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**Interpretative declarations made by States Party to Additional Protocols I and II to
the Treaty of Tlatelolco
Report of the Secretary-General**

I. Introduction

1. The Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean - Treaty of Tlatelolco, contains two additional legal instruments annexed to it: Additional Protocols I and II. Both Protocols are inseparable from the Treaty of Tlatelolco.
2. The legal commitments of the States Party to the Additional Protocols I and II represent essential guarantees for the Nuclear-Weapon-Free Zone in Latin America and the Caribbean. However, interpretative declarations made by some States Party to the Protocols at the time of signing and/or ratifying the Protocols limit, in some cases, such commitments and, therefore, constitute reservations.
3. Only the following two aspects can be considered as reservations among the interpretative declarations made by States Party to the Additional Protocols I and II:
 - 1) **The non-recognition of the zone of application of the Treaty of Tlatelolco** - reservations submitted by France and Russia, which directly oppose a fundamental clause of the Treaty.
 - 2) **The hypothesis that a State Party to the Treaty of Tlatelolco commits military aggression with the support from a nuclear-weapon State or in support of a nuclear-weapon State** - reservations made by the United States of America, the

United Kingdom and Russia, which limit the guarantee of not using or threatening to use nuclear weapons against the States Party to the Treaty of Tlatelolco.

4. Through Resolution CG/Res.03/2015 of 26 November 2015, the General Conference of OPANAL resolved:

“To instruct the Council to make the necessary decisions for the implementation of the action plan presented by the Secretary-General in document CG/05/2015.”

5. In accordance with the action plan presented by the Secretary-General (CG/05/2015Corr.) and in follow-up to the aforementioned Resolution CG/Res.03/2015, during the 300th Meeting of the Council, on 10 March 2016, the Secretary-General presented the document C/08/2016 “Interpretative declarations of the States Party to Additional Protocols I and II to the Treaty of Tlatelolco. Implementation of the General Conference Resolution CG/Res.03/2015.” Document C/08/2016 contains in annex 3 memoranda, one addressed to France (on the non-recognition of the zone of application of the Treaty of Tlatelolco), and the other two addressed to Russia (on the non-recognition of the zone of application of the Treaty of Tlatelolco and on the eventuality of an act of military aggression with the support of a nuclear-weapon State or in support of a nuclear-weapon State). Each of these three memoranda contains attached a proposal of Adjustment, a type of international instrument with effect of agreement between the signatory parties of a treaty or other international instrument in order to clarify any controversy over the text of such instrument. The intention is to eliminate the misunderstandings present in the interpretative declarations that constitute reservations.
6. At its 304th Meeting held on 28 September 2016, the Council approved the memoranda prepared by the Secretary-General on the interpretative declarations made by the Russian Federation and the French Republic.
7. At its 305th Meeting held on 27 October 2016¹, the Council decided that *“the démarches with the Ministries of Foreign Affairs of France and Russia commence in the second or third week of December under the chairmanship of Brazil”*, which then served as President of the Council. This decision was ratified by the General Conference at its

¹ Summary Record of the 305th Meeting of the Council held on 27 October 2016 (C/35/2016).

XXIV Special Session, on 10 November 2016, by Resolution CG/E/Res.03/2016 in which it instructed the Council the following:

“to commence démarches with the Governments of the Russian Federation and the French Republic, according to the action plan proposed by the Secretary-General (Doc.CG/05/2015Corr.), in order to present the memoranda C/29/2016 and C/30/2016 to the Russian Federation and C/31/2016 to the French Republic.”

II. Démarches undertaken by the Representatives of the Member States of the Council before France and Russia (2016-2019)

8. On 16 December 2016, Representatives of the five Member States of the Council in Moscow were received at the Ministry of Foreign Affairs of Russia and presented the memoranda contained in documents C/29/2016 and C/30/2016 and their respective proposals of Adjustment attached.
9. On 20 December 2016, Representatives of the five Member States of the Council in Paris were received at the Ministry of Foreign Affairs of France and presented the memorandum contained in document C/31/2016 and their respective proposal of Adjustment attached.
10. During the 306th Council meeting, on 30 January 2017, Ambassador Enio Cordeiro, then Permanent Representative of Brazil to OPANAL presented a report on the démarches carried out by the Member States of the Council in Paris and Moscow on the interpretative declarations. This report was presented to the Council in document C/17/2017.
11. After eight months since the Council carried out démarches in Paris and Moscow, OPANAL had not received a response from France or Russia. At the 309th Meeting of the Council held on 23 August 2017, the Secretary-General submitted for consideration of the Members of the Council *“to undertake a follow-up démarche in Paris and Moscow, which can be made through a joint note by the representatives of the five Member States*

of the Council, to express that OPANAL is awaiting for an answer.”² The Council approved the proposal of the Secretary-General.

12. At the 310th Meeting of the Council held on 12 September 2017, the Secretary-General presented a proposal of joint note containing the request for a response to the démarches undertaken in Moscow on 16 December 2016 and Paris on 20 December 2016.
13. Through note 82/2018, dated 15 March 2018, the Embassy of Brazil in Paris presented to the Ministry of Foreign Affairs of France a joint note signed by the Heads of Mission of the Member States of the Council of OPANAL in Paris. The note reminded the French Ministry that, on 20 December 2016, representatives of the Council in Paris undertook démarches to present the memorandum and proposal of Adjustment contained in document C/31/2016, on the interpretative declarations made by France regarding the zone of application of the Treaty of Tlatelolco. In this note, the Member States of the Council indicated that they would appreciate receiving a response from the French Ministry of Foreign Affairs.
14. On 19 March 2018, the Ministry of Foreign Affairs of Russia received a joint note signed by the Ambassadors of the Member States of the Council —Argentina, Brazil, Peru, Uruguay, and by the *Chargé d'affaires* of Guatemala in Moscow. This joint note was similar to that sent to France, and requested a reaction to the démarches undertaken by the Member States of the Council on 16 December 2016, regarding the reservations presented by Russia in its interpretative declaration made upon signing the Additional Protocol II to the Treaty of Tlatelolco.
15. At the 315th Meeting of the Council held on 9 August 2018, through document C/15/2018, the Representative of Brazil informed that his Embassy in Moscow received on 13 July 2018 the note N. 6139-H/ ДНKB from the Russian Ministry of Foreign Affairs. In that note, the Russian Foreign Ministry communicated its response to the aforementioned joint note from the Council. A copy of that note was sent to all OPANAL

² Report of the Secretariat on the démarches made by the French Republic and the Russian Federation on their interpretative declarations made when signing and/or ratifying the Additional Protocols I and II to the Treaty of Tlatelolco, presented to the Council at its 309th meeting on 23 August 2017 through document C/17/2017.

Member States through notes S-442/2018 of 13 August and S-443/2018 of 14 August 2018.

16. In the note from the Russian Foreign Ministry (translated into Spanish by the Russian Foreign Ministry), they expressed affirmations such as:

- *“The Ministry has the honor to underline that restrictions, made during the signing of the aforementioned document [Additional Protocol II to the Treaty of Tlatelolco], do not contravene the spirit and letter of the Treaty and correspond to the recognized rules of international law.”*
- *“Russia does not intend to use them [nuclear weapons] hereinafter under rigorous observations of participating states of the Treaty of its region and with the absence of abuse Treaty positions by other nuclear powers.”*

17. Russia did not accept the proposals of Adjustment submitted by the Council. It maintains its position to condition the guarantees of non-use and non-threat of use of nuclear weapons against the States Party to the Treaty of Tlatelolco. Furthermore, it still does not recognize the delimitation of the zone of application of the Treaty of Tlatelolco contained in article 4, paragraph 2. That, rather than “restrictions”, as mentioned in the Russian response, is a rejection of fundamental clauses of the Treaty and Additional Protocol II.

18. At the 314th meeting of 11 October 2018, Ambassador Julio Garro, Permanent Representative of Peru to OPANAL, reported that his country's Embassy in Paris received a note with the French response to the follow-up démarches of the Council. A copy of that note from the French Foreign Ministry was circulated between the Member States of the Council and Observer States at the aforementioned Council meeting.

19. France also did not accept the proposal of Adjustment on its non-recognition of the delimitation of the zone of application of the Treaty of Tlatelolco. The French Foreign Ministry's note includes the following statements (unofficial English translation by OPANAL Secretariat):

“France admits a zone of territorial application of the Treaty of Tlatelolco restricted to the territorial sea, airspace and any other place over which the State

exercises its sovereignty in accordance with its legislation, pursuant to Article 3 of the Treaty of Tlatelolco. France thus refers to the territorial scope of a treaty as is commonly recognized in international law."

"This interpretative declaration also aims to recall that, in accordance with Article 2 of the Convention on the High Seas, this is not subject to appropriation and is characterized by the principle of freedom of navigation. These provisions have been confirmed by the Convention of the United Nations on the Law of the Sea in its articles 87.1 and 90."

"The analysis done by France is, therefore, that an adaptation of its interpretative declaration concerning Article 4 of the Treaty of Tlatelolco would have the effect of restricting the principle of free navigation and overflight on the High Seas, in contradiction with the norms of international law."

20. The response from France not only rejects *"an adaptation of its interpretative declaration regarding Article 4 of the Treaty of Tlatelolco"*. It also mistakenly declares that such adaptation *"would have the effect of restricting the principle of free navigation and overflight on the high seas, in contradiction with the norms of international law."*
21. As the Council clarified in the memorandum addressed to France on its interpretative declaration, the fact that the zone of application of the Treaty of Tlatelolco includes high seas areas, in no way constitutes a *"declaration of sovereignty or jurisdiction over high seas spaces included in that zone."* The zone of application of the Treaty has the sole purpose of indicating the space where the placement of nuclear weapons is prohibited.
22. In compliance with resolution CG/E/Res.01/2018 of the OPANAL General Conference, the Secretariat prepared responses to the two countries, which were considered by the Council during the 318th and 319th meetings; and finally approved at the 320th meeting of 27 June 2019. The five Member States of the Council - Argentina, Brazil, Guatemala, Peru and Uruguay - agreed that the notes would be delivered to the Russian Foreign Ministry (document **C/10/2019**) and France (document **C/10/2019**). On 25 July 2019, the OPANAL Secretariat requested the Foreign Ministers of the five Member States of the Council for their support to carry out joint démarches, similar to those carried out in December 2016, under the coordination of the State that holds the Presidency of the OPANAL Council.

III. Council démarches before the United States of America and the United Kingdom (2018)

23. At the 311st Council meeting on 9 November 2017, the Council decided to begin the démarches before the governments of the United States of America and the United Kingdom. In that meeting, the Secretary-General reminded the members of the Council that the démarches before the aforementioned States Party to the Additional Protocols that submitted reservations to those instruments “*do not configure a claim or request by the Member States of OPANAL or any criticism or censorship in relation to the States that made such declarations.*”

Council démarches before the United States of America (2018)

24. At the 314th Council meeting on 7 June 2018, the delegation of Brazil informed that the Ministers-Counselor of the Embassies of the Member States of the Council - Argentina, Brazil, Guatemala, Peru and Uruguay - made on 6 April 2018 a joint démarche in the Department of State of the United States of America regarding the interpretative declarations made by the United States at the time of signing Additional Protocol II to the Treaty of Tlatelolco. The United States of America was represented by Ambassador C.S. Eliot Kang (*Principal Deputy Assistant Secretary of the Bureau of International Security and Nonproliferation*), the Legal Advisor of the Department of State and other officers.

25. The representatives of the Council presented the memorandum and the proposal of Adjustment (C/21/2017) on the interpretative declaration of the United States of America that configures a reservation. They emphasized that the proposal of Adjustment seeks to strengthen the Nuclear-Weapon-Free Zone of Latin America and the Caribbean and that does not constitute a claim or criticism in relation to the United States of America.

26. Ambassador Kang thanked the opportunity to exchange views on the subject and reiterated the “*strong support*” from the United States to the Treaty of Tlatelolco, which “*served as a model*” for other regions. Regarding his interpretative declaration, he

argued that it is in line with international law. He said that the United States of America “*does not intend to review its declarations and understandings for now.*” He affirmed that the declarations to the Protocols of the Treaty of Tlatelolco have internal political implications since they enabled, at the time, the support from the Congress to sign the instruments.

27. The representatives of the Council asked the North American side to examine the OPANAL proposal with “*openness of spirit*” and indicated that the démarche would be communicated to the Agency. Elliot Kang said that the proposal would be appreciated in a constructive way.

Council démarches before the United Kingdom (2018)

28. At the 314th Council Meeting on 7 June 2018, Brazil reported that the United Kingdom's Foreign Office had not received the Representatives of the Embassies of the Member States of the Council.
29. That request was initially made, in March 2018, by the Ambassador of Peru to the United Kingdom, Susana de la Puente. The Ambassadors of Brazil and Peru additionally asked the Director of the Americas of the British Foreign Ministry for her support to schedule a meeting.
30. On all occasions, the Foreign Office reported that the Representatives of the Member States of the Council could not be received due to “agenda difficulties”.
31. The Ambassadors of the Member States of the Council in London met on 12 July 2018 in order to establish a course of action to follow. The Ambassador of Brazil proposed to send immediately a joint note on the matter. The Council Representatives also decided to reiterate the request for a meeting, which was made by means of a note from the Embassy of Peru, in his capacity as President of the Council of OPANAL.
32. To date, the British Foreign Ministry has not responded to the Council's attempts and has not shown willingness to receive the Council Representatives.

IV. Recent developments 2020-2021

33. The Secretariat of OPANAL sent, on 25 July 2019, the templates of the joint notes to the Ministries of Foreign Affairs of the five Member States of the Council -Argentina (S-346/2019), Brazil (S-344/2019), Guatemala (S-350/2019), Peru (S-348/2019) and Uruguay (S-352/2019)-, through their Embassies in Mexico. They requested the "authorization for the Heads of Mission in Moscow and Paris to carry out joint démarches upon the Ministries of Foreign Affairs of Russia and France".

34. Through resolution CG/Res.12/2019 of November 7, 2019, the General Conference at its XXVI Ordinary Session resolved:

“To reiterate the validity of Resolution CG/Res.03/2015 and, therefore, of the action plan presented by the Secretary-General in document CG/05/2015Corr.

“[...] To present [...] the joint notes of the Council Member States that reiterate the interest of engaging in constructive dialogue with [...] [France and Russia] regarding the Memoranda and the proposals of Adjustment on interpretative declarations”.

“To invite the Council to renew joint démarches before the Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland.”

35. At the 323rd Meeting of the Council on 28 January 2020, the Member States of the Council informed that their Embassies in Moscow were instructed to carry out the mandated mission. However, no response has yet been received from France and Russia.

36. During the rest of the year 2020, as a consequence of the atypical times marked by the global pandemic caused by the SARS-CoV-2 virus, no major progress was reported.

37. At the 330th Meeting of the Council on 28 April 2021, it was decided to establish a Technical Group to agree on a new strategy of rapprochement and dialogue with the four nuclear-armed states - the United States, France, the United Kingdom and Russia - regarding the memoranda and proposals of Adjustments to the interpretative declarations, which is coordinated by Minister Alejandro Torres Lépori, of Argentina, and has met on two occasions. At both meetings, progress was made in the discussions on potential strategies, among which is the possibility of carrying out:

"A strategy to reiterate OPANAL's interest through joint notes from the Member States of the Council and to request a virtual meeting with the Ministries of Foreign Affairs of the four countries involved. The Secretary General and the Ambassadors of the Member States of the Council would participate in the virtual meeting (with a technical support liaison from capitals and to follow up the démarches in those in-person instances depending on how the sanitary situation evolves at the global level).

38. However, the Working Group has not yet concluded its substantive work, and therefore the draft resolution CG/L.01/2021 reflects the work carried out by the Council within the framework of the technical group and invites the Council to continue its work in the elaboration of recommendations.

V. Conclusions and recommendations to the General Conference at its XXVI Regular Session

39. In 2018, it was the only occasion in which the French and Russian Foreign Ministries sent notes in response to the respective memoranda and adjustments proposals, following the démarches carried out by the Representatives of the Member States of the Council in Paris and Moscow.
40. In its response, France rejects *"an adaptation of its interpretative declaration regarding Article 4 of the Treaty of Tlatelolco."* It mistakenly mentions that such adaptation *"would have the effect of restricting the principle of free navigation and overflight on the high seas, in contradiction with the norms of international law."*
41. Russia maintains its position to condition the guarantees of non-use and non-threat of use of nuclear weapons against the States Party to the Treaty of Tlatelolco. In addition, it continues without recognizing the delimitation of the zone of application of the Treaty of Tlatelolco contained in article 4, paragraph 2.
42. The démarches of the Representatives of the Member States of the Council before the United States of America were carried out. However, the Council is still awaiting a response from the Department of State.

43. To date, the United Kingdom Foreign Office has not yet accepted to receive the Ambassadors of the five Member States of the Council.
44. The Secretary-General proposes to invite the Council to continue with the work carried out by the Technical Group and, on the basis of its recommendations, to follow-up the démarches of the Member States of the Council with the Governments of the United States of America, the Russian Federation, the French Republic and the United Kingdom of Great Britain and Northern Ireland. He also proposes to mandate the Council to reiterate its interest in engaging in a constructive dialogue regarding the Memoranda and proposals of adjustments to the interpretative declarations.
45. Taking into account these considerations, the Secretary-General submits the draft resolution **CG/L.01/2021** to the General Conference.