confined themselves to military installations in the specified areas but for all section VIII inspections a police officer does accompany the escort team with a warrant drawn up under the 1991 Act should entry to private property be required.

¹ *Note from Witness:* Declared sites are informed six hours before an inspection. A states party will be informed 36 hours in advance that an inspection is taking place on its territory.

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Chairman

69. Could that be an MoD policeman or does it have to be a county constabulary one?

(Colonel Rouse) I think it is normally a county constabulary one. It would not be an MoD policeman, I do not believe.

70. What if the guy says, "I do not want you to look around my farm"? Maybe a farmer would have something he does not want the police to look at which may not be an item within the CFE treaty. I can imagine all sorts of things.

(Dr Wells) The police officer is there with a warrant. The inspecting team would do the inspection.

Mr Cran

71. I wondered if you could set out in rather more detail the rights of private owners under the current regime. You say the police come along with a warrant. Can an individual refuse?

(Dr Wells) Under the current Act which has been passed by Parliament, if an inspection team under a section VIII inspection does wish to exercise the treaty rights of inspecting private property, subject to the size of the door, the policeman has a warrant and the inspectors are entitled to enter.

72. The private individual has absolutely no rights at all under these provisions?

(Dr Wells) I would not have gone so far as to say they have no rights but—

73. If they have rights, please enumerate the ones that they do have.

(Colonel Rouse) The circumstances under which an inspecting team might wish to enter a private owner's property are very, very rare. These inspections are conducted in the spirit of the treaty and the inspections do take place on military installations rather than private land. Yes, in theory, an inspecting team could under a Section VIII inspection go into private land. In practice, these things tend to be handled very sensitively on the ground and if there is clearly a situation developing in which a private owner has difficulty with what he or she is being asked to do, then the JCIG inspector would take the appropriate action and if the JCIG inspecting team leader felt that right of access needed to be refused, then he or she could do so. There is a certain pragmatism.

74. I do not understand, he or she could do what?

(Colonel Rouse) Should a situation develop on the ground where a private owner objects then the escort team leader from JCIG could deny access to the inspecting team and by doing that could possibly incur an observation by the inspecting team but it would be within the JCIG escort team leader's right to do that if he felt that an unwelcome situation needed to be avoided.

75. Where is all this set out, that is to say that the inspecting officer can indeed weigh in on behalf of the objecting private owner? Where is that all set out, in the Bill?

(Colonel Rouse) It is not set out in the Bill, no.

76. Where is it set out?

(Colonel Rouse) I do not know the answer to that but I do understand that to be normal practice.

77. But should you not know that? I take entirely the point you are making which is most, if not all, of the inspections take place in military establishments and military land and so on but things are not static. In future it may well be the case that you could not say no and it may well be the case that inspections will take place on private land and therefore it seems right that the individual should know what his or her rights happen to be and where they are set out and codified. Are you really telling me you do not know where they are set out?

(Colonel Rouse) The training that the JCIG—

78. No, I want to be clear from you that you do not know.

(Colonel Rouse) I am saying I am unclear about where it is laid out.

Chairman

79. Could you drop us a note?

(Colonel Rouse) Certainly.

Mr Cran

80. Sorry, you were going to answer, Dr Wells.

(Dr Wells) The JACIG officers receive training on how to fulfil their duties as escort officers and the underlying philosophy of the Treaty is transparency but fairness as well, and clearly we would look to implement the observations within that spirit.

81. I do not doubt that at all. I feel the rights of the individual are being encroached upon inexorably and therefore their rights should be set out? You are going to write a note?

(Dr Wells) We will.

82. Just clear up another thing for me, in relation to Section VII declared sites, it is my understanding that the 1991 Act does not oblige private owners to give permission for their land to be trampled over. Have I got it wrong and indeed have our advisers got it wrong?

(Dr Wells) When the 1991 Act was passed it was not felt necessary to grant the right of access to private installations within declared military sites.

83. Why has that changed?

(Dr Wells) It has changed because over the years private contractors have started to operate within military bases. The land I should emphasise is still MoD land within the declared sites but it was felt that this provided the opportunity to put the provisions in the Act to allow inspectors, should they wish, to inspect those sites that are operated by private contractors.

84. Is that not incredibly heavy-handed to put all this into an Act? Could you not put it into the agreement you doubtless have with whatever private contractors are under your tent, as it were?

(Dr Wells) It allows us to make the position clear in statute.

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85. I understand you are making it very clear in the statute. All I am saying is it is awfully heavy-handed, why not do it in agreement with the private contractors that you have?

(*Dr Wells*) That would be an option. If we put it in the Act then it allows comprehensive coverage.

Chairman: If you are required to object to it, a party of farmers—

Mr Cran: I thought your party represented farmers.

Chairman: After last night I am not sure that we do represent them. Rachel?

Rachel Squire

86. Like James I take an interest particularly in the large expanse of land north of the border known as Scotland. The Scottish Parliament has recently passed a Land Reform Bill which certainly has created a lot of debate about access and so on. Who would be responsible for reviewing the implications that might have for conducting inspections in the event, given that there are so many areas in Scotland that are testing sites and other MoD facilities or former MoD facilities? Is that your responsibility or will you simply wait until someone requests an inspection in Scotland and then seek advice from the Scottish Executive?

(*Dr Wells*) The CFE Treaty, being an international treaty, will cover the United Kingdom as a whole and so the rights of incoming inspection teams to inspect in designated sites in Scotland would be exactly the same as in England and Wales.

87. In spite of legislation by the Scottish Parliament affecting access to Scotland?

(*Dr Wells*) The inspecting team can inspect private property subject to the restrictions that are already laid out anywhere in the territory of the UK.

Jim Knight

88. You have consulted the Scottish Executive when you were drawing up this Bill?

(*Ms Smith*) We can check on that but I am sure the devolved administrations would have been consulted on this, yes.

89. Sorry to dwell on these issues but I will for a little bit longer. Unlike the challenge inspections, Section VII is about declared sites so you can anticipate land ownership and so on because you know which sites you are talking about. Can you tell us what sort of private owners are likely to be affected by Section VII inspections and how many declared sites have privately owned or leased properties?

(*Dr Wells*) Declared sites are all MoD land at the moment but there are private contractors who may be operating within a military base. To give you an example, RAF Shawbury, which has two flying schools and also an air traffic control centre, has contractors that provide the support services, that provide the aircraft treaty limited equipment and simulators for the flying schools and the private contractor there is part of the RAF station's arms control plans. They practice for arms control inspections and they would, if the inspectors wished,

be part of an actual inspection, so they are fully integrated into the plans for posting for arms control inspections.

90. You do not have a figure on how many sites have got these private contractors?

(*Dr Wells*) There are 94 declared sites in the United Kingdom as a whole, 79 Army and 15 RAF.

91. Within that figure you cannot tell us how many have got private contractors with whom you have to negotiate?

(*Dr Wells*) I have not got those figures.

92. You would be able to let us know?

(*Dr Wells*) I would.

93. Thank you. The negotiations with those contractors—is there an issue about getting them on side before the inspections happen or is it all now going to be put into contract and so on as part of the deal you have come to with them?

(*Dr Wells*) I am not aware there have ever been any problems. In the majority of cases private contractors would have taken over from military users and consequently this obligation to host potential inspections would have been on-going.

94. None of them has expressed misgivings about access and inspections in the past?

(*Dr Wells*) I have not been aware of any.

95. How significant in practice then, we have questioned you for some time now, but in practice are these changes likely to be for private contractors and so on?

(*Dr Wells*) I believe it is important to bear in mind that although our liability to host inspections, as I say, is 18 inspections of Objects of Verification annually, we have been required to host very few inspections and we have given the Committee in our memorandum the totality of those inspections over the last two years and it is not a great deal.

Jim Knight: Thank you.

Rachel Squire

96. We have already touched on NATO enlargement and how many former Warsaw Pact countries are now members of NATO or about to become full members of NATO. Can you say a bit more about how the inspection regime has kept pace with those shifts and changes?

(*Dr Wells*) Yes. One of the developments that we have seen through the 1990s is something of a reduction in inspection activity as a whole and that has been due really to two things. The first is that the number of Objects of Verification has reduced in Europe and so the percentage liabilities of Member States have reduced. In addition, in the context specifically of NATO enlargement, there is an understanding that NATO allies do not inspect each other. With the Madrid decisions which subsequently brought in three new members of the alliance in 1999 and subsequently the Prague decisions which will further enlarge the alliance, the number of inspections of NATO allies, for example, the United Kingdom will undertake will, in fact, reduce. One of the ways that we have looked to maintain the transparency of the CFE Treaty is that when the Adapted Treaty comes into force the

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percentage liability on inspections will increase from 15% of our OOV to 20% to allow us to undertake more inspections in order to maintain our transparency.

97. You said OOV?

(Dr Wells) Objects of Verification.

98. Thank you. So really touching on my other question, what you say is: it is the case that members of NATO do not inspect each other?

(Dr Wells) That is correct.

99. So as NATO has expanded that has obviously restricted the number of present CFE members who can go in and inspect another member of the Treaty?

(Dr Wells) That is correct. It is fair also to point out that NATO's own military planning systems provide transparency between allies.

Rachel Squire: Thank you.

Chairman

100. Following on from that, NATO does not inspect each other, so does that mean NATO members who are not part of the integrated military structure, or NATO members who are only part of the political structure now. A purely abstract question—

(Dr Wells) It is the NATO 19, Chairman, so it includes all the allies.

101.—A purely hypothetical question; could anybody mount a challenge inspection on Turkey in the event of having items of military equipment in preparation for an attack on Iraq?

(Dr Wells) Not all of the territory of Turkey is covered.

102. What about Incirlik? I am sorry to ask a trick question. What I am coming to is would that be covered by the Treaty?

(Dr Wells) I could not say whether Incirlik was inside or outside the CFE area.

Chairman: Could you drop us a note in due course because it does raise a relevant question as to the rights of members of the Treaty to inspect. James?

Mr Cran

103. Moving on to Russia's equipment holdings in the CFE Treaty Flank zone, how many inspections have been carried out and how many refused since the 1999 Adaptation Agreement?

(Dr Wells) We are looking for the figures.

(Colonel Rouse) Carried out by the United Kingdom in the Flank?

104. By the United Kingdom or other countries with which we are associated, you choose your ground.

(Colonel Rouse) I do not believe I can give you today a figure for United Kingdom inspections. There have been inspections into the Flank by the United Kingdom, both normal inspections under

Section VII and Section VIII and also in support of the NATO initiative, to verify whether or not Russia is in compliance with its Flank limits, but the exact figure I cannot give you today but we can provide you with a note. Would you also like to have the figure for other NATO allies as well?

105. Yes please. Again I think I am correct in saying that in your memorandum you say Russia has refused to provide details of equipment "temporarily located" in the Flank. Is this because the Adaptation Agreement is not yet ratified or is it just non-co-operation that we had in the past and you would expect in the future? Why is that?

(Colonel Rouse) A difficult one. I think possibly it is because they are just being awkward, quite frankly, it is as simple as that.

106. That is not good enough, come on, we must tease out what that means. What we are really trying to get from you is have you any feel for whether this non-co-operation is something which we might have understood in the past but we might not understand into the future? Is it going to occur in the future?

(Dr Wells) It is fair to say—

107. And what are you doing about it?

(Dr Wells) Since 2000 NATO allies have been able to undertake inspections in the Flank, with the exception of the position in Chechnya, and NATO has been able to come to an estimate of the Treaty-limited equipment holdings in Chechnya. So we are getting visibility of the Russian holdings of Treaty-limited equipment in the flank.

Rachel Squire: Transparency is still quite some way away when it comes to Russia's actual equipment?

Mr Cran

108. Just one more question. Has the lack of a ratified Adaptation Agreement reduced the number of inspections that the UK or any other country has conducted in Chechnya?

(Dr Wells) Pardon?

109. I will read the question again but this time I will read it rather more slowly. Has the lack of a ratified Adaptation Agreement reduced the number of inspections that the UK or other countries have been able to conduct in Chechnya?

(Dr Wells) We have not been able to conduct formal CFE inspections in Chechnya because of the security situation there. What we have been able to do is to come to an estimate of the holdings of Treaty-limited equipment there by undertaking inspections of units that are believed to have Treaty-limited equipment in Chechnya but are not themselves based in Chechnya, and by looking at the level of current holdings we can come to an estimate of the extent of Treaty-limited equipment holdings in Chechnya. It is not a formal inspection but it allows us to arrive at an estimate.

110. Who are you referring to when you use "us" and "we", the United Kingdom or the United Kingdom and its NATO allies?

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DR BRYAN WELLS, COLONEL PHILIP ROUSE
AND MS KATE SMITH

[Continued

[Mr Cran Cont]

(Dr Wells) It has been a programme undertaken by NATO allies.

Chairman: As a last question, with your difficult lives you emerge far better than a group we had 10 years ago when our Chairman asked very pointedly how many tanks and aircraft we had in Germany. The senior Ministry of Defence witness now retired, I will not tell you his name but R J are his initials, said that he was not at liberty to tell us. Our Chairman asked Roger Jackling, and I fully agreed with this: "Are we a signatory to the CFE Treaty?" At that moment Mr Jackling knew he had been hooked: "Yes." "Are we compliant with that Treaty?": "Yes." "Have we disclosed this information to the Warsaw Treaty Organisation?": "Yes." "Let me get my head around this. You have disclosed information to our adversaries which you are not prepared to disclose to a Committee of the House of Commons?" It was very funny but a very serious point and we appreciate you have been, by the standards of the MoD and Foreign Office, remarkably forthcoming. Before I finish my colleague is anxious to ask one further devastating, killer question.

Mr Knight

111. I just note that in the Bill the Act extends to Northern Ireland. Does the current inspection regime extend to Northern Ireland? If so, have they always been able to go ahead without any problem and have we never had cause to refuse them on grounds of security of numbers and so on?

(Colonel Rouse) That is correct. In fact, there was an inspection last year into Scotland. The Unit inspected in Scotland was a Royal Artillery unit which had a deployed sub-unit in Northern Ireland. It was a Russian inspection and they chose to go into Northern Ireland, and it has happened before. There are procedures in place. Clearly there is a security angle because we the United Kingdom have a responsibility to ensure the security of the inspecting team. But the answer to your question is, yes, there have been inspections to Northern Ireland.

112. You have never refused one because of security grounds?

(Colonel Rouse) Not so far as I am aware, no.
Chairman: Thank you very much.

Supplementary joint memorandum submitted by the Ministry of Defence and the Foreign and Commonwealth Office

What are the grounds under which states can refuse inspections?

1. The grounds under which states may refuse inspections differs according to the type of inspection.
2. With regard to Section VII (Declared Site inspections), paragraph 1 of Section VII of the Protocol states that requests to inspect declared sites shall not be refused and or delayed other than by reason of force majeure (Section VI paragraph 1 of the Protocol), or because the inspecting State Party has exceeded the maximum number of inspections allowed under the Protocol.
3. With regard to Section VIII (Challenge Inspections within Specified Areas), paragraph 4 of the Protocol does give the inspected party the right to refuse challenge inspections within specified areas, and it does not limit the grounds on which this must be based. The inspected State Party must however, inform the inspection team within two hours after the designation of a specified area whether the inspection request will be granted.
4. The term force majeure is not further defined in the Treaty, although it is generally understood to mean "problems, preventing an inspection or visit, which are beyond the reasonable control of the State Party and which could not have been avoided by the exercise of due care". An example of force majeure might be severe weather conditions preventing travel to the inspection location. Additionally a state might declare force majeure under circumstances when the security of the inspecting team could not be guaranteed. Under paragraph 7 of Section VI of the Protocol, the inspected State Party shall be responsible for ensuring the safety of the inspection team and transport crew members, from the time they arrive at the point of entry until the time they depart the territory of the inspected state. Declarations of force majeure must be explained through diplomatic or other official channels giving the reasons for delay or refusal for the inspection to take place.
5. The refusal of an inspection on the grounds that the permitted inspection quota has been exceeded can apply to both Section VII (declared site) and Section VIII (challenge) inspections. Each state has a "passive declared site inspection quota", which means the total number of inspections of objects of verification (OOVs) that the state shall be obliged to receive within a Treaty year at declared sites. For the current CFE Treaty the passive declared site quota is calculated as being 15% of the number of OOVs declared in the annual data exchange of information. For the Adapted Treaty the passive quota will be based on 20% of OOVs. Similarly each state has a "passive challenge inspection quota" which limits the number of challenge inspections under Section VIII of the Protocol that each State Party shall be obliged to receive.
6. With regard to inspections under Section IX of the Adapted Treaty (Designated Area Inspections), paragraph 2 of the Protocol says that this category of inspection cannot be refused, although grounds for refusal under force majeure would still apply. However, there would be no grounds for refusal as a

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[Continued

consequence of inspection quota limitations because no annual quota will be set for Section IX inspections. Section IX inspections can only take place when a States territorial ceiling is exceeded as a result of a temporary deployment or exercise.

Why did the Bill as presented to the House of Commons not carry the Human Rights certificate?

7. The Bill was not presented in the Commons with the European Human Rights Certificate due to an administrative error. We ensured that a written Ministerial statement was made as soon as possible after the Secretary of State signed the certificate.

What rights do private owners/operators have to refuse access to inspectors, and how will these rights change under the Adaptation of the CFE Treaty? What rights does the JACIG team leader have to stop inspectors forcing their access rights to privately owned/operated facilities, and where are these set out in Treaty documentation?

8. The Secretary of State has signed a statement confirming that he is confident that the Arms Control and Disarmament Bill is compatible with the ECHR. Rights of entry to private land were provided for Section VIII (Challenge) inspections under the Arms Control and Disarmament (Inspections) Act 1991. But the 1991 Act did not provide rights of entry for Section VII (Declared Site) inspections since at that time the growth and extent of private involvement in declared sites was not foreseen.

9. Section 2 of the 1991 Act provides that where a request for an inspection has been made under the Protocol and has been granted by the UK Government, then the Secretary of State may issue an authorisation under Section 2 of the Act in respect of that inspection. It is that authorisation which gives the inspectors and their escort team the right to enter any premises covered by the authorisation.

10. Section 2(7) of the 1991 Act provides that the occupier of any premises which is the subject of a Section VIII inspection can ask for a copy of the authorisation. In addition:

- (a) it is a criminal offence for them to refuse wilfully or to obstruct the conduct of an inspection;
- (b) a police constable can give assistance to the escort team to facilitate the conduct of the inspection and it is a criminal offence to refuse to comply with a request made by a constable for that purpose;
- (c) Section 2(8) makes clear that the inspection cannot be delayed or obstructed by raising arguments about the validity of the authorisation; and
- (d) According to Section 4 of the Act the powers of entry provided for in Section 2 apply to private interests in Crown land. So if a private company operates a business on Crown land under a lease or licence from the Crown, the rights of entry apply to that part of the land covered by the lease or licence.

11. Assuming that the amendment Bill goes through in its current form the amendments will extend the application of this section to other kinds of inspections (ie it will apply not just to challenge inspections but also to Section VII (declared site) and Section IX (designated area) inspections under the Adapted Treaty).

12. With regard to the rights of the JACIG team leader to stop inspectors forcing their access rights to privately operated facilities, during the course of any inspection, the JACIG team leader may declare a room, building or facility to be a "sensitive point". The term "sensitive point" is defined in Section 1 paragraph (P) of the amended Inspection Protocol as being any equipment, structure or location which has been designated to be a sensitive point by the inspected State Party through the escort team. Designation can wait until the inspection team is actually carrying out the inspection. The effect of a sensitive point is the same whatever kind of inspection, as the provisions are contained in Section VI of the Protocol which applies to all categories of inspections. Para 33 of Section VI provides that the escort team have the right to deny access to sensitive points but they must declare whether any relevant Treaty Subject equipment is located there. These procedures are set out in the Protocol on Inspection, Section VI, Paragraphs 28 and 29 in original CFE Treaty (Paragraphs 31 and 32 in Adapted CFE Treaty).

13. It should be emphasised, however, that the intention underlying the inspections is to permit full and unobstructed access, and so discretion should be used when designating sensitive points, where operational security is an issue, or similarly under circumstances where force majeure might be applied to refuse an inspection.

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[Continued

How many of the 94 “declared sites” have privately owned/operated facilities or property?

14. All the 94 Declared Sites (DS) are on MoD or Federal German owned property.

All of the DS have some sort of contractors on them, predominantly providing multi-activity contracts ranging from catering services, NAAFI shops and clubs, and ground and building maintenance. There are also specialist activities such as vehicle and aircraft servicing, simulator support, supply, storage and logistics, fire and crash rescue, range and targetry, and medical and dental services.

15. Where required by the type of service contracted, the MoD supplies contractors with facilities on site to carry out their contract. This is done by a lease, hire, loan, encroachment or gratis arrangement depending on the contract. These facilities range from single room office space, to buildings, aircraft hangers, storage sheds to hard standing and open spaces. In some cases contractors erect their own structures, mainly of the portable variety, to carry out their contracts.

16. The majority of contractor sites and facilities do not have doors that are two metres in width or wider, and thus they are not inspectable under the Treaty.

Have any private owners/operators expressed any misgiving about the access rights afforded by the current and Adapted Treaties?

17. Since the entry into force of CFE Treaty there have been 192 declared site Section VII inspections and 4 Section VIII challenge/specified area inspections of UK forces. As far as can be ascertained there have been no reports of any instances of refusal of access to civilian owned/operated sites or facilities. In addition to live inspections, exercises are routinely conducted with representation from civil police forces. It is normal practice for the civil police accompanying the Joint Arms Control Implementation Group (JACIG) escort team to make first contact with civilian owner/operators and, having explained the nature of the exercise, to attempt to be granted a “consensual search”. Only in the event of failure to gain the consent of the owner/operator would the civil police use the search warrant authorised in pursuit of the Act.

Since the signing of the Adaptation Agreement in 1999, how many inspections have been undertaken (and how many refused) in the Flank Zone, by each inspecting state?

18. Since the signing of the Adaptation Agreement, nine NATO nations have conducted a total of 25 inspections into the Adapted Flank Zone. Of these, nine inspections were conducted in the Leningrad Military District (Northern Flank) and the remaining 16 took place in the North Caucasus Military District (Southern Flank). The breakdown by inspecting state is as follows:

Germany	7
Turkey	6
US	3
France	2
Norway	2
Canada	2
Spain	1
Denmark	1
Greece	1

19. Within this period Russia refused three inspections into the Southern Flank. These were two Section VII (declared site) inspections notified by Turkey in June 2000 and June 2001, and a Section VIII (challenge inspection) notified by Germany in July 2000. In each case Russia permitted both Germany and Turkey to inspect alternative sites to those originally selected.

Two of the three alternative sites were in the Southern Flank. Additionally, the German Section VIII inspection went ahead in July 2001 to the area originally requested by Germany in the previous year.

20. The UK has not conducted any inspections into the Adapted Flank since signing the Adaptation Agreement; the last inspection into the Adapted Flank by a UK team was a Section VIII Specified Area inspection to the Stavropol area in May 1999. However, the UK has conducted six inspections into the areas removed from the Original Flank area (Pskov, Volgograd, Astrakhan Oblasts and part of the Rostov Oblast).

21. For completeness, and although Georgia is not technically part of the Revised or Adapted Flank area, a UK inspection team attempted a CFE inspection in June 2001 into Gudauta which is located within the separatist area of Abkhazia, just before the official closure of Gudauta as a declared site. The authorities in Georgia said they were unable to guarantee the safety of inspecting teams or to deliver them to Gudauta, and hence the inspection was aborted on safety grounds.

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[Continued

In the previous Committee's inquiry in 2000, the MoD provided information on UK holdings of tanks, armoured combat vehicles, artillery, attack helicopters and combat aircraft, as at January 2000 (see Defence Committee's Twelfth Report [HC 295], page 22). The Committee would be grateful for updated figures on UK holdings against these categories, for January 2003 if possible.

22. The updated figures as at 1 January 2003, and as notified in the UK's CFE Information Exchange pursuant to the Protocol on Notifications and Information Exchange, are as follows:

Main Battle Tanks	560
Armoured Combat Vehicles	2,361
Artillery	441
Combat Aircraft	502
Attack Helicopters	254

The Committee also asked for copies of key NATO and OSCE documents which encompass judgements on compliance with the original and Adapted treaties, and any recommendations made by those bodies aimed at securing compliance.

23. The UK Government is not in a position to release the NATO documents requested by the Committee since these documents are classified and they are not the sole property of the UK Government.

24. The UK Delegation to the OSCE has furnished the Conclusions of the Second CFE Review Conference held in 2001 (copy enclosed). This report covers, *inter alia*, implementation issues raised by States Parties for further consideration in the JCG (as detailed at paragraph 4 etc of the document). In practice the JCG delegate this task to their Treaty Operation and Implementation Working Group (TOI WG) who, we understand, are still dealing with those matters raised at the Review Conference. It is our impression that the TOI's role tends to be more philosophical than judgmental.

25. It is rare for a compliance issue resulting from a CFE inspection to be raised to the JCG Plenary. Most implementation issues are of a routine nature, or relate to relatively minor technical points noted during the course of the inspection, and reported in the relevant inspection report. Often these stem from differing national interpretations of the Treaty and thus there is a recurring theme in some categories on "non-compliance." For implementation issues of a more serious nature, these would in the first instance be dealt with bilaterally between the States Parties involved. Failure to resolve the issue bilaterally could result in the matter being referred either to NATO who might form an Alliance position, or to the JCG for consideration by the TOI WG as described above.

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