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**Contribution of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean to the report of the Secretary-General
United Nations General Assembly resolution 73/124 of 11 December 2018, entitled
“Oceans and the law of the sea”.¹**

I. Introduction

The Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), created by article 7 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)², presents herewith its contribution to the report of the United Nations Secretary-General pursuant to paragraph 362 of the resolution 73/124. This report provides relevant information about the main recent developments, since May 2018.

II. Additional Protocols to the Treaty of Tlatelolco

The Treaty of Tlatelolco, which establishes the first nuclear-weapon-free zone in a populated region, was opened for signature on 14 february1967, and entered into force on 25 April 1969. It has two Additional Protocols:

- *Additional Protocol P*³ is directed towards extra-regional States having *de jure* or *de facto* international responsibility for territories situated in the zone of application⁴ of the Treaty of Tlatelolco.

¹ This document was prepared by the Secretariat of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean – OPANAL under the responsibility of its Secretary-General, Ambassador Luiz Filipe de Macedo Soares.

² United Nations, *Treaty Series*, vol.634, No. 9068.

³ http://disarmament.un.org/treaties/tlatelolco_pl/text

⁴ In accordance with article 4 of the Treaty of Tlatelolco the zone of application is “the whole of the *territories* for which the Treaty is in force”. The term *territory*, as defined in article 3, includes, “the territorial sea, air space and any other

- *Additional Protocol II*⁵ is directed towards the five nuclear-weapon states recognized by the Treaty on the Non-Proliferation of Nuclear Weapons.

At the time of signature and/or ratification of the Additional Protocols I and II, the States Party to such instruments issued declarations. Two of them, issued declarations containing reservations to the zone of application of the Treaty of Tlatelolco: France and the Russian Federation.

The Member States of OPANAL, and the Agency itself, consider that the zone of application of the Treaty of Tlatelolco implies no distortion, violation or incompatibility with the freedom of the high seas established in article 87 of the Convention on the Law of the Sea. Moreover, the vast majority of Latin American and the Caribbean states are parties to this convention and have never issued any restrictive declaration on its provisions.

Additionally, OPANAL has reiterated its willingness to achieve a mutually agreed solution with the States Party of Protocols I and II, in accordance with article 88 of the UN Convention on the Law of the Sea, which states that “*The high seas shall be reserved for peaceful purposes*”, which is fully compatible with the zone of application of the Treaty of Tlatelolco and, in no way, it jeopardizes the maritime security of none of the States Party to the Protocols I and II of the Treaty of Tlatelolco.

The Resolution A/RES/71/27 of the United Nations General Assembly entitled “Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)”⁶ also encourages States Parties to Additional Protocols I and II to the Treaty of Tlatelolco to review their interpretative declarations thereto, in accordance with action 9 of the Final Document of the 2010 Review Conference of the Parties to the

space over which the State exercises sovereignty in accordance with its own legislation”. Thus, the zone of application straddles areas defined in articles 55 (Specific legal regime of the exclusive economic zone) and 86 (Application of the provisions of high seas) of the 1982 Convention on the Law of the Sea (United Nations, *Treaty Series*, vol. 1833, No. 31363).

⁵ http://disarmament.un.org/treaties/t/tlateloco_p2/text

⁶ <https://uniteapps.un.org/UNODA/vote.nsf>

Treaty on the Non-Proliferation of Nuclear Weapons (NPT),⁷ reaffirming and recognizing the legitimate interests of the States that comprise the nuclear-weapon-free zone in Latin America and the Caribbean in receiving full and unequivocal security assurances from nuclear-weapon States.

III. Recent developments

In 2015, the General Conference of OPANAL accepted a plan of action suggested by the Secretary General of OPANAL.⁸ This action consisted in proposing Adjustments, alongside with explanatory memoranda, to those States having made interpretative declarations to Additional Protocols I and II. On the reservations concerning the zone of application of the Treaty of Tlatelolco, the proposed Adjustments and memoranda were submitted to the Ministry for Europe and Foreign Affairs of the French Republic and to the Ministry of Foreign Affairs of the Russian Federation.⁹

In the second half of 2018, the Agency received notes verbales from France and the Russian Federation.

1. **France:** On its note, France affirms that after the proper analysis of the proposal *“an adaptation of its declaration regarding article of the Treaty of Tlatelolco will have the effect of restricting the principle of free navigation and overflight on the high seas, in contradiction with the norms of international law”*

The Treaty of Tlatelolco is legally compatible with the Convention of the High Seas of 1958 and the United Nations Convention on the Law of the Sea of 1982. In this sense, the Treaty of Tlatelolco does not represent a modification of the law of the sea but rather its

⁷ 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, vols. I-III (NPT/CONF.2010/50 (Vols. I-III):

⁸ General Conference of Opanal. Resolution CG/Res.03/2015 “Interpretative Declarations made by the States Party to the Additional Protocols I and II to the Treaty of Tlatelolco”, adopted on 26 November 2015. <http://www.opanal.org/wp-content/uploads/2015/11/CG-Res-03-2015.pdf>

⁹ On 16 and 20 December 2016, the aforementioned were submitted to the Russian and French Government, respectively. On 15 and 19 March, respective démarches were carried out by the Council Member States representations in Paris and Moscow.

States Parties undertake to comply with the obligations under the treaty, including in geographical areas of the high seas.

OPANAL maintains that it would be possible to agree on a text with the French Republic that -without eliminating the interpretative declaration made on March 2, 1979 when signing Additional Protocol I to the Treaty of Tlatelolco- could represent a mutual understanding that would correct the problem.

The Member States of OPANAL are preparing a proposal to the French Republic to reconsider the aforementioned points and reiterate its willingness to engage in a direct and constructive dialogue with the Ministry for Europe and Foreign Affairs regarding the Adjustment contained in Memorandum C / 31/2016.

2. **Russian Federation:** On its note, Russia affirms that “... *the restrictions, expressed upon signing the aforementioned document, do not contradict the spirit and the letter of the Treaty, being in conformity with the norms recognized by international law*”. Also, it mentions that “*the experience of the operation of the Treaty of Tlatelolco and its Additional Protocol II evidenced that there were no situations that motivated the need to make its reservations effective*”. Moreover, the note affirms that the Russian Federation “...*has no intention to utilize its reservations in the case of strict observance by all the States Parties to the Treaty and in the absence of an abusive utilization of the Treaty’s provisions by other nuclear-weapon-states*”.

In its declaration, the Russian Federation expresses that it does not accept article 4 of the Treaty of Tlatelolco, which is a fundamental provision, as it is related to the zone of application. OPANAL is not proposing the Russian Federation to withdraw its declaration, but rather extending an invitation to negotiate with the Agency an explanatory text acceptable for both sides. The response of the Russian Federation does not seem to reflect this possibility of understanding.

The Member States of OPANAL are preparing a proposal to the Russian Federation to reconsider the aforementioned points while reiterating their willingness to establish an open and constructive dialogue with the Ministry of Foreign Affairs of the Russian Federation regarding the Adjustments contained in Memoranda C/29/2016 and C/30/2016.

The General Conference of OPANAL, to be held in the second semester of 2019, will continue to revisiting both interpretative declarations, in accordance with the resolutions CG/E/Res.02/2017¹⁰ and CG/E/Res.01/2018.¹¹

¹⁰ http://www.opanal.org/wp-content/uploads/2017/10/CG_E_Res.02_2017_Declaraciones_interpretativas.pdf

¹¹ http://www.opanal.org/wp-content/uploads/2018/11/CG_E_Res.01_2018_Declaraciones_interpretativas.pdf