The Secretary of State presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission of the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace and refers to her circular note, dated September 14, 2007, regarding the deposit of an instrument of ratification, with a statement, by the Russian Federation of the Agreement among the States Parties to the North Atlantic Treaty and the other States Participating in the Partnership for Peace Regarding the Status of Their Forces, and the Additional Protocol thereto, done at Brussels June 19, 1995.

In performance of the depositary duties of the Government of the United States of America, the Secretary of State encloses a statement by the United States of America, in its capacity as a party to the Agreement, concerning the statement accompanying the instrument of ratification by the Russian Federation.

The Secretary of State would be grateful if the Chiefs of Mission would forward this information to their respective Governments.

Enclosure: as stated.

Department of State,

Washington, September 12, 2008.

DIPLOMATIC NOTE

The Government of the United States of America has examined the statement submitted by the Russian Federation with its instrument of ratification on August 28, 2007, concerning the 1995 Agreement Among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace Regarding the Status of their Forces (hereinafter the PfP SOFA) and the Additional Protocol thereto. In its statement, the Russian Federation states that it sets forth its understanding of the provisions of the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, of June 19, 1951 (hereinafter the Agreement). The Government of the United States considers some of the "understandings" acceptable. The United States, however, considers some of the "understandings" to be reservations that purport to exclude or modify the legal effect of certain provisions of the PfP SOFA, and others to purport to create additional obligations for the Parties beyond those explicitly contained in the PfP SOFA.

The Government of the United States responds to each of the "understandings" contained in the statement submitted by the Russian Federation as follows:

1. Russian "understanding": "[T]he provision of Article III (4) of the Agreement, which obligates the authorities of the sending State to immediately inform the authorities of the receiving State of cases where a member of a force or of a civilian component fails to return to his country after being separated from the service, shall also apply to cases where those persons absent themselves without authorization from the site of deployment of the force of the sending State and are carrying weapons;"

This statement purports to create an additional notification obligation on the sending State that is not contained in the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces or in the PfP SOFA. Article III (4) of the Agreement requires the sending State to inform the host country if a member is no longer employed by the sending State and is not repatriated (and thus may no longer be covered by the SOFA) and if a member has absented himself for more than 21 days. There is no obligation in the Agreement to notify if an individual absents himself without authorization even if he is carrying a weapon. The Russian Federation cannot by unilateral statement extend the obligations of the United States or any other country, other than the Russian Federation, beyond those obligations contained in the PfP SOFA without the express consent of the United States or such other countries. Such a statement is only effective insofar as the statement constitutes a unilateral declaration by Russia that, on a unilateral basis, Russia will provide notice as a sending State under Article III (4) in the stated circumstances, which go beyond those required by the PfP SOFA. The United States does not consider this statement to have any effect in respect of the rights and obligations of the United States under the PfP SOFA.

However, the United States notes that the concern to which the Russian statement appears to be addressed is a legitimate concern, and it could be addressed in a bilateral supplementary agreement setting forth the terms and conditions of a particular deployment, or in a general bilateral SOFA supplementary agreement.

2. Russian "understanding": "[O]n the basis of reciprocity, the Russian Federation will understand the words 'possess arms' used in Article VI of the Agreement to mean the application and use of weapons, and the words 'shall give sympathetic consideration to requests from the receiving State' to mean the obligation of the authorities of the sending State to consider the receiving State's requests concerning the shipment, transportation, use, and application of weapons;"

The Government of the United States considers this to be a reservation and objects to it because it purports to broaden the rights of the receiving State and narrow the rights of the sending State. The right of the receiving State is to make requests. The sending State retains the right to determine when and how members of its force possess and carry arms within the receiving State. The only obligation of the sending State is to give sympathetic consideration to requests made by the receiving State concerning that matter. Any limitation on the carrying of weapons and other issues such as the use and transportation of weapons is a matter that is appropriately and regularly addressed within separate bilateral agreements between the sending and receiving States.

The United States also notes that Article VI of the Agreement does not address matters concerning the rules on use of force, which remain matters for discussion between the sending and receiving States.

3. Russian "understanding": "[T]he list of offenses set forth in subparagraph c of Article VII (2) is not exhaustive and, for the Russian Federation, includes, apart from those enumerated, other offenses that are directed against the foundations of its constitutional system and security and that are covered by the Russian Federation Criminal Code;"

The Government of the United States considers this to be a reservation and objects to it because it purports to add an additional – and vaguely defined – class of offenses to the category of "security offenses against a State." Without an enumerated list of offenses that the Russian Federation considers directed against "the foundations of its constitutional system," we are unable to determine whether adding these offenses would be acceptable to the United States.

4. Russian "understanding": "[P]ursuant to Article VII (4) of the Agreement, the Russian Federation presumes that the authorities of the sending State have the right to exercise their jurisdiction in the event that, at sites where the sending State's force is deployed, unidentified persons commit offenses against that State, members of its force, and members of its civilian component, or their family members. When a person who committed an offense is identified, the procedure established by the Agreement takes effect;"

The Government of the United States recognizes that a sending State is entitled to conduct non-custodial investigation as long as the persons who committed an offense remain unidentified. As soon as the persons are identified, however, the sending

State would only have authority to exercise jurisdiction as specified in the Agreement. For example, if an individual is caught in the act of committing a crime at a site where the sending State's forces are deployed, the sending State may exercise its jurisdiction to stop and search the suspect, and if he or she is determined not to be a person over whom the sending State is empowered to exercise criminal or disciplinary jurisdiction under Article VII of the SOFA, to turn the person and any items recovered from him or her over to receiving State authorities. If this is a correct characterization of the Russian Federation's understanding, the United States finds this understanding acceptable.

However, if the intent of the Russian Federation's statement is to expand investigative jurisdiction to permit custodial detention and interrogation of any individual not determined to be a person over whom the sending State is empowered to exercise jurisdiction under Article VII of the SOFA, the Government of the United States would consider this to be a reservation, and would object to such a reservation.

5. Russian "understanding": "[T]he assistance mentioned in subparagraph a of Article VII (6) of the Agreement is provided in conformity with the legislation of the requested State. In providing legal assistance, the competent authorities of the States Parties to the agreement interact directly, and if necessary, through the appropriate higher authorities;"

The Government of the United States understands the reference to "legislation of the requested State" in the first sentence of this statement as referring only to the general procedures for effecting the requested assistance. For instance, if one State requests the other to conduct a search of property, the search would be conducted under the procedures the requested State uses for conducting searches, including obtaining judicial authority to search the premises if that is a requirement of the requested State's procedures. If this is a correct characterization of the Russian Federation's understanding, the United States finds this understanding acceptable.

The United States further notes that effective mutual assistance between the authorities of the sending and receiving States is required for the conduct of investigations and the collecting of evidence if suspects are to be identified, tried, and, as appropriate, punished. The drafters of the Agreement recognized that the usual international mutual legal assistance regimes (letters rogatory, Mutual Legal Assistance Treaties, etc.) may be poorly suited for the investigation of a fresh offense occurring in the territory of a receiving State. Prompt and cooperative action is essential for the effective pursuit of justice. The United States recognizes the necessity for procedures to assure that the assistance is provided in a proper manner. Such procedures could be developed in separate bilateral agreements between the sending and receiving States.

6 (a). Russian "understanding": "[T]he Russian Federation allows importation of the goods and vehicles mentioned in Article XI (2), (5) and (6) of the Agreement, and the equipment and items mentioned in Article XI (4) of the Agreement which are intended for the needs of the force, in accordance with the terms of the customs regime for

temporary importation that were established by the customs legislation of the Russian Federation. In this connection, such importation is carried out with full exemption from payment of customs duties, taxes, and fees, except for customs fees for storage, customs processing of goods, and similar services outside of the designated places or hours of operation of the customs authorities, and for the periods provided for in the Agreement if such periods are expressly stipulated in the Agreement."

The Government of the United States considers this to be a reservation and objects to this reservation insofar as Russia purports to (a) accept its obligations only if such obligations are in accordance with the terms of the customs regime for temporary importation established by the customs legislation of the Russian Federation, and (b) allow the imposition of customs duties that are prohibited under Article XI (5) of the Agreement. The reservation by the Russian Federation could significantly limit Russia's obligations because the obligations would be limited by whatever Russian legislation is put in place. Domestic legislation should not limit the obligations of the Parties under the PfP SOFA to apply the terms of the Agreement.

The United States further notes that conditions relating to the designated places and hours for customs clearance may be addressed within separate bilateral agreements between the sending and receiving States.

6 (b). Russian "understanding": "The Russian Federation presumes that the procedure and terms for importation of the goods mentioned in Article XI (4) of the Agreement and intended for the needs of the force will be governed by separate agreements on the sending and receiving of forces between the Russian Federation and the sending State."

The Government of the United States considers this to be a reservation and objects to this reservation. The rights and obligations under Article XI of the Agreement apply by their terms even in the absence of a bilateral supplemental arrangement between the Russian Federation and a sending State. Such separate agreements are appropriate to protect against customs abuses, but should not require additional conditions or procedures for import and export.

The United States further notes that implementation of Article XI (4) of the Agreement may be the subject of separate bilateral agreements if two Parties elect to enter into such agreements.

6 (c). Russian "understanding": "None of the provisions of Article XI, including paragraphs 3 and 8, restrict the right of Russian Federation customs authorities to take all necessary steps to monitor compliance with the terms for importation of goods and vehicles provided for by Article XI of the Agreement, if such measures are necessary under Russian Federation customs legislation."

The Government of the United States considers this to be a reservation and objects to it insofar as the referenced procedures "necessary under Russian Federation legislation" are inconsistent with the provisions on import, use, and export of goods

and equipment specified in Article XI of the Agreement. The United States recognizes that appropriate measures to prevent abuse of duty-free import privileges are appropriate. Such measures may be the subject of separate bilateral agreements between the sending and receiving States.

6 (d). Russian "understanding": "The Russian Federation presumes that the sending State will send confirmation to the Russian Federation customs authorities that all goods and vehicles imported into the Russian Federation in accordance with the provisions of Article XI of the Agreement and with separate arrangements on the sending and receiving of forces between the Russian Federation and the sending State may be used solely for the purposes for which they were imported. In the event they are used for other purposes, all customs payments stipulated by Russian Federation legislation must be made for such goods and vehicles, and the other requirements set by Russian Federation legislation must also be fulfilled."

The Government of the United States considers this to be a reservation and objects to this reservation insofar as it purports to limit Russia's obligations by subjecting them to its own domestic legislation and to impose additional requirements on sending States beyond those stated in Article XI (4) of the Agreement to certify that the equipment and goods imported by the visiting forces are for use by the force, civilian component, or dependents – and not to certify the specific uses of such equipment and goods.

The United States recognizes that it is appropriate to establish measures to prevent abuse of these duty-free import privileges through black-marketing and other unauthorized transfers of such goods and vehicles to persons not entitled to duty-free privileges. Such measures could be addressed in separate bilateral agreements.

6 (e). Russian "understanding": "Transit of the aforesaid goods and vehicles shall be carried out in accordance with Russian Federation customs legislation."

The Government of the United States considers this to be a reservation and objects to this reservation because it is directly contrary to the provisions of paragraph 13 of Article XI of the Agreement. Article XI (13) provides that the provisions of Article XI, not Russian Federation customs legislation, apply to goods imported in accordance with Article XI during transit through the territory of the Russian Federation.

6 (f). Russian "understanding": "Pursuant to Article XI (11), the Russian Federation declares that it permits the importation into the customs territory of the Russian Federation of petroleum products intended for use in the process of operating official vehicles, aircraft, and vessels belonging to the forces or the civilian component, with exemption from the payment of customs duties and taxes in accordance with the requirements and restrictions established by Russian Federation legislation."

The Government of the United States considers this to be a reservation and objects to it. This reservation purports to limit only to imports of fuel, oil, and lubricants the obligation under Article XI (11) of the Agreement to allow delivery of such petroleum products free of all duties and taxes. Article XI (11) has no such limitation. Fuel, oil, and lubricants for use in service vehicles, aircraft, and vessels of a force or civilian component are to be "**delivered** free of all duties and taxes." (Emphasis added.) This applies whether the fuel, oil, and lubricants are imported by the sending State or are acquired within the receiving State. Additionally, Article XI (11) does not condition "delivered free of all duties or taxes" on "requirements and restrictions established by Russian Federation legislation."

6 (g). Russian "understanding": "The Russian Federation permits the importation of the vehicles that are mentioned in Article XI (2), (5) and (6) of the Agreement and intended for personal use by members of the civilian component and their family members under the terms of temporary importation that are established by Russian Federation legislation."

The Government of the United States considers this to be a reservation and objects to this reservation insofar as it purports to limit the responsibility of the Russian Federation to ensure the duty-free importation and re-exportation of these vehicles under Article XI of the Agreement or to substitute the procedures set out in Russian Federation legislation for those in Article XI.

6 (h). Russian "understanding": "The Russian Federation presumes that customs processing of goods imported (exported) by members of the civilian component and their family members and intended solely for their personal use, including goods for initially setting up a household, shall be carried out without the exacting of customs payments, except for customs fees for storage, customs processing of goods, and similar services outside the designated places or hours of operation of the customs authorities.'

The Government of the United States considers this to be a reservation and objects to this reservation insofar as it purports to allow the imposition of customs duties, which are prohibited under Article XI (5) and (6) of the Agreement.

7. Russian "understanding": "The Russian Federation also presumes that documents and materials appended to them that are sent to its competent authorities within the framework of the Agreement will be accompanied by duly certified translations thereof into the Russian language."

The Government of the United States understands this to purport to change the basic NATO method of operation, i.e., that documents need only be in one of the official NATO languages, and thereby to purport to impose an additional obligation on the other Parties to the PfP SOFA. It is the opinion of the United States that the Russian Federation cannot by unilateral statement extend the obligations of the United States or any other country other than the Russia Federation, beyond those obligations contained in the PfP SOFA without the express consent of the United States or such

other countries. Therefore, the United States does not consider this statement to have any effect in respect of the rights and obligations of the United States under the PfP SOFA. Moreover, the Government of the United States notes that requiring additional certified translations into the Russian language for all documents and matters appended to them would make implementing the Agreement and the PfP SOFA impracticable. An obligation to provide translations of certain documents could be addressed in separate bilateral agreements between the sending and receiving States.

The response of the United States set forth above to the Russian understanding does not preclude entry into force between the United States of America and the Russian Federation of the Agreement Among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace Regarding the Status of Their Forces. The United States acknowledges that many of the understandings raised by the Russian Federation address issues of legitimate concern that could be appropriately addressed in bilateral supplemental agreements.