

The Non-Proliferation of Nuclear Weapons in Latin America

by H. Gros Espiell

The non-proliferation of nuclear weapons in Latin America rests upon three international instruments: the Statute of the International Atomic Energy Agency (IAEA), the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the Treaty for the Prohibition of Nuclear Weapons in Latin America (the Tlatelolco Treaty)¹

Since two of these documents are universal, and one is regional in scope, the obligations arising from them are not the same, their respective approaches are not necessarily identical and they are not equally effective at achieving the non-proliferation or prohibition of nuclear weapons in Latin America. The three documents also differ somewhat with respect to the Latin American countries party to them. However, all three, in their various ways, must be taken into consideration if an accurate and complete account of non-proliferation of nuclear weapons in the Latin American zone is to be given.

One of the objectives of the Statute of the IAEA is to accelerate and enlarge the contribution of atomic energy to peace (Article II); its functions therefore include encouraging and assisting research on, and development and practical application of, atomic energy for peaceful uses throughout the world.

To ensure that these objectives are achieved in practice, Article XII of the Statute provides for a safeguards system which is intended to assure that nuclear equipment and facilities do not further any military purpose (Article XII.A.1) and that irradiated materials are not diverted for military purposes (Article XII.A.5). The Statute, by its very nature, is essentially concerned with the question of the peaceful use of nuclear energy. It is thus an important element in the existing international normative system for preventing the spread and use of nuclear weapons.

Four Latin American countries that are party neither to NPT nor yet to the Tlatelolco Treaty — although some of them, as we shall see, have signed and/or ratified the latter — have concluded or are negotiating, for specific nuclear activities, safeguards agreements based exclusively on the Statute of the IAEA. The countries concerned are Argentina, Brazil, Chile and Cuba. The first three of these countries have repeated again and again that they oppose NPT because it is discriminatory and violates the legal equality of States and is therefore unacceptable. The Latin American countries that have become parties to NPT and have thereby accepted the non-proliferation obligations established by Article II must conclude safeguards agreements in accordance with

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the provisions of Article III. However, since these Latin American countries party to NPT are at the same time parties to the Tlatelolco Treaty, which also imposes the obligation to negotiate and conclude safeguards agreements with the IAEA (Article 13), such agreements are based on both these multilateral instruments simultaneously.

There still exists the situation where a State party to the Tlatelolco Treaty is not yet party to NPT; however, there is no case of a Latin American country being party to NPT but not to the Tlatelolco Treaty.

The third international document, the Tlatelolco Treaty, is really essential; it takes precedence over the other two mentioned above and provides the basis for the non-proliferation of nuclear weapons in Latin America.

It should be understood, first, that this Treaty does not limit itself to establishing a set of measures for achieving non-proliferation of nuclear weapons in a geographical region or zone. It establishes, by a system of total, absolute and non-discriminatory prohibition, the first and hitherto only nuclear-weapon-free zone in an inhabited region of the Earth; this is based on a regime of absolute prohibition of nuclear weapons in the area covered by the Treaty, which includes not only all the territories of the States party to Additional Protocol I but may even be extended to cover the zone established in paragraph (1) of Article 4 once all the requirements of Article 28, paragraph (1) of the Treaty have been met.

In addition, the nuclear-weapon-free zone of Latin America is legally guaranteed by the obligations assumed in that respect by all the nuclear-weapon States party to Additional Protocol II (China, France, Union of Soviet Socialist Republics, United Kingdom, United States of America). This Protocol is the only international treaty connected with disarmament at present in force to which the five States possessing nuclear weapons are parties.

The Tlatelolco Treaty and NPT are two separate, distinct and autonomous instruments. Although they are contemporaneous, the Tlatelolco Treaty being opened for signature on 14 February 1967 and NPT on 1 July 1968, the former is not merely an instrument designed to prevent the horizontal proliferation of nuclear weapons by prohibiting their construction, possession and use by certain States, but a treaty imposing upon all the States party to it a regime which involves the complete, absolute and permanent absence of nuclear weapons.

The Preamble of the Tlatelolco Treaty recalls Resolution 2028 (XX) of the United Nations General Assembly, "which established the principle of an acceptable balance of mutual responsibilities and duties for the nuclear and non-nuclear powers". This resolution is also quoted in General Assembly Resolution 2372 (XXII) of 12 June 1968, by which NPT was approved and opened for signature and ratification by States. However, the two treaties, in spite of being intended to contribute to international security and peace, are not based on the same criteria. Thus, while twenty-two of the twenty-five signatories of the Tlatelolco Treaty have also signed NPT, there are three Latin American States which have not signed NPT in spite of being signatories of the Tlatelolco Treaty (Argentina, Brazil and Chile); two of these (Brazil and Chile) have ratified the Tlatelolco Treaty without the waiver provided for in Article 28.2. Similarly, two countries party to Additional Protocol II of the Tlatelolco Treaty, China and

France, are not signatories of NPT; France has also signed Additional Protocol I of the Tlatelolco Treaty. It should be pointed out, finally, that Cuba has signed neither the Tlatelolco Treaty nor NPT.

Currently, 22 States² are parties to the Tlatelolco Treaty and Members of the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL); 25 have signed the Treaty³ and 24 have ratified it⁴. It is very likely that Argentina will ratify it in the near future once certain conditions are fulfilled. It is now accepted that States which are not yet parties to the Treaty, but which have ratified or signed it, cannot take any action which would run counter to the objective and purpose of the Treaty; this necessarily excludes the construction, receipt or use of nuclear weapons by those States.

There are two States which have still not joined the Tlatelolco system in any form at all, namely Cuba and Guyana. As long as these two States have not signed and ratified the Treaty (and we have hopes that the question which has prevented Guyana from signing it can be resolved), the Treaty does not effectively and genuinely cover all of Latin America. As regards Cuba – especially in the light of the latest official statement of the Government, voiced in December 1979, that no steps towards signing will be taken until the United States has given back Guantánamo and certain other conditions have been fulfilled – the question seems likely to remain open until the more remote future.

The Netherlands and the United Kingdom are already parties to Additional Protocol I, according to which States possessing *de jure* or *de facto* jurisdiction over territories which lie within the limits of the zone established in the Treaty undertake to apply to those territories the statute of denuclearization established by the Treaty. The United States signed the Protocol in May 1977 and France on 2 March 1979. When France ratifies it, French Guiana, Martinique and Guadeloupe will become militarily denuclearized. When the United States ratifies the Protocol, the Canal Zone in Panama, Guantánamo, the Virgin Islands and Puerto Rico will have to be kept free of nuclear weapons. In any case, the Canal Zone is militarily denuclearized already as a result of the entry into force of the Panama Canal Treaty; the agreement for the implementation of Article IV of the Panama Canal Treaty, which constitutes an annex to the Treaty, explicitly states in Article IV, paragraph 6, that since the Republic of Panama is a party to the Tlatelolco Treaty, the United States shall not install any type of nuclear armament on the territory of Panama. Thus, since the Netherlands and the United Kingdom are already parties to Additional Protocol I, all the territories possessed by non-Latin-American States in Latin America will thereafter necessarily be free of nuclear weapons.

Additional Protocol II, by which the nuclear-weapon States undertake to respect the statute of denuclearization of Latin America in respect of warlike purposes, has already been signed and ratified by China, France, UK, USA and USSR.

The Tlatelolco Treaty establishes, under the international agency which it created (OPANAL), a complete control system to verify compliance with the obligations imposed on the contracting parties by the Treaty. We do not intend to analyse this system in detail at this point, but merely to indicate that the procedures laid down in Articles 13, 14 and 23 work and are already being applied effectively.

Indeed, the semi-annual submission by the Governments of reports stating that no activity prohibited under the Treaty has occurred in their respective territories (Article 14) is now a regular activity, and every 60 days the OPANAL Council analyses the reports received and the process of compliance with this provision of the Treaty.

As to the safeguards agreements which the countries party to the Tlatelolco Treaty have undertaken to negotiate and conclude with the IAEA, under Article 13, the rate of preparation and signature of such agreements has been accelerating recently, and it may be hoped that all Latin American countries party to the Treaty will have concluded such agreements shortly. When the State negotiating the agreement is party to NPT as well as to the Tlatelolco Treaty, the safeguards agreement is based on both instruments. When the State is party only to the Tlatelolco Treaty at the time of negotiation, the agreement is based solely on this Treaty⁵. OPANAL is actively involved in the process of negotiating these safeguards agreements between Latin American countries and the IAEA, rendering assistance and advice to those States that desire it. The OPANAL Council verifies compliance with Article 13 and closely follows its application.

At the present time, IAEA safeguards agreements have been signed by the following parties to the Tlatelolco Treaty: Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. Agreements with the Bahamas and Grenada are under negotiation. It is hoped that negotiations will soon be taken up with Barbados and Trinidad and Tobago.

Article 23 states: "Once this Treaty has entered into force, the Secretariat shall be notified immediately of any international agreement concluded by any of the Contracting Parties on matters with which this Treaty is concerned; the Secretariat shall register it and notify the other Contracting Parties". This is being complied with in a normal and satisfactory way.

The remaining Articles of the Treaty referring to the control system [Special Reports (Article 15) and Special Inspections (Article 16)] have not so far been applied. Nevertheless, they are there, the legal framework for them is in force, and they could be applied if the circumstances requiring their application arose. Similarly, the provisions of the Tlatelolco Treaty concerning measures to be taken in the event of violation of the Treaty (Article 20) have not so far been applied, since there have been no violations of the kind specified in the Treaty.

The peaceful use of nuclear energy is a right of the States party to the Tlatelolco Treaty (Articles 18 and 19) and an indispensable element in the future economic and social development of peoples; this is an aspect to which the OPANAL General Conference has paid particular attention in view of its eminent importance and significance. In the Declaration approved by the General Conference during the Special Session to commemorate the tenth anniversary of the Treaty (February 1977) this point was stressed particularly, and the responsibilities of OPANAL in that respect were more precisely defined.

The countries party to the Tlatelolco Treaty which are at the same time parties to NPT, and members of OPANAL as an international organization, have paid particular

attention to the application of NPT. They participated in the First Review Conference of the Parties to NPT in 1975, at which OPANAL presented a special document; at the request of the Preparatory Commission, it has also submitted a document for the Second NPT Review Conference. The OPANAL General Conference, in Resolution 131(VI) adopted on 27 April 1979, recommended to States party to both the Tlatelolco Treaty and NPT that they should co-ordinate, by all ways and means they consider appropriate, the positions they will adopt at the Second NPT Review Conference. The OPANAL Council has already taken steps to effect such co-ordination in Resolution C.16 of 21 April 1980. The document presented by OPANAL for the Second NPT Review Conference particularly stresses the need for adequate, complete and non-discriminatory application of Articles IV and VI of NPT.

These brief remarks describe the present status of the Tlatelolco Treaty, not only with respect to the signatures and ratifications obtained so far for the Treaty itself and for the two Additional Protocols, but also with respect to the effective application of its provisions. The situation is encouraging and the outlook very good indeed. Everything suggests that it will be possible within a relatively short time to complete the process of achieving its application throughout the territory of continental Latin America. Thus, the prohibition of nuclear weapons in Latin America, which is already, fortunately, a practical reality, will be a certain and ineluctable fact throughout Latin America guaranteed by a multilateral international instrument and a complete and effective control system which makes any violation of the obligations imposed by the Treaty practically impossible.

This successful example of the prohibition of nuclear weapons in Latin America must serve as a model for the establishment of other nuclear-weapon-free zones. It is to be desired that Latin America will soon cease to enjoy the unique privilege of being the only zone free of nuclear weapons in an inhabited region of the Earth.

It might also constitute a basis for an analogous experiment aimed at the control and limitation of conventional armaments in Latin America, a suggestion made by Venezuela and Mexico, in particular, at the recent Special Session on Disarmament of the General Assembly (May–June 1978), at the General Conference of the Organization of American States (June 1978) and in other fora.

The course taken in giving the Tlatelolco Treaty an important part to play in connection with the peaceful use of nuclear energy in Latin America and in making OPANAL the regional planning and co-ordinating centre for such matters opens up prospects of the highest interest.

Thus, the example set by the Tlatelolco Treaty, which Latin America presented to the world as a contribution to peace, security and development, should produce, in the future, effects of exceptional relevance, not only where disarmament is concerned, but also in the necessary effort to make nuclear energy an important factor in the economic and social development of the peoples of Latin America.

NOTES

1. The uninhabited zones of the Earth directly connected to Latin America, such as the Antarctic and the seabed up to 12 miles off the Latin American coasts, have a special statute prohibiting the detonation of nuclear explosives and the emplacement of atomic weapons in those zones.

The Antarctic Treaty, which has been in force since 23 June 1961, contains this prohibition in Article I; Argentina and Chile have been parties to this Treaty since its adoption, Brazil since 1975 and Uruguay since 1977. The Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil thereof, which has been in force since 18 May 1971, contains this prohibition in its Articles I and II; it has already been signed by a large number of Latin American countries and ratified by many of them.

2. Bahamas, Barbados, Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela.
3. The 22 States mentioned in note 2. plus Argentina, Brazil and Chile.
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5. This is the case with the safeguards agreements of Colombia and Panama.