



General Conference

XXVIII Session
3 November 2023
Agenda Item 7

CG/04/2023
Original: Spanish/ English

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

I. Background

The Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean – Treaty of Tlatelolco contains two other legal instruments annexed to it: Additional Protocols I and II; which are inseparable from the Treaty.

The legal commitments of the States Parties to Additional Protocols I and II represent critical guarantees for the Nuclear-Weapon-Free Zone in Latin America and the Caribbean. However, interpretative declarations made by some States Parties to the Protocols at the time of signing and/or ratifying the Protocols limit, in some cases, such commitments and, therefore, constitute reservations.¹

In the interpretative declarations made by four States Parties to Additional Protocols I and II, the following two issues are identified as reservations:

1. The non-recognition of the zone of application of the Treaty of Tlatelolco – reservations introduced by France and Russia, which directly oppose a fundamental clause of the Treaty.²
2. The hypothesis that a State Party to the Treaty of Tlatelolco could commit military aggression with the support of a nuclear weapon State or in support of a nuclear weapon State – reservations introduced by the United States, the United Kingdom and Russia, which limit

¹ According to article 2, paragraph (d), of the Vienna Convention on the Law of Treaties, for a "unilateral statement" to be a reservation, reference must be had not to "its wording or name", but to the fact that it "purports to exclude or modify the legal effects of certain provisions of the Treaty in their application to that State". *Vienna Convention on the Law of Treaties*. United Nations, *Treaty Series*, vol. 1155, p. 331.

² Article 4, paragraph 2, of the Treaty of Tlatelolco (Zone of Application).

the negative security assurance established by the Treaty, *i.e.* the non-use or threat of use of nuclear weapons against any of the States Parties to the Treaty of Tlatelolco.

Therefore, on 19 November 2014, the XXIII Special Session of the General Conference adopted resolution CG/E/Res.568, by which it requested the Secretary General "[...] *to present to the Member States for their consideration and adoption an action plan with the aim that the States Parties to the Additional Protocols to the Treaty of Tlatelolco revise or delete the Interpretative Declarations they have made with respect to those instruments.*"

In accordance with the resolution, the Secretary-General presented document CG/05/2015, which contains a "*Study on the issue and Plan of Action*", requested by the General Conference. On 15 November 2015, the XXIV General Conference of OPANAL adopted resolution CG/Res.03/2015, whereby it resolved: "*To instruct the Council, based on the plan of action presented by the Secretary General in document CG/05/2015, to take the necessary decisions to implement said plan of action.*"

With the aim of implementing the aforementioned plan of action (*corrigendum*, CG/05/2015Corr.), the Secretary-General submitted to the Member States of the Council document C/08/2016 entitled "*Interpretative Declarations made by the States Parties to Additional Protocols I and II to the Treaty of Tlatelolco. Implementation of Resolution CG/Res.03/2015 of the General Conference*", which contains in annex three memoranda:

1. The first memorandum is addressed to France on the non-recognition of the zone of application of the Treaty of Tlatelolco.
2. The second memorandum is addressed to Russia on the non-recognition of the zone of application of the Treaty of Tlatelolco; and
3. The third memorandum is also addressed to Russia, but 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 memorandum contains a concrete proposal for an Adjustment, which is a type of international act, with the effect of an agreement between the signatory parties to a treaty or other international instrument, in order to clarify some dispute over the text of such instrument. The intention of such a proposal is to eliminate the ambiguities currently present in interpretative declarations that constitute reservations.

II. Démarches undertaken by the Representatives of the Member States of the Council before States Parties to Additional Protocols I and II to the Treaty of Tlatelolco

In 2018, France and Russia transmitted respective notes of response to the respective memoranda and proposals for adjustments, following démarches by the Representatives of the Member States of the Council in Paris and Moscow, initiated in December 2016.

In its reply, France rejects "*an adaptation of its interpretative declaration concerning Article 4 of the Treaty of Tlatelolco*" (*Annex I*). It erroneously mentions that such an 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."

For its part, Russia maintains its position of conditioning assurances of non-use and non-threat of use of nuclear weapons against States Parties to the Treaty of Tlatelolco. Moreover, it continues to not recognize the delimitation of the zone of application of the Treaty of Tlatelolco contained in Article 4, paragraph 2 (*Annex II*).

Regarding the negotiations with the United States and the United Kingdom, they did not reflect progress that year since no response was obtained from the U.S. Department of State or the Foreign Office of the *United Kingdom*.

In 2019, the OPANAL Secretariat circulated the models of joint notes to the Ministries of Foreign Affairs of the then 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. In these, "authorization was requested for the Heads of Mission in Moscow and Paris to make joint representations to the Ministries of Foreign Affairs of Russia and France". At the 323rd Meeting of the Council on 28 January 2020, the Member States of the Council stated that their Embassies in Moscow were instructed to carry out the mandated mission. However, no further response has yet been obtained from France and Russia. During the remainder of 2020, as a result of the atypical situation marked by the global pandemic caused by the SARS-CoV-2 virus, no further progress was made.

At the 330th Council Meeting on 28 April 2021, it was decided to establish a Technical Group to agree on a new strategy for rapprochement and dialogue with the United States, France, the United Kingdom and Russia, regarding memoranda and proposed adjustments to interpretative declarations. On 30 September 2021, the General Conference at its XXVII Regular Session by

resolution CG/Res.01/2021 mandated the Council to: "*on the basis of its [Technical Group] recommendations to reactivate the démarches of the Member States of the Council to the Governments of the United States of America, the Russian Federation, the French Republic and the United Kingdom of Great Britain and Northern Ireland, reiterating the interest to engage in a constructive dialogue regarding the Memoranda and proposed Adjustments on interpretative declarations.*" In this regard, the Technical Group, in accordance with its terms of reference, recommended:

1. To approve the four draft joint notes prepared by the OPANAL Secretariat.
2. To authorize the Secretary-General to elaborate the four corresponding dossiers for the signature of the five Ambassadors of the Member States of the Council in 2022 (Belize, Brazil, Guatemala, Honduras, and Nicaragua).
3. To transmit the joint letters to the Ministries of Foreign Affairs of the four States Parties to Additional Protocols I and II that made Interpretative Declarations.
4. To make the necessary arrangements and coordinate the respective virtual meetings with each of the States Parties to Additional Protocols I and II that made Interpretative Declarations, beginning in February 2022.

On 27 April 2022, at its 336th meeting, the Council decided to postpone the start of the work on the interpretative declarations to the second half of the year, taking into consideration the deterioration of the international security environment.

III. Latest developments

The XXVII Special General Conference adopted resolution CG/E/Res.03/2022, which mandated the Council to take "*the necessary measures to establish a constructive dialogue with the States Parties to Additional Protocols I and II to the Treaty of Tlatelolco so that they may give positive consideration to the proposals for Adjustment to Interpretative Declarations.*". To this end, at the 341st meeting of the Council, the Member States decided to reactivate the negotiations with the United States, France, the United Kingdom, and Russia, through the sending of joint notes from the five Member States of the Council, requesting a virtual meeting to review jointly with OPANAL the specific points that make up reservations to withdraw or eliminate them.

At the 343rd meeting of the Council, the Secretary-General reported on the dispatch of joint notes to the United States (S-183/2023); United Kingdom (S-184/2023); France (S-185/2023); and Russia (S-186/2023); electronic copies of which were shared with the Member States of the Council in note S-196/2023 of 3 March 2023.

At the 344th meeting of the Council, the Secretary-General reported that the Russian Federation replied to Note S-186/2023 through Notes No. 163/n of 16 March and No.171/n of 22 March 2023 indicating the readiness of Mr. Sergei Ryabkov, Vice Minister of Foreign Affairs, to hold a virtual meeting with the Member States of the Council, which was verified on 28 March 2023.³

The Secretary-General also reported on the receipt of Note 061/2023, dated 5 May 2023, from the Embassy of the United Kingdom communicating that the Government of that country had taken due note of the proposed dialogue mechanism and that the matter was being analyzed by the corresponding authorities. Likewise, it reported that on 12 May 2023, the OPANAL Secretariat received a Note from Ambassador Bonnie D. Jenkins, Secretary of State for Arms Control and International Security of the United States, in response to Note S-183/2023, of 28 February 2023, designating Ambassador Adam M. Scheinman, Special Representative of the President for Nuclear Non-Proliferation, as point of contact for the establishment of a dialogue to jointly address the concerns of OPANAL Member States with respect to the interpretative declaration of the United States on Additional Protocol II to the Treaty of Tlatelolco.

At the 345th meeting of the Council, the Secretary-General reported on the virtual meeting of the Member States of the Council held on 28 June 2023, with Ambassador Adam M. Scheinman, Special Representative of the President of the United States for Nuclear Non-Proliferation, to precisely address the matter of the Interpretative Declaration to Protocol II.⁴ The Secretary-General also indicated that he would seek to establish dialogue with States Parties to the Additional Protocols with which there had been no communication (France and the United Kingdom), within the framework of the First Preparatory Committee for the Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (Vienna, 31 July-11 August 2023), as well as a follow-up meeting with Russia.

³ Document (Inf.16/2023). "Minutes of the Meeting of the Council of OPANAL with the Ministry of Foreign Affairs of the Russian Federation on the interpretative declarations made by the country to Additional Protocol II to the Treaty of Tlatelolco".

⁴ Document (Inf.27/2023). "Minutes of the meeting of the States Members of the Council with Ambassador Adam Scheinman, Special Representative of the President of the United States for Nuclear Non-Proliferation on the Interpretative Declaration to Protocol II to the Treaty of Tlatelolco"

At the 346th meeting of the Council, the Secretary-General highlighted the most relevant aspects of the report on the meetings held with States Parties to Additional Protocols I and II within the framework of the NPT Preparatory Committee.⁵ He noted that France, the United Kingdom, and Russia welcomed the dialogue and are ready to continue the exchange of views with OPANAL Member States at upcoming multilateral meetings.

They also stressed that nuclear-weapon-free zones, their strengthening, and the creation of other zones are among their priorities, and they are ready to support the efforts of the States Parties to these treaties, including those pertaining to the Treaty of Tlatelolco.

In the case of France and the United Kingdom, they appreciated the proposed amendment contained in the respective memoranda prepared by the Member States of OPANAL, although they insisted that this legal concept is something they are not aware of. Accordingly, they suggested that their legal services or divisions in charge of these issues would provide specific feedback.

France, the Russian Federation, and the United Kingdom reiterated their interest in exploring ways to meet the concerns of OPANAL Member States. However, they were not optimistic that there would be a withdrawal or modification in the short term, taking into account the current geopolitical situation. In turn, in particular, the United Kingdom and the Russian Federation agreed to make the necessary efforts to continue the dialogue in order to strengthen recognition of the status of the zone and to explore ways to make their support for nuclear-weapon-free zones more evident in their nuclear postures.

With regard to the United States, and as a follow-up to the virtual meeting of the Member States of the Council held on June 28 with Ambassador Adam M. Scheinman, Special Representative of the President of the United States for Nuclear Non-Proliferation, on September 21, he transmitted a note in which he explained the position of the United States on Article III of Additional Protocol II and the proposed adjustment presented by OPANAL (*Annex III*).

The Secretary-General extended the invitation to France, the United Kingdom and Russia to continue this dialogue by visiting the headquarters of OPANAL in Mexico City, as well as the XXVIII General Conference of OPANAL.

⁵ Document (Inf.42/2023). "First session of the Preparatory Committee for the 2026 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)."

N° 2018-1541492/ASD-QA

Le Ministère de l'Europe et des Affaires étrangères présente ses compliments à l'Ambassade de la République fédérative du Brésil et a l'honneur d'apporter une réponse à sa note verbale n°82 par laquelle elle a bien voulu lui transmettre une note conjointe des Etats membres du Conseil de l'OPANAL.

La France a toujours considéré qu'une des voies importantes du désarmement et de la non-prolifération nucléaires résidait dans l'approche régionale. En témoigne son soutien à la constitution de zones exemptes d'armes nucléaires et les engagements pris dans le cadre des protocoles aux traités instituant ces zones en Amérique latine et Caraïbes, en Afrique, en Asie centrale, en Océanie et dans le Pacifique. La France a donné des garanties de sécurité à plus d'une centaine d'Etats dans le cadre des protocoles aux traités instituant ces zones.

Le Ministère de l'Europe et des Affaires étrangères a étudié avec la plus grande attention le document C/31/2016 ou Mémoire de l'OPANAL sur les réserves françaises dans le Protocole I du Traité de Tlatelolco et la proposition d'ajustement de la déclaration interprétative faite par la France concernant l'article 4 du Traité de Tlatelolco.

La France a assorti sa ratification du Protocole I du traité d'une déclaration interprétative, pratique pleinement admise par le droit des traités (notamment par l'article 2.1. de la Convention de Vienne sur le droit des traités), qui vise à préciser que la France admet une zone d'application territoriale du Traité de Tlatelolco restreinte à la mer territoriale, à l'espace aérien et tout autre lieu sur lequel l'Etat exerce sa souveraineté conformément à sa législation, ceci dans le respect de l'article 3 du Traité de Tlatelolco. La France s'en remet ainsi au champ d'application territorial d'un traité tel que classiquement admis en droit international.

Cette déclaration interprétative vise également à rappeler que, conformément à l'article 2 de la Convention sur la haute mer, celle-ci est insusceptible d'appropriation et caractérisée par le principe de liberté de navigation. Ces dispositions ont été confirmées par la Convention des Nations Unies sur le droit de la mer, dans ses articles 87.1 et 90.

L'analyse de la France est ainsi qu'une adaptation de sa déclaration interprétative concernant l'article 4 du Traité de Tlatelolco aurait pour effet de restreindre le principe de libre navigation et de survol en haute mer, en contradiction avec les règles de droit international./.

Le Ministère de l'Europe et des Affaires étrangères saisit cette occasion pour réitérer à l'Ambassade de la République fédérative du Brésil l'assurance de sa plus haute considération.

Fait à Paris, le 5 septembre 2018

AMBASSADE DE LA REPUBLIQUE
FEDERATIVE DU BRESIL

RECEBIDO EM: 13/9/2018
DISTRIBUIÇÃO: Política
RESPONSÁVEL: _____

Nota N° 2018-1541492/ASD-QA

El Ministerio de Europa y Asuntos Exteriores saluda atentamente a la Embajada de la República Federativa del Brasil y tiene el honor de proporcionar una respuesta a su nota verbal n° 82 mediante la cual amablemente transmitió una nota conjunta de los Estados Miembros del Consejo del OPANAL.

Francia siempre ha considerado que una de las vías importantes del desarme y la no proliferación nucleares reside en el enfoque regional. Prueba de ello es su apoyo a la constitución de zonas libres de armas nucleares y los compromisos contraídos en virtud de los protocolos a los tratados que establecen dichas zonas en América Latina y el Caribe, África, Asia Central, Oceanía y el Pacífico. Francia ha otorgado garantías de seguridad a más de cien Estados bajo los protocolos a los tratados que establecen estas zonas.

El Ministerio de Europa y Asuntos Exteriores ha estudiado con la mayor atención el documento C/31/2016 o Memorandum del OPANAL sobre las reservas francesas al Protocolo I del Tratado de Tlatelolco y la propuesta de ajuste a la declaración interpretativa hecha por Francia sobre el artículo 4 del Tratado de Tlatelolco.

Francia acompañó su ratificación del Protocolo I del Tratado de una declaración interpretativa, práctica plenamente admitida por el derecho de los tratados (en particular, el artículo 2.1. de la Convención de Viena sobre el Derecho de los Tratados), destinada a precisar que Francia admite una zona de aplicación territorial del Tratado de Tlatelolco restringida al mar territorial, al espacio aéreo y a cualquier otro lugar sobre el cual el Estado ejerce su soberanía de conformidad con su legislación, esto de conformidad con el artículo 3 del Tratado de Tlatelolco. Francia se remite así al ámbito de aplicación territorial de un tratado como está habitualmente reconocido en el derecho internacional.

Esta declaración interpretativa tiene también por objeto recordar que, de conformidad con el artículo 2 de la Convención sobre la Alta Mar, ésta no es susceptible de apropiación y se caracteriza por el principio de libertad de navegación. Estas disposiciones han sido confirmadas por la Convención de Naciones Unidas sobre el Derecho del Mar en sus artículos 87.1 y 90.

El análisis de Francia es, por lo tanto, que una adaptación de su declaración interpretativa referente al artículo 4 del Tratado de Tlatelolco tendría el efecto de restringir el principio de libre navegación y de sobrevuelo en alta mar, en contradicción con las normas de derecho internacional.

El Ministerio de Europa y Asuntos Exteriores aprovecha esta oportunidad para reiterar a la Embajada de la República Federativa del Brasil las seguridades de su más alta consideración.

Hecha en París, el 5 de septiembre de 2018.

EMBAJADA DE LA REPÚBLICA FEDERATIVA DEL BRASIL

Embaixada do Brasil
em Moscou
Correspondência Recebida em
16 JUL 2018
16.07.2018

№ 6139-19мв

Министерство Иностранных Дел Российской Федерации свидетельствует свое уважение Посольству Федеративной Республики Бразилия в Российской Федерации и, ссылаясь на ноту Посольства №47 от 19 марта 2018 года, которая препровождает совместную ноту Посольств Аргентины, Бразилии, Гватемалы, Перу и Уругвая в Москве относительно толкования заявления Советского Союза при подписании Дополнительного протокола II к Договору Тлателолко, имеет честь сообщить следующее.

Российская Федерация неизменно поддерживает процесс создания в мире зон, свободных от ядерного оружия (ЗСЯО), и содействует соответствующим усилиям государств. Создание таких зон способствует повышению уровня взаимного доверия, укреплению региональной и международной безопасности.

Россия высоко оценивает более чем полувековой опыт эффективного функционирования Договора о создании ЗСЯО в Латинской Америке и Карибском бассейне (Договор

ПОСОЛЬСТВУ
ФЕДЕРАТИВНОЙ
РЕСПУБЛИКИ БРАЗИЛИЯ В
РОССИЙСКОЙ ФЕДЕРАЦИИ

2

Тлателолко) и его весомый вклад в формирование ЗСЯО в других регионах мира. Во многом это стало возможным благодаря выверенному балансу интересов и обязательств участников зоны и ядерных государств, которые легли в основу Договора и Дополнительных протоколов к нему.

Министерство признательно Агентству по запрещению ядерного оружия в Латинской Америке и Карибском бассейне (ОПАНАЛ) за внимательное отношение к позиции Российской Федерации — продолжателю Советского Союза — по Дополнительному протоколу II к Договору Тлателолко. Предложения ОПАНАЛ относительно толкования заявления Советского Союза при подписании упомянутого документа внимательно изучены. В результате анализа сделан вывод о том, что оснований для пересмотра заявления не имеется.

Министерство одновременно подтверждает намерение Российской Федерации и впредь строго соблюдать ее обязательства по Дополнительному протоколу II к Договору Тлателолко. Министерство имеет честь при этом подчеркнуть, что оговорки, сделанные при подписании нами упомянутого документа, не противоречат букве и духу Договора и соответствуют общепризнанным нормам международного права.

Опыт функционирования Договора Тлателолко и Дополнительного протокола II к нему за прошедшие годы показал, что ситуаций, требовавших задействования оговорок с нашей стороны, на практике не возникало. Россия не намерена их использовать и впредь при строгом соблюдении государствами-участниками Договора безъядерного статуса

своего региона и отсутствии злоупотреблений положениями Договора со стороны других ядерных держав.

Министерство пользуется случаем, чтобы возобновить Посольству уверения в своем весьма высоком уважении.



Москва, « 13 » июля 2018 года

No.6139-Н/ДНКВ

El Ministerio de Relaciones Exteriores de la Federación de Rusia saluda muy atentamente a la Embajada de la República Federativa de Brasil en la Federación de Rusia y tomando en consideración la nota No.47 del 19 de marzo del 2018 que acompaña la nota de la Embajada de Argentina, Brasil, Guatemala, Perú y Uruguay en la ciudad de Moscú acerca de la interpretación de la declaración de la Unión Soviética durante la firma del Acta Adicional II al Tratado Tlatelolco, y tiene el honor de informar lo siguiente.

La Federación de Rusia apoya invariablemente el proceso de creación en el mundo de zonas libres de armas nucleares y contribuye a los esfuerzos correspondientes de los estados. La creación de estas zonas contribuye al crecimiento del nivel de confianza mutua, al fortalecimiento de la seguridad regional e internacional.

Rusia valora altamente la experiencia de casi medio siglo del funcionamiento eficaz del Tratado de creación de zonas libres de armas nucleares en América Latina y el Caribe (Tratado Tlatelolco) y su aporte influyente en la creación de zonas libres de armas nucleares en otras regiones del mundo. Esto se hizo posible gracias al balance verificado de intereses y responsabilidades de los participantes de la zona y estados nucleares que formaron la base del Tratado y Actas adicionales.

El Ministerio agradece al Organismo para la Proscripción de Armas Nucleares en América Latina y el Caribe (OPANAL) la actitud muy atenta a la posición de la Federación de Rusia – seguidor de la Unión Soviética – sobre el Acta adicional II al Tratado Tlatelolco. Propuestas de OPANAL en relación a la explicación de la declaración de la Unión Soviética a la hora de firmar el documento mencionado se ha investigado detalladamente. Como resultado del análisis realizado se hizo la conclusión que no hay razones para una revisión de la declaración.

El Ministerio de una vez confirma la intención de la Federación de Rusia en adelante guardar rigurosamente sus compromisos según el Acta adicional II al Tratado Tlatelolco. El Ministerio tiene el honor de subrayar que restricciones, realizadas durante la firma del documento antes mencionado, no contradicen al espíritu y la letra del Tratado y corresponden a las normas reconocidas del derecho internacional.

La experiencia del funcionamiento del Tratado Tlatelolco y del Acta adicional II durante los años anteriores ha demostrado que en la práctica no han pasado situaciones que demanden restricciones de nuestra parte. Rusia no tiene intenciones para utilizarlas en adelante bajo observaciones rigurosas de estados-participantes del Tratado de estatus anucleado de su región y con ausencia del abuso de posiciones del Tratado por parte de otras potencias nucleares.

El Ministerio aprovecha la oportunidad para expresar a la Embajada las muestras de su más alta consideración.

Moscú, 13 de julio del 2018



United States Department of State

Washington, D.C. 20520

September 21, 2023

The Council of the Agency for the Prohibition
Of Nuclear Weapons In Latin America and the Caribbean
Milton No. 61, Colonia Anzures
Mexico City, 11590, Mexico

To the Council:

Thank you for your joint letter addressed to Under Secretary Bonnie Jenkins, enclosed within your note verbale, S-183/2023, on February 28, 2023.

I very much appreciate our conversation on June 28, 2023, to discuss the concerns of OPANAL Member States regarding the interpretative declaration of the United States on Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean – Treaty of Tlatelolco.

At that time, I promised to convey U.S. views on these issues, which can be found in the attached document.

I look forward to continuing our conversation at an appropriate time.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam M. Scheinman", with a long, sweeping underline.

Adam M. Scheinman
Special Representative of the President
for Nuclear Nonproliferation

Attachment: U.S. views on the OPANAL joint letter of 28 February 2023

The United States appreciates the contributions of the Treaty of Tlatelolco and its organization, OPANAL, to regional security and to the international nonproliferation and disarmament architecture. The United States strongly supports nuclear-weapon-free zones established on the basis of the UN Disarmament Commission Guidelines (1999) and recognizes such zones are integral to the Nuclear Non-Proliferation Treaty (Article VII).

The United States also recognizes the close relationship between OPANAL and the International Atomic Energy Agency (IAEA), which plays a key role in global efforts to prevent the spread of nuclear weapons and to promote nuclear energy, science and technology for peaceful purposes.

The United States further notes our strong, historical support for the Treaty of Tlatelolco and that we continue to stand by our obligations under the Additional Protocols I and II to the Treaty. In addition to the negative security assurance undertaken in Protocol II, it has been U.S. policy since 2010 not to use or threaten to use nuclear weapons against any non-nuclear-weapon State that is party to the NPT and in compliance with its non-proliferation obligations. All parties to the Treaty of Tlatelolco meet the criteria for this assurance.

With respect to the U.S. undertaking in Article III of Additional Protocol II not to use or threaten to use nuclear weapons against the Treaty parties, we wish to make the following additional points:

Concerning the U.S. statement made with its ratification that the United States would “have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon State, would be incompatible with the Contracting Party’s corresponding obligations under Article I of the Treaty,” we are aware that reservations are not permitted, pursuant to Article 27 of the Treaty and Article 4 of Additional Protocol II.

This matter was considered and discussed when Additional Protocol II was presented to the U.S. Senate for its advice and consent to ratification.

During the hearings on the Protocol before the Committee on Foreign Relations of the Senate, the Chairman of the Committee raised the topic of reservations. Officials of the U.S. Government confirmed in testimony that the proposed U.S. statements would not be reservations.

The U.S. statement was incorporated in the U.S. Senate's resolution giving advice and consent to ratification and in the U.S. instrument of ratification, which expressly included "understandings and declarations." Any revision to that statement would therefore require approval by the U.S. Senate, meaning a vote in favor by two-thirds of the Senate's 100 members.

Concerning the OPANAL proposal that the United States consider a "subsequent agreement" to revise our statement, the United States wishes to emphasize that because the Treaty and Protocol are separate instruments, any such subsequent agreement concerning Additional Protocol II would require agreement of its five parties (the United States, United Kingdom, France, Russia and China). Such agreement is neither politically feasible under current or foreseeable circumstances nor consistent with the U.S. President's recommendation for similar protocols submitted to the U.S. Senate for its advice and consent to ratification.

Finally, we wish to note that although articulated in the circumstances of the Cold War, the extant U.S. statement on Additional Protocol II does not undermine the security of any Treaty party. Since the Treaty's entry into force, no Treaty party has taken an action that is incompatible with its Article I obligations, and consequently the applicability of the U.S. negative security assurance under Additional Protocol II has never been in question.