

Nuclear Weapons Free Zone in Latin America and the Caribbean

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NB The class was given on the basis of the following notes.

I. Historical context

a) *International Context*

The Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, also known as the Treaty of Tlatelolco, came to be in the international context of Cold War. Shortly after Hiroshima and Nagasaki and the end of World War II, the arms race began marked by the test of the Soviet Union's first atomic bomb in 1949. Within the framework of the Cold War, the decade of the 1960s was a period of ascending tensions which had begun with the iron curtain ("From Stettin in the Baltic to Trieste in the Adriatic an iron curtain has descended across the Continent" – Winston Churchill's speech at Westminster College in 1946).

Also in that decade the process of decolonization had a tremendous impact on international politics, with the entrance of many new actors in the international scene.

The new leading world power, the United States, was anticolonialist but so was its counterpart, the USSR. This opened the way for the former colonies to begin to participate in the international arena, and so, new participants with no prior commitments began to have significant roles as international actors. For instance, in the San Francisco Conference of 1945, where the United Nations Charter was approved, out of the fifty attending nations, there were 20 Latin American countries, but only 7 from Asia and Middle East and 4 from Africa.

In this regard, the existence of the United Nations was essential for the quick introduction of these newly independent States in the discussions. The relevance of these emerging voices did not stem from their economic or military power. Great leaders of several Asian and African countries created the Non-Aligned Movement (NAM), which had an impact on Cold War polarity (i.e. *Sukarno of Indonesia, Jawaharlal Nehru of India, Josip Broz Tito of Yugoslavia, Gamal Abdel Nasser of Egypt and Kwame Nkrumah of Ghana*/ *important milestone: Conference of Bandung of 1955; first conference of NAM: Belgrade, 1961*).

Along the decolonization movement, a new paradigm based on economic and social development emerged. Especially in Latin America, a number of social scientists active in the Economic Commission for Latin America (ECLAC/CEPAL), helped to create a new vision of

world politics based not on the East-West divide but on North-South separation. There was also a level of uncertainty about how the newly decolonized countries would develop; the Soviet Union took advantage of this scenario to increase its influence in other regions.

The sixties was a complicated decade of great tension in the context of the Cold War. Precisely in 1962, year of the Cuban Missile Crisis, there were 178 estimated nuclear explosions, the largest number of nuclear tests ever conducted, which could serve as a thermometer of the Cold War (later in 1986 the world reached 69,368 nuclear warheads, reported to be the largest number in history).

b) Latin American context

During the Cold War, Latin American found itself in the eye of the storm. From inside the region, there are two important factors which demonstrate the Treaty of Tlatelolco proved to be a great achievement. During this period, there was a shift towards authoritarian governments in the continent, and as a result, a major part of the Latin American territory was subject to authoritarian, military governments which were naturally pro-West and anti-communist. An atmosphere of mistrust, territorial disputes, and guerrilla warfare pervaded the region, making it hard to believe that a Treaty related to matters of national security, which would require confidence among the parties, could ever be achieved. Against these odds, the Latin American countries made a decision aiming to guarantee their security that did not involve neither solving their differences nor aligning themselves with the East or West: the establishment of a nuclear-weapons-free zone.

After the 1962 “Missile Crisis” in Cuba, which generated an atmosphere of great tension and fear, on 29 April 1963 the Presidents of Bolivia, Brazil, Chile, Ecuador and Mexico issued a Joint Statement announcing that they were prepared to sign a multilateral agreement that would make Latin America a nuclear-weapon-free zone. That same year, on 27 November, the United Nations General Assembly adopted Resolution 1911 (XVIII) which endorsed the aforementioned declaration. Clearly, the initiative had been set out and other Latin American countries decided to join it.

The following year, from 23 to 27 November, the “Preliminary meeting on the Denuclearization of Latin America” (REUPRAL) took place and resolved to establish the “Preparatory Committee for the Denuclearization of Latin America” (COPREDAL). Thus,

from 1965 to 1967 intense negotiations were held until 12 February when COPREDAL unanimously approved the text of the “Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean” or Treaty of Tlatelolco. Two days later, on 14 February, the Treaty of Tlatelolco was opened for signature. Today, after 47 years, all the 33 Latin American and Caribbean States are Parties to the Treaty.

II. International law

International Law is essential for the existence of the international community. Within the vast framework of International Law, the Treaty of Tlatelolco established a Nuclear-Weapons-Free Zone to be applied to a specific region. This NWFZ should not be confused with the region itself but rather understood as an abstract superstructure or institute of International Law applied over a specific area. It does not alter the area where it is applied and, as a legal attribute, it creates rights and obligations.

In order to better understand this idea of how the NWFZ is an abstract attribute applied over a tangible extension of territory, one can reflect upon the fact that a portion of the high seas (extending beyond the 12 nautical miles of the territorial waters and the 200 nautical miles of exclusive economic zone) is considered part of the NWFZ according to the limits established by Article 4 of the Treaty of Tlatelolco. In this regard, absolutely no claim of sovereignty is made through the extension of the NWFZ over the high seas and in no way does this modify their characteristic as a sovereignty-free space according to the Law of the Sea. This clarification is very important, since it was not perceived this way by France and Russia (formerly USSR) when they ratified both Protocols to the Treaty of Tlatelolco.

A NWFZ, as an institute of International Law has several characteristics:

- it has a material application and generates concrete consequences;
- it represents an attribute of an area, which on its turn does not undergo any change in its nature beyond the rights and obligations under the international legal instrument applied to it, in this case the NWFZ;
- it must be associated to an international instrument, and therefore, it results in rights and obligations, the institute is a legal attribute of the area to which it applies;

- it implies the creation of a mechanism to administer this legal attribute in the area to which it applies, or in other words, it implies the establishment of an agency devoted to its administration.

Latin America and the Caribbean, considered as a geographical area and set of States, are not the NWFZ. A NWFZ is a legal institute of International Law applied to Latin America and the Caribbean, providing the region a distinctive status with legal implications and consequences in terms of international relations.

A similar example of an institute of International Law which creates legal implications and consequences over a specific geographical area can be found in the Common Heritage of Mankind, coined by the UNGA Resolution 2749 (XXV) of 1970, then taken to the United Nations Convention on the Law of the Sea. In this regard, the abstract idea of Common Heritage of Mankind is applied to the area comprising the sea-bed, ocean floor and subsoil thereof located beyond national jurisdictions. The Common Heritage of Mankind cannot be confused with this “area” described in the Convention, it does not change its natural characteristics and yet it provides a legal regime administered by a multilateral institution, just as a NWFZ relates to its zone of application, which must remain free from nuclear weapons at all times.

III. The Treaty of Tlatelolco

a) Obligations and Zone of Application

Article 1 of the Treaty of Tlatelolco establishes very comprehensive and precise obligations:

“1. The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:

- a. The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and
- b. The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way.

2. The Contracting Parties also undertake to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.”

It is important to highlight that when the Parties oblige themselves under Article 1 Paragraph 2 “in any other way” implies the prohibition of possession of nuclear weapons by Member Parties to the Treaty even in territories outside the region. Moreover, by being so broad in the prohibition, this Article leaves no room for any form of possession, endorsement or deployment of nuclear weapons.

The Zone of Application, in the case of the Treaty of Tlatelolco, goes beyond the territories of the States. Article 4 defines the zone of application of the Treaty as follows:

“1. The Zone of application of this Treaty is the whole of the territories for which the Treaty is in force.

2. Upon fulfillment of the requirements of Article 29, paragraph 1, the Zone of Application of this Treaty shall also be that which is situated in the western hemisphere within the following limits (except the continental part of the territory of the United States of America and its territorial waters): starting at a point located at 35° north latitude, 75° west longitude; from this point directly southward to a point at 30° north latitude, 75° west longitude; from there, directly eastward to a point at 30° north latitude, 50° west longitude; from there, along a loxodromic line to a point at 5° north latitude, 20° west longitude; from there, directly southward to a point at 60° south latitude, 20° west longitude; from there, directly westward to a point at 60° south latitude, 115° west longitude; from there, directly northward to a point at 0° latitude, 115° west longitude; from there, along a loxodromic line to a point at 35° north latitude, 150° west longitude; from there, directly eastward to a point at 35° north latitude, 75° west longitude.”

Having explained that the NWFZ is an abstract institute of International Law that creates rights and obligations but which cannot be confused with the geographical region of Latin America and the Caribbean, it is important to mention that the declarations made by France and the USSR expressing that the Zone of Application is limited to the territories of the Member Parties, implying that paragraph 2 of Article 4 contradicts International Law are unfounded.

In this regard, it is worth mentioning that one year after the Treaty of Tlatelolco was opened for signature, negotiations on the Law of the Sea began (the Conference itself started only in 1973). If the Treaty would have implied any claim to national sovereignty or

jurisdiction, contradicting International Law, its States party would not have signed/ratified the Convention on the Law of the Sea.

b) *Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL)*

Once the NWFZ was established with its corresponding legal implications and consequences, the administration of such implications had to be conducted in a unified way and not individually by each State of the region, which would have not been feasible. Thus, the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) was conceived in Article 7 of the Treaty of Tlatelolco: “in order to ensure compliance with the obligations of this Treaty [...]”.

OPANAL is one of the greatest successes of the Latin America and the Caribbean NWFZ, and it was one of many innovations proposed by the Treaty of Tlatelolco. Article 8 “[...] established as principal organs of the Agency: a General Conference, a Council and a Secretariat.” These three main organs can be briefly described as follows:

1. **The General Conference:** “the supreme organ of the Agency, shall be composed of all the Contracting Parties; it shall hold regular sessions every two years, and may also hold special sessions whenever this Treaty so provides or, in the opinion of the Council, the circumstances so require. [...]” The General Conference “shall establish procedures for the Control System to ensure observance of this Treaty [...]” (Art. 9).
2. **The Council:** formed by 5 Member States elected for a four-year period in which they alternate the Council’s presidency. OPANAL Council meets on a regular basis every two months, and extraordinarily whenever needed. The current Members are: Argentina, Ecuador, Mexico, Paraguay, and Venezuela. “In addition to the functions conferred upon it by this Treaty and to those which may be assigned to it by the General Conference, the Council shall, through the Secretary General, ensure the proper operation of the Control System in accordance with the provisions of this Treaty and with the decisions adopted by the General Conference.” (Art. 10 par. 5).

3. **The Secretariat:** “shall consist of a Secretary General [elected by the General Conference], who shall be the chief administrative officer of the Agency, and of such staff as the Agency may require. The term of office of the Secretary General shall be four years and he may be re-elected for a single additional term. [...] The staff of the Secretariat shall be appointed by the Secretary General, in accordance with rules laid down by the General Conference [...] The Secretary General shall ensure the proper operation of the Control System established by this Treaty, in accordance with the provisions of the Treaty and the decisions taken by the General Conference.” (Art. 11).

The problem of participation of Caribbean States

Of the 33 States party to the Treaty of Tlatelolco, one third, all of them Caribbean States¹, do not have permanent representations in Mexico City, where OPANAL headquarters are located. Consequently, their actual participation in the works of OPANAL is insufficient. Some of those countries have been present at General Conferences but none has ever been a Member of the Council, for example. This anomalous situation must be corrected. OPANAL is a unique regional organization – the only one of its kind devoted to nuclear disarmament and non-proliferation.

Different measures to establish closer ties between the Agency and these States are already being implemented: the Secretariat sends all important documentation in English; there is a specific coordination for CARICOM regarding OPANAL works at the United Nations Headquarters in New York; whenever OPANAL Secretary General attends UN events or any international forum he seeks to hold meetings with representatives of all the Caribbean States; and constant communication is maintained between the Secretariat and officers from the Ministries of Foreign Affairs both by e-mail and post.

Moreover, Secretary General Macedo Soares has several ideas to be implemented in the near future in order to increase the participation of these States: he proposed to OPANAL Council that the next Regular Session of the General Conference, in 2015, takes place in a Caribbean State; he is interested in the possibility of participating in a meeting of CARICOM Members; he has suggested to OPANAL Council the design of a document containing

¹ Countries not permanently represented in Mexico City: Antigua and Barbuda, Bahamas, Barbados, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname and Trinidad and Tobago.

proposals for the Third Conference of States Parties and Signatories to the Treaties that Establish Nuclear-Weapon-Free Zones and Mongolia (April 2015), which would be discussed in the framework of this year's UNGA First Committee Sessions and adopted by all Member States.

c) *Control System of the Treaty of Tlatelolco*

The Treaty of Tlatelolco established the first international monitoring and verification system to ensure compliance with disarmament and non-proliferation obligations: The Control System, which was the main reason for the institutionalization of the Treaty. The Agency itself, through its three main organs, is in charge of ensuring compliance with the Treaty, whereas the General Conference “shall establish procedures for the Control System to ensure observance of this Treaty in accordance with its provisions” (Art. 9, paragraph 2, subparagraph b) and “the Council shall, through the Secretary General, ensure the proper operation of the Control System” (Art. 10, paragraph 5). In this way, the three organs are involved in the procedure of ensuring the effectiveness of the Control System itself.

Moreover, the Control System is observed as well by the International Atomic Energy Agency (IAEA) regarding the implementation of nuclear safeguards (Arts. 13, 14, 16 and 19).

The legal structure of the Control System can be summarized as follows:

- **Art. 12:** the Control System shall be put into effect in accordance with the provisions of Articles 13-17 of the Treaty.
- **Art. 13:** each Party shall negotiate multilateral or bilateral agreements with the IAEA for the application of its safeguards to its nuclear activities.
- **Art. 14:** the Parties shall submit to OPANAL and the IAEA semi-annual reports stating that no activity prohibited under the Treaty has occurred in their respective territories. They shall simultaneously submit to OPANAL a copy of reports submitted to the IAEA relevant to the work of the Agency.
- **Art. 15:** at the request of any Party and with the authorization of the Council, the Secretary-General may request any of the Parties to provide the Agency with complementary or supplementary information regarding any extraordinary event or circumstance affecting compliance with the Treaty. The Parties undertake to cooperate promptly and fully with the Secretary-General.

- **Art. 16:** at the request of any of the Parties, the Council may submit for the consideration of the IAEA a request that the necessary mechanisms be put into operation to carry out a special inspection.
- **Art. 24:** all Member Parties shall notify the Secretariat of any international agreement concluded on matters with the Treaty is concerned. (Even though this Article is not strictly part of the Control System, it establishes another important obligation for Contracting Parties).

Additional aspect related to the Control System:

Although it is not included in the Treaty of Tlatelolco, since it was created at a later date, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC) should also be considered part of the Control System. This Agency maintains a Quadripartite Safeguards Agreement signed by Argentina, Brazil, ABACC and IAEA. Together with the amendments to Articles 14, 15, 16, 19 and 20, the founding of ABACC (1991), played an important role for Argentina and Brazil to become full Parties to the Treaty of Tlatelolco (1994).

IV. Negative Security Assurances (NSAs)

Negative Security Assurances are essential for a NWFZ to be complete and effective. They are meant to guarantee that Nuclear Weapons States will not employ nuclear weapons or use them to threaten Member States of the Zone. NSAs must be legally binding.

Additional Protocol II corresponds to NSAs, therefore interpretative declarations or reservations issued by the Nuclear-Weapon-States (NWS) must be modified or withdrawn. In the case of the Treaty of Tlatelolco, Article 3 of Protocol II (signed and ratified by the 5 Nuclear Weapons States) indicates the following:

The Governments represented by the undersigned Plenipotentiaries also undertake not to use or threaten to use nuclear weapons against the Contracting Parties of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean.

Nonetheless, several of the interpretive declarations they made when signing or ratifying this Protocol affect the NSAs which must be absolute to be considered as valid.

V. The Treaty of Tlatelolco and the Treaty on the Non-Proliferation of Nuclear Weapons.

It is often forgotten that the Treaty of Tlatelolco predates the Treaty on the Non-Proliferation of Nuclear Weapons. Unlike the NPT, the TT is a negotiated instrument: the first one was mainly drafted by the United States and the USSR in the Eighteen Nation Disarmament Committee of the United Nations; the latter was negotiated by 21 Latin America and Caribbean States at the Preparatory Commission for the Denuclearization of Latin America (COPREDAL).

The common idea that the NPT has 3 pillars (non-proliferation, nuclear disarmament, and peaceful use of nuclear energy) is not really valid. The NPT prohibits proliferation (Arts. I and II), thus non-proliferation is an obligation basically complied with. It contains the compromise to negotiate disarmament since each NWS “undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament [...]” (Art. VI), an obligation which has not yet been complied with. However, with regards to the so-called “third pillar” concerning peaceful uses of nuclear energy (Art. IV), it implies this right as conditioned or subordinate to compliance with the obligation of non-proliferation, a sort of reward for good behaviour. This is a distortion of the letter and spirit of the NPT and an attempt to present development, knowledge, and application of nuclear energy as a concession instead of an inalienable right, which requires no authorization and pre-exists the NPT.

Comparing the Treaty of Tlatelolco to the NPT in regards to non-proliferation, nuclear disarmament and peaceful use of nuclear energy, one can mention that the Treaty of Tlatelolco begins reaffirming the inalienable right for all States to use nuclear energy for peaceful purposes. Then, it establishes the obligations of the Parties to refrain from military use of nuclear energy and any form of possession of any nuclear weapon. Article 1 of the Treaty contains this extensive and comprehensive obligation. Moreover, the Treaty defines nuclear weapons in its Article 5:

“For the purposes of this Treaty, a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.”

Finally, unlike the NPT, which is intrinsically unbalanced, the Treaty of Tlatelolco establishes the principle of an acceptable balance of mutual responsibilities and duties for the nuclear and non-nuclear-weapon States recalling in its Preamble (paragraph 6) “United Nations General Assembly Resolution 2028 (XX), which established the principle of an acceptable balance of mutual responsibilities and duties for the nuclear and non-nuclear powers”.