



AGENCY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN  
LATIN AMERICA AND THE CARIBBEAN

Secretariat

Inf.14/2018

31 May 2018

Original: English

**Contribution of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) to the report of the Secretary-General on oceans and the law of the sea, pursuant to United Nations General Assembly resolution 72/73 of 5 December 2017<sup>1</sup>**

**I – Introduction**

1. The Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), created by article 7 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)<sup>2</sup>, presents its contribution to the report of the United Nations Secretary-General pursuant to paragraph 358 of resolution 72/73.

**II – The Treaty of Tlatelolco and its zone of application**

2. The Treaty of Tlatelolco and its Additional Protocols I and II were opened for signature on 14 February 1967. Article 1, paragraph 1, contains the main obligations that States Party to the Treaty undertake. It reads as follows:

*“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*

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<sup>1</sup> This document was prepared by the Secretariat of the Agency for the Prohibition of Nuclear weapons in Latin America and the Caribbean – OPANAL under the responsibility of its Secretary-General, Ambassador Luiz Filipe de Macedo Soares

<sup>2</sup> United Nations, *Treaty Series*, vol. 634, No. 9068.

- b. *The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapons.*”
3. The States Party to Additional Protocols I and II undertake to respect the denuclearization regime contained in article 1 of the Treaty of Tlatelolco. The commitments undertaken by the States Party to the Additional Protocols to the Treaty are explained in part III of this document.
4. In its article 4, the Treaty of Tlatelolco describes its “*zone of application*”. Paragraph 1 of said article defines “*zone of application*” as: “*the whole of the territories for which the Treaty is in force*”. The term “*territory*”, as defined in article 3, includes “*the territorial sea, air space and any other space over which the State exercises sovereignty in accordance with its own legislation*”. Paragraph 2 of article 4, expanding the “*zone of application*” beyond “*the territories*” mentioned in paragraph 1, expressly indicates the geographical coordinates of the “*zone of application*”.
5. Consequently, in accordance with the description contained in paragraph 2 of article 4, the “*zone of application*” straddles areas defined in articles 55 and 86 of the United Nations Convention on the Law of the Sea<sup>3</sup> as exclusive economic zone and high seas, respectively. The rationale for this extension of the “*zone of application*” is explained in part IV of the present document.

### **III – Additional Protocols to the Treaty of Tlatelolco**

6. Additional Protocol I to the Treaty of Tlatelolco has been signed and ratified by the French Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The States Party to Protocol I undertake “*to apply the statute of denuclearization in respect of warlike purposes as defined in articles 1, 3, 5, and 13 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean in territories for which, de jure or de facto, they are internationally responsible and which lie within the limits of the geographical zone established in that Treaty*” [underlining added] (article 1 of Additional Protocol I).

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<sup>3</sup> United Nations, *Treaty Series*, vol. 1833, No. 31363

7. Additional Protocol II to the Treaty of Tlatelolco has been signed and ratified by the five nuclear-weapon States: the French Republic, the People's Republic of China, the Russian Federation<sup>4</sup>, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The States Party to Protocol II undertake "*not to contribute in any way to the performance of acts involving a violation of the obligations of article 1 of the Treaty in the territories to which the Treaty applies in accordance with article 4 thereof*" [underlining added] (article 2 of Additional Protocol II).
8. At the time of signing and/or ratifying Additional Protocols I and II, the States Party to such instruments issued declarations. In the case of two States, their declarations contain reservations regarding the zone of application of the Treaty of Tlatelolco.
9. The French Republic states in its declaration upon signing Additional Protocol I, on 2 March 1979, that "*article 4, paragraph 2, of the Treaty, cannot be considered as being established in conformity with international law, and consequently the French Government could not agree to the application of the Treaty therein.*"<sup>5</sup>
10. The Russian Federation affirms in its declaration upon signing Additional Protocol II, on 18 May 1978, that the signing of the Protocol "*does not in any way signify recognition of the possibility of the force of the Treaty as provided in Article 4(2) being extended beyond the territories of the States parties to the Treaty, including air space and territorial waters as defined in accordance with international law.*"<sup>6</sup>
11. Those concerns of the French Republic and the Russian Federation reflected the fact that the III United Nations Conference on the Law of the Sea would not conclude its work on the Convention until 1982. Those two States wanted to avoid taking any position elsewhere which would prejudice their positions during the negotiations in the Conference. Those preoccupations, understandable at that time, should not subsist 23 years after the entry into force of the Convention on the Law of the Sea.

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<sup>4</sup> Successor State of the Union of Soviet Socialist Republics.

<sup>5</sup> UNODA, *Treaties Database*, Declaration made by the French Republic upon signing and ratifying Additional Protocol I to the Treaty of Tlatelolco, retrieved from [http://disarmament.un.org/treaties/a/tlatelolco\\_p1/france/rat/mexico+city](http://disarmament.un.org/treaties/a/tlatelolco_p1/france/rat/mexico+city)

<sup>6</sup> IAEA, "Communication received from the Union of Soviet Socialist Republics Regarding the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean", July 1978, document INFCIRC/262, retrieved from [http://www.iaea.org/inis/collection/NCLCollectionStore/\\_Public/44/117/44117779.pdf](http://www.iaea.org/inis/collection/NCLCollectionStore/_Public/44/117/44117779.pdf)

12. It should be noted that none of the other four Parties to the Additional Protocols raised any difficulty regarding the zone of application.

#### **IV – Compatibility of the zone of application with the Law of the Sea**

13. The observance of the obligations included in the Treaty of Tlatelolco and in the two Additional Protocols requires a clear identification of the space to which they apply. In addition, the Treaty includes the following among its preambular paragraphs: “... *the establishment of militarily denuclearized zones is closely linked with the maintenance of peace and security in the respective regions*”. A zone of application limited to the territory in which States Party exercise sovereignty would not contemplate the concern expressed in the mentioned preambular paragraph. The zone of application established in article 4, paragraph 2, of the Treaty of Tlatelolco was therefore considered essential by the States of Latin America and the Caribbean. A regional precedent of a similar concept of application area may be found in article 4 of the Inter-American Treaty of Reciprocal Assistance of 1947<sup>7</sup>. The legal nature of the zone of application of the Treaty of Tlatelolco does not mean, in any way, a claim of sovereignty or jurisdiction over the portion of high seas included in the zone. This was exactly the case of the Inter-American Treaty of Reciprocal Assistance. In this Treaty, as in Tlatelolco 20 years later, security was an urgent concern among the States that negotiated those instruments.

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<sup>7</sup> Article 4: “*The region to which this Treaty refers is bounded as follows: Beginning at the South Pole, thence due north to a point 7 degrees south latitude, 90 degrees west longitude; thence by a rhumb line to a point 15 degrees north latitude, 118 degrees west longitude; thence by a rhumb line to a point 56 degrees north latitude, 144 degrees west longitude; thence by a rhumb line to a point 52 degrees north latitude, 150 degrees west longitude; thence by a rhumb line to a point 46 degrees north latitude, 180 degrees longitude; thence by a rhumb line to a point 50 degrees 36. 4 minutes north latitude, 167 degrees east longitude, thereby coinciding with the End Point of the United States-Russia Convention Line of 1867; thence along this Convention Line to its Initial Turning Point 65 degrees 30 minutes north latitude, 168 degrees 58 minutes 22. 587 seconds west longitude; thence due north along the Convention Line to its Starting Point at 72 degrees north latitude; thence by a rhumb line to a point 75 degrees north latitude; 165 degrees west longitude; thence due east to a point 75 degrees north latitude, 140 degrees west longitude; thence by a great circle to a point 86 degrees 30 minutes north latitude, 60 degrees west longitude; thence due south along the 60 degrees west meridian to a point 82 degrees 13 minutes north latitude, which coincides with Point No. 127 of the Line of the Agreement between the Government of Canada and the Government of the Kingdom of Denmark, which entered into force March 13, 1974; thence along this Line of Agreement to Point No. 1 at 61 degrees north latitude, 57 degrees 13. 1 minutes west longitude; thence by a rhumb line to a point 47 degrees north latitude, 43 degrees west longitude; thence by a rhumb line to a point 36 degrees north latitude 65 degrees west longitude; thence by a rhumb line to a point at the Equator and 20 degrees west longitude; thence due south to the South Pole.*”

14. The zone of application of the Treaty of Tlatelolco implies no distortion, violation or incompatibility with the “*freedom of the high seas*” established in article 87 of the United Nations Convention on the Law of the Sea. Although four Latin American and Caribbean States are not yet Parties to that Convention, no State Party to the Treaty of Tlatelolco (the entirety of Latin America and Caribbean) has ever issued any restrictive declaration in relation to provisions on the high seas contained in the Convention on the Law of the Sea. It is worth noticing once more that, among the six States Party to the Additional Protocols to the Treaty of Tlatelolco only two raised objections concerning the “*zone of application*”.

#### **V – Solving the reservations made by States Party to the Additional Protocols**

15. For more than 30 years, the States Party to the Treaty of Tlatelolco have been demanding the withdrawal or revision of interpretative declarations made by States Party to the Additional Protocols to the Treaty. This has been done directly through the organs of OPANAL<sup>8</sup> or on broader contexts such as the United Nations General Assembly and the Review Conferences of the Treaty on the Non-Proliferation of Nuclear Weapons. In fact, interpretative declarations were also issued in relation to Protocols to other treaties establishing nuclear-weapon-free zones. These appeals have not been successful. That is why the States Party to the Treaty of Tlatelolco decided to change the approach from presenting appeals to presenting proposals of Adjustments.

16. In 2015, the General Conference of OPANAL accepted a plan of action suggested by the Secretary-General of OPANAL<sup>9</sup>. Said action plan consisted basically in the preparation of draft Adjustments to be proposed with explanatory memoranda to those States having made interpretative declarations which in fact constitute reservations to specific parts of the Additional Protocols. In the case of reservations concerning the zone of application of the Treaty of Tlatelolco, the memoranda and proposals of Adjustments were presented to the French Republic on December 20<sup>th</sup>, 2016, and to the Russian Federation on December 16<sup>th</sup>, 2016. These démarches were respectively renewed on March 15<sup>th</sup>, 2018, and March 19<sup>th</sup>, 2018.

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<sup>8</sup> Article 7 of the Treaty of Tlatelolco establishes OPANAL, which has three main organs: the General Conference (article 9), the Council (article 10) and the Secretariat (article 11).

<sup>9</sup> Resolution CG/Res.03/2015 adopted on 26 November 2015 by the General Conference of OPANAL, entitled “Interpretative Declarations made by the States Party to the Additional Protocols I and II to the Treaty of Tlatelolco”, retrieved from <http://www.opanal.org/wp-content/uploads/2015/11/CG-Res-03-2015.pdf>

17. The States Party to the Treaty of Tlatelolco are waiting for a response from the French Republic and the Russian Federation.

#### **VI – The questions of “transport” and “transit” in the Treaty of Tlatelolco**

18. Due to their relationship to the Law of the Sea, “transport” and “transit”, words not mentioned in the Treaty of Tlatelolco, should be considered in this document. The sufficient information on these matters is contained in the Final Act of the IV Session of the Preparatory Commission for the Denuclearization of Latin America – COPREDAL, the negotiating body, dated 14 February 1967, as follows:<sup>10</sup>

*“The Commission deemed it unnecessary to include the term ‘transport’ in article 1, concerning “Obligations”, for the following reasons:*

*“1. If the carrier is one of the Contracting Parties, transport is covered by the prohibitions expressly laid down in the remaining provisions of article 1 and there is no need to mention it expressly, since the article prohibits ‘any form of possession of any nuclear weapon, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way’.*

*“2. If the carrier is a State not a Party to the Treaty, transport is identical with “transit” which, in the absence of any provision in the Treaty, must be understood to be governed by the principles and rules of international law; according to these principles and rules it is for the territorial State, in the free exercise of its sovereignty, to grant or deny permission for such transit in each individual case, upon application by the State interested in effecting the transit, unless some other arrangements has been reached in a Treaty between such States.”*

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<sup>10</sup> COPREDAL/76, p. 8, annexed to United Nations General Assembly document A/6663 of 23 February 1967.