THE TREATY OF TLATELOLCO and the AGENCY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA AND THE CARIBBEAN:

EFFICACY

CONSOLIDATION and

ENHANCEMENT[1]

The Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) was established by Article 7 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean – Treaty of Tlatelolco.

In the concise style that is one of its characteristics, the Treaty attributes to the Agency the sole purpose of "guaranteeing compliance with the obligations". An additional element regarding the objectives of the Treaty is added when it indicates the functions of the organs of OPANAL – the General Conference, composed of the entire membership, and the Council, which is integrated by 5 Member States. The General Conference "shall establish procedures for the Control System to ensure observance" of the Treaty (Art.9 paragraph 2b); the Council shall ensure the "proper operation" of the Control System (Art.10 paragraph 5) together with the Secretary-General, who shall lead the Secretariat. All other functions of those Organs, which are listed in those relevant Articles, are regulatory; they are focused on the operation of the Agency.

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This paper was included in the publication of the International Seminar of OPANAL "A world free of nuclear weapons: Is it possible? Is it desirable? How could it be achieved?", p. 201-225, available at http://www.opanal.org/wp-content/uploads/2017/02/OPANAL_Seminar_2017.pdf

It ensues that the central reason for the institutionalization of the Treaty lies on the Control System, to which, as indicated by the use of capitals, the negotiators wished to confer an equally institutional character in order to ensure compliance with obligations.

The General Conference has also the task to promote "studies designed to facilitate the optimum fulfilment of the aims" of the Treaty. This function may equally be carried out by the Secretary-General (Article 9 paragraph 2f). The term "aims", deliberately broad, as discussed later in this text, indicates that there is something more beyond the obligations stated in Article 1 and beyond the Control System established by Articles 12 through 18 in order to ensure compliance with Article 1.

It is important to transcribe this Article as it corresponds to the very purpose of the Treaty:

> *"Article 1: Obligations*
>
> 1. *The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:*
>   *(a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and*
>   *(b) The receipt, storage, installation, deployment and 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. *The Contracting Parties also undertake to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon."*

The style is precise, concise and complete, covering everything that should be prohibited so that there be no nuclear weapons in the Zone of Application of the Treaty.

The "Obligations" are clearly directed to the Contracting Parties. However, they go beyond the Contracting Parties and reach any other State, entity or whomever under the term "anyone" in the expressions "on behalf of anyone else" and "by anyone on their behalf" in items a. and b. of paragraph 1. The prohibitions are imposed upon the Contracting Parties not only in the Zone of Application, but also everywhere else, as specified in paragraph 2, "[…] in any way participating in […]". They cannot test, use, manufacture, produce, possess or control nuclear weapons anywhere, on behalf of anyone or by means of anyone (as a proxy).

It is worth noting that the undertaking by the Parties in Article 1 begins with the exclusive use of nuclear energy for peaceful purposes, which is thereby preserved. Article 17 will readdress the subject more briefly than Article IV of the Treaty on the Non-Proliferation of Nuclear Weapons – NPT (1968). However it does not relate the right to peaceful use to the obligations, as it is the case in the NPT. This is an essential difference between Tlatelolco and the NPT. It is therefore worth examining the matter before focusing on the OPANAL.

The discoveries in physics, as in any other science, led to different applications that continue to expand. The use of such findings for warlike purposes does not contaminate the science in its pure and applied developments. However, it must be recognized that nuclear-weapon proliferation, which started in 1945, placed the science of physics under a veil of suspicion. Thus, it was necessary to reaffirm the natural character of normal uses of nuclear energy when efforts to prevent global nuclear-weapon proliferation started, and therefrom derive Article 17 of the Treaty of Tlatelolco and Article IV of the NPT. Nowadays, in the liturgy of the so-called “NPT review process”, which concludes with a quinquennial conference, the expression “three pillars” was coined to describe the scope of the NPT: non-proliferation, disarmament and peaceful uses. However, this is a misleading idea that contains a not so innocent purpose.

The NPT bans proliferation and includes an undertaking to negotiate nuclear disarmament. Those are its central mandatory clauses. Regarding peaceful uses of nuclear energy, Article IV barely states that “nothing in this Treaty shall be interpreted as affecting the inalienable right […]”, that is to say, a right that cannot be waived by the States, although they are not obliged to exercise it. Why, then, the insistence on “*the three pillars*”? Because the intention is to attribute to the peaceful uses of nuclear energy the status of a contingent right, a right dependent on compliance with non-proliferation, as a kind of reward for good behaviour. This represents a counterfeit, a distortion of the NPT and an attempt to make the development of knowledge and the applications of nuclear energy a concession and not a right, which has always existed and does not require authorization. The banning of chemical weapons, for instance, does not bring about any discrimination regarding research centres and chemical industries.

The “grand bargain” of the NPT, so often mentioned, is a *quid pro quo* between disarmament and non-proliferation. The uses of nuclear energy for peaceful purposes is not part of the “bargain”, being a pre-existing right.

Although Tlatelolco precedes the NPT, it is worth mentioning Article VII of the NPT, which guarantees the right of Parties to conclude regional treaties aimed at ensuring the total absence of nuclear weapons in their respective regions.

There is no mention of “nuclear-weapon-free zone” in the Treaty of Tlatelolco. Article 4 describes, with precise limits, the Zone of Application within which the obligations are in force. The thought of giving a name to that Zone of Application, describing its attributes, appears in documents of the United Nations. In 1974, the United Nations General Assembly (UNGA) adopted Resolution 3261 F (XXIX) by which it “decides to undertake a comprehensive study of the question of nuclear-weapon-free zones in all its aspects”. The following year, having received the study prepared under the aegis of the Conference of the Committee on Disarmament, the UNGA adopted, by Resolution 3472 (XXX), the declaration that contains the following definition of the concept of a nuclear-weapon-free zone:

> *“1. A “nuclear-weapon-free zone” shall, as a general rule, be deemed to be any zone recognized as such by the General Assembly of the United Nations, which any group of States, in the free exercise of their sovereignty, has established by virtue of a treaty or convention whereby:*
>
> *(a) The statute of total absence of nuclear weapons to which the zone shall be subject, including the procedure for the delimitation of the zone, is defined;*
>
> *(b) An international system of verification and control is established to guarantee compliance with the obligations deriving from that statute.”*

Subsequent Treaties, similar to Tlatelolco, have adopted the title “nuclear-weapon-free zone”[2] attached to the name-place that identifies the respective geographical area.

Since all these treaties and resolutions pertain to International Law, the nature and concept of a NWFZ should be examined in the light of it.

The NWFZ in Latin America and the Caribbean is not a synonym, and should not be confounded with the area to which the concept is applied.

Every State in the region, in its capacity as Party to the Treaty establishing the NWFZ, undertake the obligations flowing from the Treaty. However, this fact neither alters the nature of that State nor transforms the essence of the territory, in other words of the country. By undertaking the obligations set forth in the Treaty of Tlatelolco, States Party become participants in the NWFZ and, as a normal consequence of taking part in an international instrument, they accept the limitation of sovereignty included in the assumed obligations. This, however, does not alter the nature of the country.

[2] Hereinafter the acronym “NWFZ” is used.

This argument becomes still clearer when we consider the high seas portion – the marine area located beyond national jurisdiction, that is to say, beyond the territorial sea (12 nautical miles) and the exclusive economic zone (200 nautical miles) – which lies within the limits of the NWFZ in Latin America and the Caribbean described in Article 4 of the Treaty of Tlatelolco. Nothing is changed in the nature, physical or legal, of that high seas portion; no residual element of sovereignty of any State in the region impinges upon the character established by the Law of the Sea as a space devoid of any sovereignty. This interpretation is indeed important since it was not perceived by France or Russia (former U.S.S.R.) when they assumed the obligations set forth by the Additional Protocols to the Treaty of Tlatelolco, as will be discussed further on.

A NWFZ is an abstract superstructure, of a legal nature, applied to a specific area. The NWFZ possesses its own legal nature. The specific area, i.e. the natural space within clear limits, keeps its natural, social, political and legal nature to which it is added the new attribute of being a NWFZ.

Therefore the NWFZ can be identified as an **institute** of International Law in the sense that it exists and generates effects by virtue of International Law. As such, it has its own characteristics:

- It has material application, generating concrete consequences;
- It represents an attribute to an area, which does not suffer any alteration beyond the rights and obligations under the international legal instrument that creates the institute, in this case, the NWFZ;
- Necessarily associated with an international instrument and, thereby, with rights and obligations, the institute constitutes a legal attribute of the area to which it is applied;
- It should involve the establishment of a mechanism that will manage this legal attribute in the area to which it applies.

These characteristics identify what is here called an “institute of International Law”. It is worth recalling that an “institute” distinguishes itself from a principle or a concept. The latter corresponds to a term or expression which indicates any element having a specific meaning in International Law. That meaning is added by analogy to the original meaning or other meanings of that term in order to apply it to International Law. The word “treaty”, for example, has several meanings and uses, but indicates a precise concept in the context of International Law.

A “principle” is a basic, general norm, a “*jus cogens*”, a paradigm generally accepted to orient all the subjects of International Law. A common example is the principle known as “*pacta sunt sevanda*”.

Latin America and the Caribbean, taken as a geographic space and an ensemble of States, are not the NWFZ. The NWFZ is the legal institute of International Law applied to Latin America and the Caribbean, adding a differentiated status to the region with legal implications and consequences in terms of international relations. The administration of these implications and consequences has to be jointly conducted since an individual, separate and independent administration by each State in the region would not be feasible. The characteristics of the NWFZ indicated above impose collective or concerted actions. In the case of the NWFZ in Latin America and the Caribbean, it is incumbent upon the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean - OPANAL to exercise the administration of the legal attribute applied to the region by means of which it shall not have any nuclear weapons. In sum, the NWFZ may be compared to a transparent coating over the entire Zone of Application of the Treaty without altering the nature of the geographical space, but protecting it from the inside out and vice-versa. The Zone can neither receive nor produce nuclear weapons.

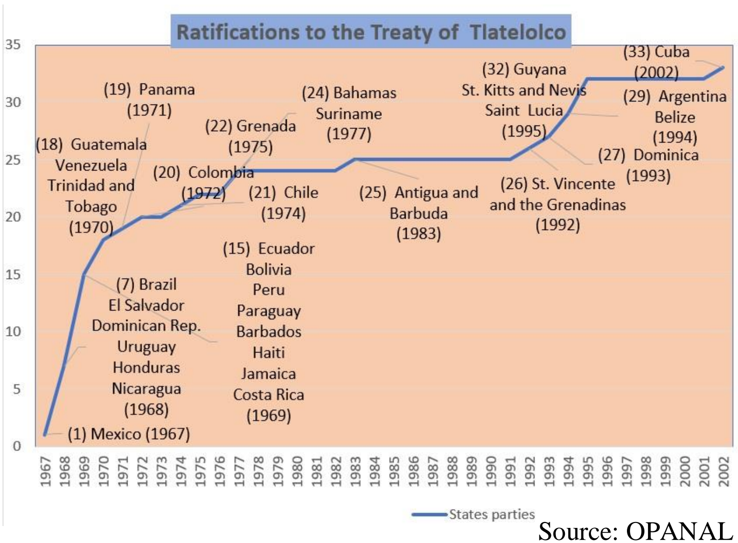
International Law deals with abstract realities and their precise conceptualization is needed for their validation and understanding.

International Law has necessarily a slower elaboration process than internal law. Its principles and doctrines are created by consensus, naturally difficult to reach due to, inter alia, the cultural, historical and geographical diversity and many other differences among States, not to mention the political and economic interests that collide with each other. The emergence of new sources and elements in International Law is rare. Institutes such as the NWFZ figure among those milestones in the progress of legal international relations. Another contemporary example of such a momentous event was the institute of the Common Heritage of Mankind coined by the Declaration contained in UNGA Resolution 2749 (XXV) in 1970, and later included in the United Nations Convention on the Law of the Sea.

In that multilateral international instrument, the Common Heritage of Mankind is applied to the seabed and ocean floor, and subsoil thereof, located beyond the limits of national jurisdiction. The Convention gave the name of “Area” to that space.

The Common Heritage of Mankind does not confuse itself with the Area, it does not transform its natural features, but it does confer to it a specific legal regime managed by a multilateral institution, the International Seabed Authority, based in Jamaica. This is similar to what occurs with the NWFZ in relation to its Zone of Application.

Once examined the essence of Tlatelolco and the nature of the NWFZ, it is proper to consider the development, the life of the Treaty, which was opened for signature in 1967 and entered into force in 1969, but was universalized, regarding its Zone of Application, only in 2002. For this analysis, the use of the terms “efficacy”, “consolidation” and “enhancement” is helpful.



Source: OPANAL

The “efficacy” of an international instrument stems from the principle of International Law “*pacta sunt servanda*”. It is expressed by the enforcement of the Treaty, in other words, by being “in force”, the expression meaning exactly “to have the force of law”, projecting its force over the society that participates in that pact. Efficacy naturally inscribes itself in the dimensions of time and space. Article 31 of Tlatelolco determines that the “Treaty shall be of a permanent nature and shall remain in force indefinitely”. The Zone of Application became in force in its entirety in 2002 with the ratification of the Treaty by Cuba. The Agency and the Control System operate continuously. The four States possessing territories, either *de jure* or *de facto,* in the Zone of Application signed and ratified Additional Protocol I; and the five States that possessed nuclear weapons when the Treaty of Tlatelolco was adopted and that are identified in the NPT (NWS), signed and ratified Additional Protocol II. The efficacy of Tlatelolco in legal terms, that is to say the acceptance of it as law, cannot be doubted. This is not always the case with many treaties and, by the way, with many

domestic laws. Upon their entry into force, all treaties are efficacious in principle but not in practice, as it would not necessarily be feasible for them to be so.

The attainment of that objective of complete efficacy is what is called “consolidation”. As described above, an essential part of that has been the entry into force of the Treaty for each Party, a process that gradually covered the entire Zone of Application. The amendments, which were deemed necessary by the Parties, were another step forward in making the Treaty more solid. However, this work has not yet been formally completed since some of the States parties have not yet ratified the amendment to Article 7 or the amendment to Article 25 or the amendments to Articles 14, 15, 16, 19 and 20.

These amendments represent measures aimed at consolidating Tlatelolco both in form and in substance. The amendment to Article 7 just adds the words “and the Caribbean” to the official name of the Treaty. It corresponds to a formal clarification. The objective of the modification to Article 25 is to align it with Article VIII of the Charter of the Organization of American States (OAS) so that newly formed States may be incorporated to the Treaty. Articles 14, 15, 16, 19 and 20, all of them related to the Control System, received substantial amendments.

According to the original version of paragraph 2 of Article 14, the Contracting Parties should simultaneously transmit to the Agency a copy of any report they might submit to the International Atomic Energy Agency (IAEA) related to matters that are the subject of the Treaty and to the application of the safeguard agreements that they are bound to conclude with the IAEA. That amendment, adopted in 1992, restricted the transmission of reports to OPANAL to those “that are relevant to the work of the Agency”. Relevance is determined at the discretion of the State Party.

Paragraph 3 of Article 14 originally stated that “the Parties shall also transmit to the Organization of American States, for its information, any reports that may be of interest to it”. This was amended in a diametrically opposite way in order to ban the dissemination to third parties of those reports submitted by the Parties, except when expressly authorized by them.

The original wording of Article 15 empowered the Secretary-General of OPANAL, with the authorization of the Council of OPANAL (composed of five States parties) to “request any of the Contracting Parties to provide the Agency with complementary or supplementary information regarding any event or circumstance connected to compliance with the Treaty…” According to the amendment, the Secretary-General may only ask for this information upon request of any of the Contracting Parties.

Article 16 addresses Special Inspections, that is to say those that show to be necessary when there is any doubt about the biannual information provided by a State Party under Article 14, paragraph 1, regarding the absence, in its territory, of any activity prohibited under the Treaty. In the original version, the collegiate organs of OPANAL – the Council and the General Conference – had initiative and direct participation in such special inspections, which would then require an infrastructure of inspectors and financial resources, as well as actions vis-à-vis the United Nations Secretary-General and the Security Council. The amendment of 1992 maintains special inspections as a prerogative of the IAEA, which can be called upon by the Council of OPANAL at the request of any of the Parties. The IAEA will have to transmit to the Council of OPANAL just the information submitted to the IAEA Board of Governors.

Article 19 kept only paragraph 1, which establishes agreements between OPANAL and the IAEA to facilitate the operation of the Control System. The second and third paragraphs referring to the relation with other organisations, but not to agreements, became a new Article 20.

The adoption of these amendments was essential in the consolidation process of Tlatelolco. It allowed three States – Argentina, Brazil and Chile – to waive the requirements for the entry into force stated in Article 29, paragraph 1. These requirements are:

a) ratification of the Treaty by all States in the region,
b) ratification of the Additional Protocols I and II by the States concerned and
c) completion of safeguards agreements with the IAEA by all the Parties.

Brazil and Chile had already ratified the Treaty, but had not waived two requirements; whereas Argentina had not yet ratified. The heavy instrumentation referred to in Articles 14, 15, 16, 19 and 20 certainly seemed invasive to those States, duplicating the powers of the IAEA, exceeding the means at the disposal of OPANAL and, consequently, creating a possible source of controversy amongst the Parties. An example of this was the provision of information to the OAS, an organization with a different composition compared to that of OPANAL, and which, moreover, does not possess the specific competence of the IAEA.

Tlatelolco is an objective and lean treaty. Its touchstone is the previously cited Article 1, which contains the obligations. Six articles address definitions and assertion of rights, as the one relative to the peaceful uses of nuclear energy. A group of seven Articles are final provisions of a procedural nature.

Faithful compliance is the essence of the consolidation of a treaty. Compliance with Tlatelolco obligations may be divided into two aspects: mechanisms and Control System, with seven and eleven articles, respectively.

Over 45 years, OPANAL has steadily fulfilled the functions entrusted to it by the Treaty. Eight Secretary-Generals have led the Secretariat since the Treaty's entry into force. The General Conference meets in regular biennial sessions. Special sessions in intervening years are mainly but not exclusively convened to adopt the yearly budget. The General Conference has held through 2017 25 regular and 25 special sessions. The Council has met in 309 occasions, usually bimonthly. These figures show the steady work of the Agency and the attention paid to it by the Member States. The Agency ensures compliance with the Treaty and processes the bi-annual communications derived from Article 14, which refer to the absence of activities prohibited, and from Article 24, regarding agreements concluded by States Parties on matters related to the Treaty.

OPANAL is the oldest regional mechanism on nuclear disarmament and non-proliferation and the only one to maintain permanent institutional relations with other multilateral organizations. The Agency is always invited to participate in the First Committee of the UNGA and is listed among the Organizations to be consulted for reports requested by the UNGA to the UN Secretary-General. With regards to the IAEA, relations are expressly stated in the Treaty, and so is the case with the OAS. The Agency has also participated occasionally in the Conference on Disarmament (CD). Especially relevant are the initiatives of the Community of Latin American and Caribbean States -CELAC, as is the case of the Havana Declaration (January 2014), in which the Heads of State and Government reaffirm the importance of cooperation and collaboration between the two organizations. In that occasion CELAC adopted a Special Declaration on Nuclear Disarmament that makes reference to the decisions of the XXIII Regular Session of the General Conference of OPANAL, held in August 2013, in Buenos Aires, Argentina. A similar Declaration adopted in the III Summit in San José, Costa Rica, on 28 January 2015 acknowledged OPANAL as the specialized body of the Region in the field of nuclear disarmament.

Three out of the four NWFZs have some form of institutionalization, but they are far from the executive and political functions which are bestowed upon OPANAL.

The South Pacific Nuclear Free Zone Treaty - Treaty of Rarotonga, of 6 August 1985, 20 years after the first atomic bomb attack, establishes a Consultative Committee but transfers to the Pacific Islands Forum, with a membership of 16 States, the institutional personality of the Treaty. The Southeast Asian Nuclear-Weapon-Free Zone Treaty - Treaty of Bangkok, of 1995, follows the model of Rarotonga. It provides for a Commission of all Member States, but the institutional representation lies in the Association of Southeast Asian Nations (ASEAN). Immediately after, in 1996, came the African Nuclear-Weapon-Free Zone Treaty - Treaty of Pelindaba. It does establish an organ capable of ensuring compliance with the Treaty, the African Commission on Nuclear Energy (AFCONE), which is not yet fully operational. To conclude, the Central Asian Nuclear-Weapon-Free Zone (CANWFZ) Treaty only includes annual meetings of the Parties, but it does not establish any institution.

The Amendments to the Treaty of Tlatelolco in 1992 simplified the Control System thus making it really efficient. The Control System, under its political and legal aspects is exercised by OPANAL with which Member States maintain permanent contact addressing to it the biannual reports pursuant to Article 14, in which they formally declare the absence, in their respective territories, of activities prohibited in Article 1; and, the reports under Article 24, regarding the conclusion of agreements on matters with which the Treaty is concerned. To the IAEA fall the technical aspects by means of monitoring the safeguards agreements that States parties are compelled to undertake. Although it is not mentioned in the Treaty, since it is subsequent to it, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials – ABACC, which maintains an agreement with the IAEA and with those two South American States, must be seen as a part of the Control System.

Two Additional Protocols are annexed to the Treaty. It is rather odd that there is no Article announcing them, although, somewhat *en-passant,* they are mentioned in Article 29 among the conditions for the entry into force of the Treaty, and in Article 31 regarding denunciation. The Additional Protocols were a clever way found to guarantee that the Treaty is respected by the States that possess territories, either *de jure* or *de facto,* in the Zone of Application, namely, the United States of America, France, the Netherlands, and the United Kingdom (Additional Protocol I); and by the NWS (NPT nuclear weapon states), the aforementioned states, except the Netherlands, plus China and the USSR, now Russia (Additional Protocol II). None of these States could become a party to the Treaty. By fully undertaking the obligations of Article 1, they would cease to be NWS. If the States parties to Additional Protocol I did not undertake obligations stated in Article 1 strictly in the Area of Application and if the Parties to Additional Protocol II, the NWS, did not provide any

guarantees to the States Parties to Tlatelolco in the sense that they would respect the NWFZ and would not use or threaten to use nuclear weapons against them, Tlatelolco would be definitely lame.

Those six States concluded the procedures for the full entry into force of the Protocols. Nevertheless, the full consolidation of Tlatelolco remains evanescent. The five NWS maintain "interpretative declarations" that are in fact reservations according to Article 2, paragraph 1, section (d) of the Vienna Convention on the Law of Treaties, which reads *"(d) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State"*. Pursuant to Article 28, Tlatelolco does not allow reservations a clause expressly accepted in Article 4 of Protocol II whereas Protocol I deliberately omits this matter.

The reservations address two essential subjects. The first one is an open challenge made by France and Russia to the scope of the Zone of Application. The second paragraph of Article 4 of the Treaty delimits the Zone of Application including areas of the high seas. The security of the States in the NWFZ was the purpose of the negotiators, and thereby of the Treaty. The III United Nations Conference on the Law of the Sea, which led to the United Nations Convention on the Law of the Sea (UNCLOS) (1982), had not yet been convened when the negotiations, conclusion and entry into force of the Treaty took place. The reservation therefore revealed the insecurity of those two States regarding the evolution of a negotiation that was coming. Yet, that reservation was and still is mistaken; it is a typical case of excessive care by timorous jurists. In Article 4 and everywhere else in Tlatelolco it is inexistent, both in the letter and in the spirit, the intention of sovereignty or jurisdiction in the high seas over which UNCLOS has basically kept the Grotian concept of *"mare liberum"*. What the Law of the Sea Convention did alter is the extension of the coastal State jurisdiction, which by the way has been accepted by France and Russia; but kept the nature and the ensuing regime of the high seas.

Other reservations of bigger relevance concern the negative security assurances (NSA), which are the object of Article 3 of Protocol II, meaning a guarantee that NWS will not use or threaten to use nuclear weapons against non-nuclear-weapon states. NSAs do not admit exceptions, they either exist or don't exist, and in order for them to exist they must be legally binding. They cannot be neither a gift nor an expression of good will. They have to be a contract. The NWS have so far declined to undertake such legal commitment. As a consolation, so to speak, their attitude reflects respect for International Law. They do not want to undertake such commitment because they are not sure they can comply with it. NSAs, to be real guarantees, must be legally binding. One

cannot deny that their signing and ratifying of Protocol II showed a support for Tlatelolco and the Latin American and Caribbean endeavor. The NWS therefore tried to circumvent the dilemma by means of individual different interpretative declarations that leave the door ajar to allow the use or threat of use of nuclear weapons against the States members of the NWFZ in Latin America and the Caribbean. In general, one can deduce from the wording of these declarations that they reflect the conditions of the Cold War and the situation of Cuba and the superpowers confrontation. They are therefore obsolete at least in the context of Tlatelolco.

OPANAL, through its Secretary-Generals and Member States, has repeatedly urged the Parties to the Protocols to modify or withdraw their declarations. Responses, when given, were vague and never positive. These pleas have been expanded to the other NWFZ and figure regularly in UNGA resolutions. However, it is necessary to revisit the matter in a proper diplomatic fashion so that negotiations can be opened. That is why OPANAL, represented by the five Member States of its Council, proposed, in December 2016 in Moscow and Paris, the negotiation of Adjustments that would remove the difficulties of France and Russia regarding Protocol II. Similar *démarches* are expected vis-à-vis the United States and the United Kingdom.

Once efficacy and consolidation have been examined, enhancement remains to be considered.

If a treaty establishing a NWFZ is in full force, fully complied with and respected in its integrity; what else would be missing? It is then necessary to consider the “aims” mentioned at the start of this paper referring to Article 9 paragraph 2(f).

The ensemble of articles of a treaty corresponds to the very substance of the contract. In principle, the clauses are sufficient for the treaty to be complied with and to generate the desired effects. However, one should not forget that a treaty has its origin in political problems situations and motivations, the development and solution of which the treaty seeks to conduct.

In the year of 1962, nuclear tests reached their peak with approximately 120 explosions in the atmosphere and 60 underground. On 17 November 1962, one month after the missile crisis in Cuba and while the world was still wiping the cold sweat off its forehead, Brazil, Bolivia, Chile and Ecuador, submitted document A/C.1/L.312/Rev.2 to the UNGA containing a proposal for the denuclearization of Latin America. Thus was launched the idea, generated from that murky political atmosphere, that would lead to the negotiation of the Treaty, starting in 1963 and completed in 1967.

As it is generally the case with treaties, Tlatelolco does not limit itself to cold and objective articles. It is in the Preamble, which is neither rhetorical nor decorative, that we will find the connection with the surrounding political conditions. It contains the other "aims" of the Treaty, which are listed below in order of appearance:

1. Ending the armaments race, especially in the nuclear field;
2. Strengthening a world at peace based on the sovereign equality of States;
3. Total prohibition of nuclear weapons and weapons of mass destruction of any type;
4. General and complete disarmament under effective international control
5. Preventing the proliferation of nuclear weapons;
6. Keeping peace and security in the militarily denuclearized zones;
7. Use of nuclear energy exclusively for peaceful purposes;
8. Right to the greatest and most equitable possible access to this new source of energy in order to accelerate economic and social development.

The preamble clearly explains that NWFZs *"are not an end in themselves but rather a means for achieving general and complete disarmament at a later stage*". These "aims" are "the route map" of Tlatelolco and of its 33 States parties. Once consolidation is achieved through full and strict compliance by the Parties and by the solution concerning reservations to the Protocols, it would be meaningless for Latin America and the Caribbean to be satisfied in their *Shangrilah,* napping under the shade of palm trees in the calm provided by the NWFZ, pretending to ignore that the world is a whole ensemble and that today there are around 15 thousand nuclear weapons, thousands of them deployed.

There are two main subjects for the enhancement of Tlatelolco.

The preamble is an integral part of the Treaty, it is in fact its most dynamic face projecting into the future. Through Tlatelolco, Latin America and the Caribbean provided themselves with political credentials to act as a block and participate more intensely in the debates and international negotiations on the ban of nuclear weapons and other weapons of mass destruction, on nuclear weapons non-proliferation and on correlated matters regarding international security.

The second aim listed above combines a "world at peace" and the "sovereign equality of States". It could not be more accurate since nuclear weapons are precisely the most serious obstacles to a truly democratic international system. The nuclear weapon is an instrument of political oppression in international relations; it cannot coexist with democracy.

The 33 Latin American and Caribbean States represent 17% of the UN membership and only a 13% of the CD membership, whereas the Western Group represents 38% of the CD membership. Apart from this purely numerical comparison, there seems to be a relatively lower participation of the Latin American and Caribbean community in this than in other global issues, including environment and human rights. Well, there is no more imminent and devastating danger than nuclear weapons. Perfecting Tlatelolco demands a more intense political activity in OPANAL, which is based in Mexico City where a third of the Member States do not have a permanent representation. It is necessary therefore to identify new modalities for a more active participation of Caribbean States.

The second subject related to the Treaty enhancement is the relationship among the NWFZs to which we add Mongolia that declared itself and is designated by the United Nations as a nuclear-weapon-free state. In 2005, by OPANAL initiative, was held a NWFZs Member States Conference. In 2009, the NWFZs focal points held a meeting in Mongolia. In 2010, a second conference took place on the eve of the VIII NPT Review Conference. Both conferences were held by a Latin American initiative, showing OPANAL leadership. These two conferences were followed by a third, in 2015, coordinated by Indonesia. These initiatives, although very hopeful, have not yet succeeded in generating a true dialogue among the NWFZs. The quinquennial declarations, which basically address all disarmament themes, do not establish by themselves a minimum organized system. Perhaps, it would be necessary to create a permanent body to maintain an active channel of communication between the 115 NWFZ States. The role of OPANAL – as the most institutionalized Agency among the NWFZs – is crucial for these developments.

The need for a zone free of nuclear weapons and other weapons of mass destruction in the Middle East, for its tremendous importance for World peace and security, cannot be silenced, but it is a matter beyond the scope of this text.