

**Third Review Conference
of the Parties to the Treaty on the Prohibition of
the Emplacement of Nuclear Weapons and Other
Weapons of Mass Destruction on the Sea-Bed and
the Ocean Floor and in the Subsoil Thereof**

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DECLARATION BY PERU

**CONCERNING THE TREATY ON THE PROHIBITION OF THE EMBLACEMENT
OF NUCLEAR WEAPONS AND OTHER WEAPONS OF MASS DESTRUCTION ON
THE SEA-BED AND THE OCEAN FLOOR AND IN THE SUBSOIL THEREOF,
AND THE THIRD REVIEW CONFERENCE**

Although Peru is not a contracting party to the 1971 Treaty, it has been and remains Peru's intention to respect faithfully the prohibition set out in article I on emplanting or emplacing on the sea-bed and the ocean floor and in the subsoil thereof any nuclear weapons or any other types of weapons of mass destruction, whether chemical, biological, toxin or radiological, as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons of mass destruction. In other words, Peru acts and will continue to act in this respect as if it were a contracting party to the Treaty.

Since the last review conference, 8 States have become parties - 18 in all since the first review conference, which was held in 1977. This is intended to show that, despite the importance of this multilateral instrument in the sphere of arms control, the enthusiasm it prompts is not so considerable, as there are eighty-one (81) States parties to date. For more than one observer, one of the reasons for the international community's limited enthusiasm would seem to be the anachronistic link which the 1971 Treaty makes with the Convention on the Territorial Sea and the Contiguous Zone, signed in Geneva on 29 April 1958, as regards the determination of the outer limit of the sea-bed zone. And this linkage is considered anachronistic both because the 1958 Geneva Convention is completely outdated and because it has always been the object of controversy, as was demonstrated in the intensive negotiations which proved necessary years later within the United Nations in order to secure the adoption of the Convention on the Law of the Sea in December 1982.

It is true that in the antepenultimate paragraph of the preambular section of its Final Declaration, the second review conference affirmed that nothing contained in the new Convention on the Law of the Sea affected the rights and obligations assumed by States parties under the 1971 Treaty. However, some countries which are not parties do not find this demarcation so easy. At best, as far as these countries are concerned, the 1982 Convention complements the 1971 Treaty in certain respects in so far as the two multilateral instruments ultimately pursue the same objective, that of reserving the sea-bed and the ocean floor and the subsoil thereof for exclusively peaceful purposes.

As has been pointed out repeatedly, the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof is not an end in itself, but a means of achieving general and complete disarmament under effective international control. From this viewpoint, there is perfect consistency between the Convention on the Law of the Sea and the 1971 Treaty, in so far as article 141 of the 1982 Convention earmarks the "sea-bed zone" exclusively for peaceful purposes, as a consequence of which articles 136 and 140 contain provisions concerning its status as the "common heritage of mankind". Hence the next step in keeping with the logic of the 1971 Treaty should be the complete military denuclearization of the seas as a means of contributing to the attainment of the objective set forth in article 141 of the 1982 Convention.

A further way in which the Convention on the Law of the Sea complements the 1971 Treaty has to do with the outer limit of the zone referred to in article II of the Treaty in question. It is well known that the reference made in this article to the 1958 Convention creates two fundamental problems. The first is related to the actual delimitation of the zone of application of the Treaty, the second to possible conflicts of jurisdiction which might arise between a coastal State party and another State party regarding conduct by the latter, on the continental shelf of the former, of military activities not prohibited by the 1971 Treaty.

The first problem was resolved once and for all by the 1982 Convention when it made the 12-mile limit universal, without prejudice to differences of opinion which may exist in some coastal States regarding sovereignty and jurisdiction beyond that maritime limit. As far as the second problem is concerned, it is clear that the specific nature of the prohibition set forth in the 1971 Treaty does not detract from the right of coastal States, by virtue of article 301 of the Convention on the Law of the Sea, to warn that within their "exclusive economic zone" no other State may place on the sea-bed or ocean floor or the subsoil thereof any types of structures, launching installations or other facilities specifically designed for storing, testing or using weapons which are not weapons of mass destruction.

In other words, the common long-term aim of the two multilateral instruments, and the justified security concerns of the coastal States that are or wish to become parties, as in the case of Peru, make it desirable to introduce between the contracting parties similar declarations that they will refrain from engaging in activities prohibited by article I of the 1971 Treaty involving the use of weapons other than weapons of mass destruction on the sea-bed and the ocean floor and in the subsoil thereof within the "exclusive economic zone" of other coastal States which are contracting parties. In addition, as one of the depositaries rightly pointed out, it would be highly appropriate for such a declaration to be complemented by another whereby the prohibitions set forth in article I of the 1971 Treaty also applied to the territorial waters of the contracting parties.

Another matter of interest to Peru is related to the application of the provisions of article V of the 1971 Treaty. This article sets forth agreement by the parties to continue negotiations in good faith concerning further measures in the field of disarmament for the prevention of an arms race on the sea-bed, the ocean floor and the subsoil thereof.

One of the purposes of this review conference is to take into account "any relevant technological developments". What is relevant is very broad if we observe the variety and extent of current technological progress. In that context, the communication from the Government of Sweden is very valuable. Equally useful are the information provided by the Government of the Soviet Union and the reference made by the Government of the United Kingdom to information on technologies which cannot be released for reasons of military secrecy or commercial confidentiality (SBT/CONF.III/4 and SBT/CONF.III/4/Add.2).

It is a major shortcoming of the 1971 Treaty that it makes nuclear weapons respectable. A further significant limitation is the fact that the prohibition is restricted solely to the sea-bed and the ocean floor and the subsoil thereof, implying acceptance of the free movement of these powerful weapons of mass destruction in the superjacent waters. Hence the non-nuclear-weapon States continue to have legitimate grounds for their anxiety to rule out de facto situations which might lead to certain equivocal technological developments in the context of the security arrangements being reached on the regional or global scale.

It is with that concern in mind that Peru views sympathetically the initiative taken by some States parties which wish to make the verification machinery created under article III of the 1971 Treaty operational. For that purpose consideration might be given to the holding of an ad hoc meeting of scientific and technical experts, under the heading of "appropriate international procedures" in the framework of the United Nations, to examine all relevant technological developments as a way of restoring mutual trust between the parties and thereby promoting the universality of the 1971 Treaty.

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