



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

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Contribution of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) to the report of the United Nations Secretary-General on the law of the sea, pursuant to General Assembly resolution A/RES/69/245

(Extended version)

The sixteenth meeting of the “United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea” will focus on the three dimensions of sustainable development in relation to the oceans, namely, environmental, social and economic. In principle, the approach of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), which encompasses a vast ocean surface, could seem alien to the theme of the meeting since it refers to security, specifically by establishing an ocean space free of nuclear weapons. However, no one can deny that keeping an ocean space free of nuclear weapons has environmental, social and economic healthy consequences.

Article 4, paragraph 2, of the Treaty of Tlatelolco defines its “Zone of Application” with precise limits that includes marine and oceanic space, both within and outside national jurisdiction of States Party. The Treaty of Tlatelolco does not include any provision related to “transit” of ships or aircraft carrying nuclear weapons in the “Zone of Application”. In the case of the States Party, there is no need for any mention or prohibition of “transit” given that Article 1 prohibits the possession of nuclear weapons “by any means”. However, the question may arise in relation to the Nuclear-Weapon States (NWS).

The Final Act adopted by the Preparatory Commission for the Denuclearization of Latin America ([Doc. COPREDAL/76](#); p. 10-11), the ad hoc body responsible for negotiating the Treaty of Tlatelolco, at its Fourth Session, in Mexico City on 14 February 1967, reads as follows:

“The Commission has considered unnecessary to include the term “transport” in article 1, relating to “Obligations”, for the following reasons:

1. If the transporter is one of the Contracting Parties, transport is covered by the prohibitions expressly contained in the other provisions of article 1 not being necessary to explicitly mention it, since Article 1 prohibits “any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way”.
2. If the transporter is a State non-party to the Treaty, transport would be identified as “transit”. In the absence of any Treaty provision related to “transit”, it must be understood to be governed by the principles and applicable rules of international law to this matter. According to those principles and rules it falls upon the territorial State, in the free exercise of its sovereignty, to grant or deny permission for such transit in a case by case manner, upon request by the interested State, unless something else has been agreed otherwise in a Treaty between such States”.¹

All five NWS have signed and ratified Additional Protocols I and II to the Treaty of Tlatelolco. All of them have made interpretative declarations to these instruments at the time of signing or ratifying. Some of these are related to the “transit” of nuclear weapons in the “Zone of Application”:

China

Declaration made with respect to Additional Protocol II:

“(…) they [the Nuclear-Weapon States] must be asked to undertake to observe and implement the following: (1) dismantling of all foreign military bases in Latin America and refraining from establishing any new foreign military bases there; (2) prohibition of the passage of any means of transportation and delivery carrying nuclear weapons through Latin American territory, territorial sea or air space (…)”.²

¹ English translation prepared by the Secretariat of OPANAL (January 2015). Spanish version available at: [COPREDAL/76](http://copredal/76)

² UNODA. (2015, January 23). China: Ratification of Additional Protocol II to the Treaty of Tlatelolco, made on 12 June 1974. Retrieved from http://disarmament.un.org/treaties/a/tlateloco_p2/china/rat/mexico+city

France

Declaration made with respect to Additional Protocols I and II:

“(…) The French Government does not agree that the obligations arising out of Protocol I, which relates to articles 1 and 13 of the Treaty, may be applied to the transit, through territories of the French Republic situated in the zone of the Treaty, of devices referred to in article 5 of the Treaty which are destined for other territories of the French Republic (…)”.³

“(…) The French Government takes note of the interpretation of the Treaty given by the Preparatory Commission and reproduced in the Final Act, which states that the Treaty does not apply to transit, authorization or denial of which is within the exclusive competence of each State Party, in conformity with the relevant rules and principles of international law (…)”.⁴

Russia (the former Soviet Union)

Declaration made with respect to Additional Protocol II:

“(…) 4. The Soviet Union takes into consideration the interpretation of the Treaty included in the Final Act adopted by the Preparatory Commission for the Denuclearization of Latin America, whereby transport of nuclear weapons by the parties to the Treaty is covered by the prohibitions laid down in article 1 of the Treaty.

5. In the Final Act adopted by the Preparatory Commission for the Denuclearization of Latin America, the Treaty is interpreted to mean that the granting of permission for the transit of nuclear weapons at the request of States not parties to the Treaty falls within the competence of each individual State party to the Treaty. In that connexion the Soviet Union reaffirms its position to the effect that to grant permission for the transit of nuclear weapons in any form would violate the spirit of the Treaty which--as expressly stated in its preamble--is that Latin America should be wholly free from nuclear weapons; and would be incompatible with the

³ UNODA. (2015, January 23). France: Ratification of Additional Protocol I to the Treaty of Tlatelolco, made on 24 August 1992. Retrieved from http://disarmament.un.org/treaties/a/tlateloco_p1/france/rat/mexico+city

⁴ UNODA. (2015, January 23). France: Ratification of Additional Protocol II to the Treaty of Tlatelolco, made on 22 March 1974. Retrieved from http://disarmament.un.org/treaties/a/tlateloco_p2/france/rat/mexico+city

non-nuclear status of States parties to the Treaty and with their obligations as defined in article 1 of the Treaty (...).⁵

United States

Declaration made with respect to Additional Protocol II:

“(...) the United States takes note of the Preparatory Commisison's [*sic*] interpretation of the Treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the Contracting Parties retains exclusive power and legal competence, unaffected by the terms of the Treaty, to grant or deny non-Contracting Parties transit and transport privileges (...).⁶

Interpretative declarations, especially those dealing with the question of “transit” must be read taking into account that the Treaty of Tlatelolco was negotiated between 1964 and 1967, when it was concluded and opened for signature. At that time, the negotiations that led to the United Nations Convention on the Law of the Sea were far from starting.

Nothing in the Treaty has to be changed concerning the question of “transit”, but it is understandable that associated States, that is to say those who are Parties to the Protocols, feel the need to make clarifications. However, being the Additional Protocols necessarily integrated to the Treaty, it is important that the Parties to the Treaty and the Parties to the Protocols share a common understanding. Unilateral interpretative declarations, which amount to reservations, cannot be considered as a shared understanding. That is why consultations between OPANAL and each State Party to the Protocols are advisable in order to ascertain the continued validity of said interpretative declarations. If the need to keep interpretative declarations is found, a better wording could be the outcome of those consultations.

⁵ UNODA. (2015, January 23). Russian Federation: Ratification of Additional Protocol II to the Treaty of Tlatelolco, made on 8 January 1979. Retrieved from http://disarmament.un.org/treaties/a/tlateloco_p2/russianfederation/rat/mexico+city

⁶ UNODA. (2015, January 28). United States of America: Ratification of Additional Protocol II to the Treaty of Tlatelolco, made on 12 May 1971. Retrieved from http://disarmament.un.org/treaties/a/tlateloco_p2/unitedstatesofamerica/rat/mexico+city

The issue of “transit” in maritime areas was dealt differently in each Treaty establishing Nuclear-Weapon-Free Zones (NWFZ). There is interest in discussing the question among the different Zones in the periodic conferences of NWFZ, the next one scheduled to take place on 26 April 2015.