



XIX Regular Session of the General Conference
Agenda Item 14
Santiago, Republic of Chile, 7-8 November, 2005.

**INTERPRETATIVE DECLARATIONS OF THE NUCLEAR POWERS TO ADDITIONAL
PROTOCOLS I AND II TO THE TREATY OF TLATELOLCO**

MEMORANDUM OF THE SECRETARY GENERAL

1. The idea of asking the nuclear powers to withdraw or modify the interpretative declarations they made when they signed or ratified Additional Protocols I and II to the Treaty of Tlatelolco was presented in note 095-5024/2001 of 22 November 2001, by the Ambassadors of the Argentine Republic, H.E. Oscar Guillermo Galié, and of the Federative Republic of Brazil, H.E. Luiz Filipe de Macedo Soares. (Doc. S/Inf. 814).
2. In the aforementioned note, among other matters related to the Strengthening OPANAL, in paragraph 14 they stated that "A specific area of work that could be explored by the Secretary General would be an analysis of possible alternatives to encourage a study by OPANAL of the interpretative declarations made by the nuclear weapon states that signed Additional Protocols I and II to the Treaty, in an effort to have those countries withdraw the exceptions they had made previously regarding the possible use of nuclear weapons in the region."
3. During the XVII Regular Session of the General Conference, the Representative of Brazil, His Excellency Mr. Antonio J.V. Guerreiro, Director General of International Organizations of the Ministry of Foreign Relations, said: "Another essential aspect for the strengthening of our region's nuclear-weapon-free zone that is worthy of more detailed analysis within OPANAL is the study of the interpretative declarations made by the nuclear weapon states that signed Additional Protocols I and II of the Treaty of Tlatelolco, with a view to withdrawing the possible exceptions regarding the commitment to not use nuclear weapons in the region." (Doc. S/Inf.820)
4. At the XVI Special Session of the General Conference, held in November 2002, and after an important debate on a draft resolution presented by the Brazilian Delegation, Resolution

CG/E/Res.430 was approved. Its operative paragraphs read:

1. **“To instruct** the Secretary General, to consider, together with the Council, the declarations made by the nuclear powers which are Parties to the Additional Protocols I and II of the Treaty of Tlatelolco, as concerns the signature and ratification of such instruments, with the purpose of identifying possible exceptions to the commitment of not using nuclear weapons in the area of application of the Treaty of Tlatelolco.
 2. **To entrust** the Secretary General, based on such analysis, to invite such nuclear powers to review their declarations so that these may be eventually removed or modified with the purpose of strengthening the integrity of the denuclearization objective as provided by the Treaty.
 3. **To request** the Secretary General to keep the Council and the General Conference informed about the result of his negotiations.”
5. At its 203rd Session on 8 May 2003, the Council agreed that the Secretary General would write to the five nuclear powers (the United States of America, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, the People's Republic of China, and the French Republic) requesting that they study the withdrawal of the interpretative declarations made at the time of signature and/or ratification of the Additional Protocols to the Treaty of Tlatelolco.
6. Also at the 203rd Session, pursuant to Resolution 430 (E-XVI), the Representative from Mexico presented a document that was subsequently sent to all Member States containing the preliminary comments of her country and noting that: "the declarations made by the nuclear powers are diverse in nature and cover matters ranging from territorial application or maritime transport to the very use of nuclear weapons."
7. The aforementioned document "identifies and deals exclusively with those declarations that have a specific relation to the use of nuclear weapons, declarations that have been classified into the following two categories: 1) Declarations in which the nuclear powers reserve the use of nuclear weapons for reasons of self-defense and 2) Declarations that, although related to the right to self -defense, have a broader scope, since they qualify the position of the State Party to the Treaty of Tlatelolco in the event of a particular act of aggression, the attitude of the State possessing nuclear weapons, or interpret the statute of denuclearization" (Doc. CG/563 Rev). Since these declarations were made, there have been important changes internationally, which make it appropriate to encourage those States that made the statements to consider their withdrawal.

8. The Secretary General sent the same note to the Ministers (or Secretaries) of Foreign Affairs of the United States of America, the Russian Federation, the People's Republic of China, the French Republic, and the United Kingdom of Great Britain and Northern Ireland dated 16 July 2003, in which, at the request of the General Conference, he suggested the possibility of withdrawing or modifying the interpretative declarations made when they signed and/or ratified Protocols I and II to the Treaty of Tlatelolco to strengthen the region's denuclearization statute.
9. He received an answer from the Governments of the Russian Federation on 1 October 2003, expressing what was a "preliminary opinion;" from the People's Republic of China on 11 November 2003, which stated that "as regards the security guarantee for nuclear-weapon-free countries, China has been committed from the day that it first obtained nuclear weapons to not be the first to use them at any time and under no circumstances. China has assumed the unconditional commitment not to use or threaten to use nuclear weapons against those States or regions that are free of them." The response of the United States of America, dated 18 February 2004, states: "The United States has decided that it will not review the declarations and understandings related to its signature and ratification of these Protocols."
10. In the absence of a response to the notes sent to France and the United Kingdom, the Secretary General sent other notes dated 16 July 2004, approved by the Council, highlighting that a year had passed since the original notes had been sent.
11. During the XVIII Regular Session of the General Conference in Havana, the Representatives from France and the United Kingdom expressed that their governments were studying the matter and that they would provide a timely response to the notes sent by the Secretary General.
12. During the same General Conference, Resolution CG/Res.447 was approved, operative paragraph 3 of which reads:

"To instruct the Council and the Secretary General to carry out periodic follow-up on the responses to the diplomatic notes sent out on July 16, 2003, requesting the nuclear powers to review or modify the aforementioned declarations and to take appropriate action aimed at strengthening the integrity of the statute of denuclearization provided for in the Treaty."
13. At its 212th Session, the Council approved the suggestion by the Jamaican Ambassador that the Representatives of the States on the Council meet with Representatives of the Ministries of

Foreign Affairs of France and the United Kingdom. In order to do so an appointment would be requested with the corresponding authorities to jointly express that OPANAL was waiting for a response to the note sent by the Secretary General. The Council considered the importance of having those responses in order to conduct an integral analysis before the XVII Special Session of the General Conference held on 23 November 2004.

14. At the XVII Special Session held in Mexico City in November 2004, the Secretary General presented the background of the matter and provided more information to the OPANAL Members in document CG/E/575.
15. At this Special Session, the Representative from Mexico informed that the Mexican Ambassador and the Cuban Chargé d'Affaires a.i. in France met on 12 November with the Deputy Director General for Political Affairs and Security of the Ministry of Foreign Affairs of the French Republic, Mr. Frédéric Du Laurens, who clarified that "not having responded to the requests of the Secretary General of OPANAL was not due to a lack of interest on the part of France, but rather to the very complexity of the issue and its strategic implications in other regions of the world." In this context, Mr. Du Laurens noted that "the adhesion of France to the Protocols reflected its unequivocal support of his country for the objectives of the Treaty of Tlatelolco, however, he commented that the possible review or withdrawal of the interpretative declarations constituted for France not only a process of consultation and coordination with all of the interested governmental agencies, but also a substantive evaluation of whether the factors that determined the French position at the time continue in force." Additionally, Mr. Du Laurens underscored the importance that France affords the denuclearization regime established in the Treaty of Tlatelolco, as a model for other regions, in particular Africa and the South Pacific, where France maintains similar positions to those regarding Protocols I and II. In light of the foregoing, Mr. Du Laurens indicated: "France would not be in a position to respond to the notes sent by the Secretary General of OPANAL before the XVII Special Session of the General Conference of OPANAL, scheduled for 23 November 2004. He did indicate, however, that "thanks to the efforts" in representation of the Council of OPANAL, by Mexico and Cuba, France could respond "by late 2004 or early 2005 at the latest."
16. At the same Special Session, the Mexican Representative informed that on 18 November the Ambassadors of Brazil, Cuba, Guatemala, and Mexico, as well as the Chiefs of Chancery of Chile and Ecuador and the Chargé d'Affaires from the Peruvian Embassy in the United

Kingdom met with representatives from the Ministry of Foreign Affairs, Mr. Edward Oakden, Director of Defense and Strategic Treaties, and Mr. Graham Nelson and Ms. Janet Goddeb, both from the same office, as well as Mr. Mathew Swerps from the Office of the Defense Administration. At the meeting they were told "...that the delay should not be interpreted as a memory lapse of the British Government, which is decidedly supports the commitments of the Treaty of Tlatelolco. However, the representatives explained that the United Kingdom considers that the notes sent by the Secretary General of OPANAL refer to a very complex issue that involves politics and defense and therefore it would not be possible to respond before 23 November." They went on to explain that a response would be sent "as soon as the United Kingdom is ready to provide it." Mr. Oakden also said that his country is facing a dilemma. "On the one hand, it considers the Treaty of Tlatelolco a very important achievement, but on the other, it faces difficulties in reconciling the Treaty's assertions with its main interests in the area of international security, bearing in mind the current situation." In addition Mr. Oakden made the following points clear: "i. There are still reasons for the British Government to preserve its rights in the event of an invasion or attack of a State to which it is bound by commitment; and ii. It will be improbable that the United Kingdom adopt a different position than that of France or the United States." Notwithstanding, Mr. Oakden said that the meeting was useful because of the strong regional interest that the Ministry of Foreign Relations was able to note given the presence at the meeting of a representative Delegation of Ambassadors and Representatives from seven OPANAL Member countries."

17. It can be said of both cases that the Representatives underscored the fact that objective factors prevail, which justify maintaining their respective interpretative declarations. In the case of France, specific reference was made to the right to self-defense and in particular the defense of territorial sovereignty in general. These efforts on behalf of the Agency's Council have allowed the nuclear powers to learn of the region's interest in the matter.

18. The Secretary General received note Num. 0011400 of 2 February 2005 from the French Ministry of Foreign Affairs, which he presented to the Council at its 214th Session, highlighting that the crux of the letter was the French position reserving the right to use nuclear weapons in the event of an attack on one of its possessions within the Treaty's Zone of Application. The Secretary General emphasized that that argument was unsustainable in the XXI Century and that OPANAL should challenge it, in light of the evolution of international law, especially the jurisprudence of the International Court of Justice.

19. A response dated 11 April 2005 was received from the British Government with its translation which specified that "The United Kingdom has decided that it will not review its declaration to the Protocols to the Treaty. The declaration is consistent with the security assurance we gave in 1995, contained in UN document A/50/152;S/1995/262 of 6 April 1995, and noted in United Nations Security Council Resolution 984/1995, and with declarations we gave upon ratification of Protocols to other Nuclear Weapon-Free Zone Treaties."
20. At its 215th Session on 31 May 2005, the Council took note that the Secretary General had prepared four draft notes for the United States, the Russian Federation, France, and the United Kingdom informing them that their responses were all similar and that they all sought to debate those arguments based on one interpretation of Article 51 of the UN Charter with reference to self-defense, which contradicts the jurisprudence of the International Court of Justice by not satisfying the elements of proportionality and need required by the Court of the Hague or in situations superceding the Cold War. He asked the Representatives to send the draft notes to their Foreign Ministries to obtain their points of view and, having obtained them, the Council would determine what course of action to pursue regarding this important issue for OPANAL.
21. At the Council's 216th Session, the Secretary General presented note 06175 of 12 July sent by the Director General of American Regional Mechanisms and Organizations of the Mexican Secretariat of Foreign Relations, Minister Yanerit Morgan Sotomayor, which read: " In light of the content of the responses of some of said powers, it is highly unlikely that they will change their positions. Therefore, Mexico is of the opinion that other types of action could be considered, such as holding an informal dialog between OPANAL and the nuclear powers in order to transmit in a more urgent manner the concern of the countries of the region regarding the importance of strengthening the regime established by the Treaty of Tlatelolco. The results from these meetings could possibly guide further action, including the possibility of adopting a joint declaration or communiqué."
22. The Secretariat also received note 2.5B1 from the Embassy of the Republic of Guatemala, which said, "that in the opinion of the Government of the Republic of Guatemala, it is fundamental to continue strengthening the integrity of the Denuclearization Statute provided for in the Treaty of Tlatelolco, through the granting of full legal guarantees by the nuclear powers not to use or threaten to use nuclear weapons against the countries of Latin America and the

Caribbean. It also supports the strategy of sending letters to all the nuclear powers."

23. During this Session of the Council, several other delegations also expressed support for sending the notes prepared by the Secretary General.

24. Also at the 216th Session, the Ambassador of Brazil suggested without prejudice to sending the Secretary General's notes to the four nuclear powers, that the XIX Regular General Conference draft a short resolution or declaration in order to have a broader dissemination of information about the matter. He noted that the Secretary General's dialog with the nuclear powers was important and that they could search for an academic institution or think to conduct a seminar and disseminate information about the important subject of the guarantees to third-party States in relation to Nuclear-Weapon-Free Zones.

25. At its 217th Session on 22 September 2005, the Representative from Mexico made suggestions to the notes for the Foreign Ministers of France and the United Kingdom prepared by the Legal Counsel of the Mexican Secretariat of Foreign Relations. The notes were approved for delivery and it was decided that they would also be presented to the media and to attendees of the XIX Regular Session of the General Conference to encourage discussion.