Open-ended Working Group taking forward multilateral nuclear disarmament negotiations¹

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Item 5 of the agenda

Taking forward multilateral nuclear disarmament negotiations

Different elements for the interoperability and nuclear ban discussion

Submitted by the Human Security Network in Latin America and the Caribbean Region (SEHLAC)

Summary

This working paper analyzed precedents on interoperability in international treaties and makes a specific proposal to include the issue on a Nuclear Ban Treaty taking into account language and experience of previous treaties.

1. This working paper aims to bring together some elements for discussion on Nuclear Ban and interoperability.

2. The concept of interoperability has changed over the years as a result of modern operations and technology. For the purpose of this paper we are going to use the following definition: “Interoperability refers to the ability of different military organizations to conduct joint operations.”

3. These organizations can be made up of different nationalities or different armed services (ground, naval and air forces) or both.

4. Interoperability allows forces, units or systems to operate together. It requires them to share common doctrines and procedures, infrastructure and bases, and to be able to communicated with other members within the operation. It reduces duplication in an Alliance of 26 members and furthermore it allows the pooling of resources and produces synergies among members.

¹ Established pursuant to resolution 70/33 of the General Assembly of the United Nations.
5. Interoperability does not necessarily require common military equipment. What is important, however, is that the equipment and resources used can share common facilities and are able to be communicated with other participants.

6. NATO militaries, as an example, have achieved interoperability through decades of joint planning, training and exercises during the Cold War. More recently, Alliance members have also put interoperability into practice\(^2\).

7. Discussions on interoperability have a long history. They involve talks on weapons of mass destruction and conventional weapons. Some of these discussions had to do with limiting proliferation by banning certain activities, while other dialogues aimed to specifically prohibiting the use of these weapons, such as the Chemical Weapons Convention and the Mine Ban Treaty\(^3\).

8. Elements of interoperability (assistance) were used in international treaties and protocols were first used in relation to the Nuclear Non-Proliferation Treaty (1968): Art 1: “Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.”

9. It was also used in the Biological Weapons Convention (1975), an additional protocol to the Geneva convention (1977) and again later in the Statutes of the International Criminal Court (1998) and Comprehensive Nuclear Test Ban Treaty (1996), which refers to the banning of certain activities (such as the manufacture or transfer of weapons) or information going beyond activities or elements.

10. In the case of international negotiations involving a BAN of a certain weapon, the concept of interoperability acquires more dimensions as the factors involved (such as military operations) should be taken into account.

11. Military interoperability as defined above was largely discussed during the Ottawa Process and is clearly incorporated in Article 1 of the Antipersonal Mine Ban Convention (1997) as: “Never under any circumstances ... assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.”

12. The terms “assist”, “encourage” and “induce” are ambiguously used in Article 1 as “transfer”, “transit” and “stockpile”. This lack of clarity means that States and coalition partners can misinterpret terminology.

   (c) To engage in any military preparations to use chemical weapons;
   (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.”

14. More recently during the Oslo Process where Cluster Munitions were banned, the discussion on interoperability was once again brought to the foreground. A specific article


\(^3\) [https://www.hrw.org/sites/default/files/reports/HRW_HLS_Interoperability_0508.pdf](https://www.hrw.org/sites/default/files/reports/HRW_HLS_Interoperability_0508.pdf)
on interoperability was established which specifically refers to the joint military operations with States who are not party to the convention, but who might engage in activities prohibited to a state party and to Article 1 (General Obligations and Scope of Applications) of the **Cluster Munitions Convention (2008)**:

**Article 1**: “Each State Party undertakes never under any circumstances to:

(a) Use cluster munitions;

(b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions;

(c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention”

And:

**Article 21**: Relations with States not party to this Convention

1. Each State Party shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention.

2. Each State Party shall notify the governments of all States not party to this Convention, referred to in paragraph 3 of this Article, of its obligations under this Convention, shall promote the norms it establishes and shall make its best efforts to discourage States not party to this Convention from using cluster munitions.

3. Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.

4. Nothing in paragraph 3 of this Article shall authorize a State Party:

   (a) To develop, produce or otherwise acquire cluster munitions;

   (b) To itself stockpile or transfer cluster munitions;

   (c) To itself use cluster munitions; or

   (d) To expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control.

15. During the Dublin Diplomatic Conference for the Adoption of a Convention on Cluster Munitions (May 2008) negotiations arose around Article 21. There was a clear understanding between participants that military operations between State Parties and Non-State Parties (especially in the case of the US) were going to continue. At the same time, however, Article 21 allows, through national interpretation, assistance during a military operation, which shows a weakness in relation with the main ban provisions in the Convention.

16. An important issue to consider in such negotiations, and in particular on the discussions involving joint military operations, is the value of weaponry for the military and their use in contemporary conflicts. The issue of weaponry, however, is assessed differently when it is used to control proliferation, or used to limit, to regulate or to prevent human suffering through a weapon ban.

17. The humanitarian perspective has put people in the center of discussions and negotiations. It is both largely know and scientifically proven that despite the fact that
nuclear deterrence is alleged as important among States and their communities, the humanitarian consequences and risks associated with nuclear weapons are devastating.

18. Nuclear disarmament is being addressed during a second OEWG (prearranged in October 2015) in order to establish legal measures, legal provisions and norms needed to attain and maintain a world without nuclear weapons.

19. Many States, humanitarian organizations, academia and civil society organizations (mainly under the International Campaign to Abolish Nuclear Weapons (ICAN)’s umbrella) are urging for a negotiating process to ban nuclear weapons as it is the only way to prevent catastrophic consequences.

20. Despite the conclusion made by the International Court of Justice, which states that the use of nuclear weapons go in contrary to the principles and rules of international humanitarian law (IHL) and the Geneva Convention Protocol (1977), nuclear weapons are hardly being used. Nevertheless nuclear deterrence combined with conventional weapons capability is one of core element of NATO alliance\(^4\).

21. It is likely that a specific article on joint military operations might be part of a legally binding instrument banning nuclear weapons and the scope and detail of that article is the key to address the humanitarian aim and approach of the instrument.

22. The major challenge faced in international negotiations, which focus on establishing instruments to ban nuclear weapons, is to be sure not to leave any details to chance, to avoid any ambiguities and to be clear with all definitions and provisions of such a ban.

23. In the case of discussions of such a provision, elements involved in joint military operations such as planning, rules of procedures, sharing of information and operational phases should be part of this new Article, as well as definitions about ‘assistance’, ‘encourage’ and ‘induce’. These definitions need to be clear in order to avoid national interpretations that could be far from the humanitarian core principles of the instrument.

24. In the ICAN statement at the Open-ended Working Group last February 2016, a number of activities were appointed that they be linked to “assistance” as:

(a) Hosting nuclear weapons on their territory;
(b) Participating in nuclear war planning;
(c) Training nationals to deliver nuclear weapons;
(d) Facilitating intelligence gathering for nuclear targeting;
(e) Claiming protection from an ally’s nuclear weapons;
(f) Discouraging an ally from pursuing disarmament or reducing the role of nuclear weapons in security doctrines;
(g) Allowing nuclear-armed ships to enter their waters;
(h) Allowing nuclear-armed aircraft into their airspace;
(i) Allowing nuclear weapons to transit through their territory;
(j) Contributing to nuclear weapon modernization programmes;
(k) Financing nuclear-weapon-producing companies;
(l) Supplying nuclear-capable delivery vehicles;
(m) Supplying uranium without comprehensive safeguards;

\(^4\) http://www.nato.int/cps/en/natohq/topics_50068.htm
(n) Stockpiling weapon-grade fissile material.⁵

25. Humanitarian initiative has demonstrated the increase number of support in addressing the legal gap in achieving a world free of nuclear weapons despite the ages of blocked of Nuclear States. Despite that the momentum for a complete ban on nuclear weapons has arrived, might be the interest of a few States include discussion and a text on interoperability. In any case, any discussions must be compatible with the principles of a ban that arise from the humanitarian perspective.

26. As joint operations are going to continue and military personnel need to be protected in any operation, within both State and Non-State Parties, actors need to reach a norm that clearly not leaves any gap for further interpretation and incompatibility with the main ban provisions.

27. The challenge is to have, such a clear language that there’s no room for interpretation, a safer world is a difficult task but not an impossible one.

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