



Nuclear-Weapon-Free Zone in Latin
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**Report of the Working Group on the Strengthening of the
Control System established by the Treaty of Tlatelolco**

On the basis of the General Conference Resolution CG/E/Res.546 “Proposal for the formation of a Working-Group to analyze and propose measures that could strengthen the Control System established by the Treaty of Tlatelolco”, the Working Group on the Strengthening of the Control System (hereafter, WGCS, or the Group) started its works on 13 February 2013. Its rules of procedure were adopted at its second session (Annex 1).

The WGCS is formed by the representatives of Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador (Group Coordinator), Guatemala, Mexico, Panama, Venezuela and the Secretary-General of OPANAL; according to the rules of procedure, Peru joined the Group as an Observer (Annex 2).

The WGCS submits its Report to the General Conference, at its XXIII Regular Sessions; this document is divided into three sections: I. Background, II. Mandate of the General Conference and the Group’s progress, and III. Conclusions and Recommendations.

I. Background

1. Article 9, section 2b of the Treaty of Tlatelolco, states that the General Conference “*Shall establish procedures for the Control System to ensure observance of this Treaty in accordance with its provisions.*” Article 10, section 5, states that “*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.*”
2. On 23 February 2011, at the 265th Session of OPANAL Council, the Secretary-General submitted a proposal to conduct an academic exercise on hypothetical cases of violation of the Treaty of

Tlatelolco. In 2012, informal sessions were held on 29 March (SG.02.2012), 13 April (SG.03.2012) and 15 May (SG.04.2012).

Hypothetical cases included fictitious countries, the debates showed that the analysis and implementation of the Treaty of Tlatelolco - including its Additional Protocols- must be systemic and must consider the current international architecture of nuclear disarmament and non-proliferation.

The outcome of this academic exercise was submitted to the Council, together with the recommendation to form a working-group (academic and informal) with the specific objective to analyse and propose measures that could strengthen the Control System. The Council unanimously adopted this proposal at its 267th Session, which was held on 23 May 2012.

3. On 13 June 2012, the Academic and Informal Working Group (AIWG) started its works on the analysis of the Treaty of Tlatelolco regarding the responsibilities of the General Conference, the Council and the Secretary-General for the Control System implementation. The AIWG analysed the possibility to establish a Control System implementation process, and discovered that there are certain aspects that cannot be regulated due to their circumstantial nature. The AIWG also highlighted that any implementation process should consider at all times the efficacy of the Control System.
4. The AIWG held three sessions (SG.07.2012, SG.08.2012, and SG.09.2012). According to a research in the historical archives of OPANAL, an implementation process has never been adopted before; therefore, the Council and the Secretary-General recommended to the General Conference, at its XXI Special Sessions, the formation of a formal Working Group.

II. Mandate of the General Conference and the progress made by the Group

On 13 November 2012, at its XXI Special Sessions, the General Conference adopted the recommendation of the Secretary-General and the Council through Resolution CG/E/Res.546 "Proposal for the formation of a Working-Group to analyze and propose measures that could strengthen the Control System established by the Treaty of Tlatelolco".

Operative paragraph 2:

"To agree on the formation of a Working Group, including all interested States and the Secretary-General, in order to submit to the General Conference at its next Regular Session a proposal on measures and/or procedures for implementing the Control System established by the Treaty of Tlatelolco, under its own provisions and within the scope of OPANAL Organs. To instruct the Council and the Secretary General to proceed with integration of this Group; it must report to the General Conference, at its next Regular Session, on the progress of its work."

At its fifth session, the WGCS decided to form a small drafting committee in order to collect and consolidate the deliberations of the Group, serving as the basis for the elaboration of this report. This committee was formed by the Secretary-General, Argentina and Brazil.

Over six sessions, the WGCS deepened the analysis and identification of key aspects of the Control System. Below is a summary of the progress made by the WGCS, including the subjects that should be given more attention in order to strengthen the Control System.

1. Procedures

The following is a preliminary structure, designed by the WGCS, for the procedures to be followed in the event of the Control System of the Treaty of Tlatelolco being activated.

A. Presenting a request and/or information

How and who can activate the Control System?

Any information brought to the attention of OPANAL Organs that might refer to acts infringing the Treaty is capable of activating the Control System. Such information could be provided by Member Parties to the Treaty of Tlatelolco, Signatory States to the Additional Protocols I & II to the Treaty, or by a third Party; through a notification, request, complaint, or report based on Article 14 of the Treaty, or through any other appropriate means.

B. Assessment process

Once the information has been received, it has to be assessed by the Agency (by the Council and/or the General Conference, as appropriate, with the support of the Secretary-General). The assessment shall determine whether the Control System activation is necessary. In the event of the Control System activation being accepted, the Agency shall determine which Articles of the Treaty of Tlatelolco would apply.

C. Control System activation

The assessment of the information received shall determine the procedures to be followed by the Agency. According to the Control System established by the Treaty of Tlatelolco, the following Articles would apply, successively or not:

- a. Article 15. Special Report requested by the Secretary-General with the authorization of the Council.
- b. Article 16. Special Inspection carried out by the International Atomic Energy Agency (IAEA), requested by OPANAL Council through the Secretary-General.
- c. Article 21. Violation of the Treaty of Tlatelolco.

D. Guidelines for the development of the procedures according to the Article that applies:

- a. Special Reports requested by the Secretary-General (Art.15): Requirements, procedure, role of each actor, etc.
- b. Special Inspections (Art.16.): Requirements, procedure, role of each actor, assumptions, possible limitations, etc.
- c. Violation of the Treaty of Tlatelolco (Art.21): Assumptions, actors, requirements, procedure, possible limitations.

It was concluded that in order to continue with the implementation process proposal, it is necessary to make progress on relevant subjects concerning the Control System, inter alia, the authentic interpretation of Article 15.1, consultations with the IAEA related to Article 16, the extent of Amendment III to the Treaty (1992), and the relationship with Signatory States to the Additional Protocols to the Treaty.

2. Authentic interpretations

The Group identified the need to make an authentic interpretation of Article 15, section 1. It is important to clarify the term “*may*”, which indicates the capacity of the Secretary-General, while the legal logic would indicate that it should be an obligation.

Article 15.1 Special Reports requested by the Secretary-General

“At the request of any of the Contracting Parties and with the authorization of the Council, the Secretary General may request any of the Contracting Parties to provide the Agency with complementary or supplementary information regarding any extraordinary event or circumstance which affects the compliance with this Treaty, explaining his reasons. The Contracting Parties undertake to co-operate promptly and fully with the Secretary General.”

To dispel any doubt about such term, the minutes of the relevant sessions of the Preparatory Commission for the Denuclearization of Latin America (COPREDAL) must be consulted. The Group has identified these historic documents, which should be analysed in order to make an authentic interpretation.

It would be very convenient to determine the extent of Article 24, as explained in item 4 of this section.

3. Extent of the 1992 Amendment to the Treaty of Tlatelolco

As discussions on the Control System implementation process were progressing, it was necessary to deepen in the historic background of the Treaty of Tlatelolco; thereby demonstrating more clearly the change involved in the adoption of the 1992 Amendment to the Articles 14, 15, 16, 19 and 20 (Resolution 290 E-VII), which are relevant to the Control System and connected regulations. The Amendment presents the need to further analyse the scope of such substantive modification to the Control System; especially regarding the powers taken from the Council, and those assumed by the IAEA.

These modifications to the Control System, particularly to Article 16, present the need to review the “The Agency’s Co-operation Agreement with the International Atomic Energy Agency”, signed on 3 October 1972 (CG/74), especially when considering that Article 19 states that such Agreement is closely related to the Control System.

Article 19. Relations with the International Atomic Energy Agency

“The Agency may conclude such agreements with the International Atomic Energy Agency as are authorized by the General Conference and as it considers likely to facilitate the efficient operation of the Control System established by this Treaty.”

Moreover, regarding the procedures related to Article 16, it would be convenient to consider carrying out consultations with the IAEA; to this end, it is recommended to firstly carry out consultations with Member States. Special attention must be paid to Article 16.2 as it involves matters that should be consulted with the IAEA.

Article 16: Special inspections

“1. The International Atomic Energy Agency has the power of carrying out special inspections in accordance with Article 12 and with the agreements referred to in Article 13 of this Treaty.

2. At the request of any of the Contracting Parties and in accordance with the procedures established in Article 15 of this Treaty, the Council may submit for the consideration of the International Atomic Energy Agency a request that the necessary mechanisms be put into operation to carry out a special inspection.

3. The Secretary General shall request the Director General of the International Atomic Energy Agency to transmit to him in a timely manner the information forwarded to the Board of Governors of the IAEA relating to the conclusion of the special inspection. The Secretary General shall make this information available to the Council promptly.

4. The Council, through the Secretary General shall transmit this information to all the Contracting Parties.”

4. Articles on the Control System and closely related regulations

Article 12 states that the Control System *shall be put into effect in accordance with the provisions of Articles 13-18 of this Treaty*; however, there are other Articles that are closely related to the Control System, such as Article 19, *Relations with the International Atomic Energy Agency*; Article 21, *Measures in the event of violation of the Treaty*; and Article 24, *Notification of other agreements*, signed by Member States.

The WGCS believes that the Control System should be extensively analysed, comprising Articles 12 to 24, since they are of the greatest importance for the compliance with the Treaty of Tlatelolco and its efficacy. Therefore, it has been considered to include the analysis of these Articles in the proposal for the strengthening of the Control System that the WGCS should continue to develop.

In this respect, it is necessary to make an authentic interpretation, or a legal interpretation, to determine the scope of Article 24, a pending issue since 2011, which has been addressed by the Secretary-General in her reports.

5. Control System of the Tlatelolco System

As it has been reiterated since 2012, when the first academic group was formed, the interpretation and implementation of the Treaty of Tlatelolco should be systemic, that is to say, the Treaty in conjunction with its Additional Protocols. Therefore, the WGCS has also considered including the analysis of Additional Protocols I and II and the relation derived from them with the Signatory States (the United States of America, the Russian Federation, the French Republic, the United Kingdom of the Great Britain and Northern Ireland, the People's Republic of China, and the Kingdom of the Netherlands).

6. The importance of compliance with Article 14

In January 2013, for the first time, all Member States complied with the submission of the report established in Article 14; four Member States that had never complied with this obligation did so between 2010 and January 2013. This is a historic event in the consolidation process of the Nuclear-Weapon-Free Zone in Latin America and the Caribbean (NWFZLAC). The major challenge today is that all States continue to comply with this obligation, as it is essential for the strengthening of the Control System.

III. Conclusions and recommendations

1. It is not registered in the archives of OPANAL that any procedure had been established in compliance with Article 9, section 2b of the Treaty of Tlatelolco.
2. The strengthening of the Control System involves various aspects that are interrelated, as can be seen in the 6 items developed in section II of this report.

3. The Treaty and its Additional Protocols I and II constitute the Tlatelolco System and should be interpreted and implemented as such.
4. It is necessary to assess the scope of Amendment III to the Treaty, which modified Articles 14, 15, 16, 19, and 20.
5. In order to report a further decision by the General Conference, it is recommended to carry out consultations with Member States to assess (i) the convenience and appropriateness of carrying out consultations with the IAEA and (ii) the possibility to review the Cooperation Agreement signed between OPANAL and the IAEA in 1972, before Amendment III was made.
6. It should be necessary to make authentic interpretations and/or legal interpretations to Articles 15.1 and 24.
7. Although the WGCS has not yet completed the process proposal for the Control System, the works done by the different Groups have strengthened OPANAL Organs and have enabled them to respond to any emergent situation that might activate the Control System.
8. The WGCS recommends the General Conference, at its XXIII Regular Sessions, to renew the mandate of the Working Group formed by its Resolution CG/E/Res.546 “Proposal for the formation of a Working-Group to analyze and propose measures that could strengthen the Control System established by the Treaty of Tlatelolco”.

4 July 2013
Mexico City

ANNEX 1**Rules of procedure for the Working Group formed by OPANAL General Conference Resolution CG/E/Res.546.**

1. The Working Group is a subsidiary organ of the General Conference pursuant to Article 8 of the Treaty of Tlatelolco and Article 35, Chapter VIII, of the Rules of Procedure of the General Conference.
2. The Working Group shall be open to all Contracting Parties to the Treaty of Tlatelolco during its first four working sessions; from its fifth session onwards, Member States' representatives may join the Group as observers.
3. The Working Group shall elect a Coordinator from among Member States' representatives; his duty shall be to lead the work of the Group. In the temporary absence of the Coordinator, the Group shall elect an interim Coordinator.
4. The Working Group shall meet as many times as it considers appropriate.
5. The Working Group could form subgroups aimed to address specific issues under the mandate conferred on them.
6. The Working Group shall make every effort to adopt its decisions by consensus. In the event that consensus could not be reached, the Group would then take decisions by simple majority of the votes cast by Member States' representatives.
7. OPANAL Secretariat General shall provide technical assistance to the Working Group, including the production of the minutes of all its meetings.
8. The minutes produced by the Secretariat General shall not individually identify any Member States' representatives, their positions and/or comments. The minutes shall describe the deliberations of the Group in an impersonal way, unless Member States' representatives request otherwise.

ANNEX 2

Member States' Representatives – Full Group Members	
Argentina	Secretary Martín Mainero
Bolivia	Minister Counsellor Jorge Caballero
Brazil	Secretary Juliana Soares Santos
Chile	Secretary Jorge Valenzuela
Colombia	Political Attaché Manuela Ríos
Cuba	Secretary Raúl Mojena Secretary Elier Almeida
Ecuador	Minister Counsellor Juan Veintimilla (Group Coordinator)
Guatemala	Secretary Federico Villacorta
Mexico	Sandra García, BA
Panama	Commercial Attaché Ayxa Chuljak de del Río
Venezuela	Counsellor Alba María Méndez Romero
OPANAL	Secretary-General, Ambassador Gioconda Ubeda

Member States' Representatives – Observers

Peru	Minister Counsellor Elizabeth Alice González
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