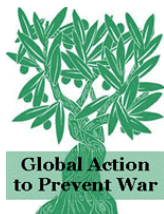


ARMS TRADE TREATY MONITOR

Civil society perspectives on the Arms Trade Treaty negotiation process

30 July 2012
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Editorial: A pause for reflection

Ray Acheson | Reaching Critical Will of WILPF

On Friday afternoon, the arms trade treaty (ATT) negotiation conference closed without adopting a treaty. During the morning plenary, the United States, followed by Cuba, DPRK, Russia, and Venezuela, declared that negotiations needed to be extended. Thus the six year process to develop an ATT failed to achieve its goal. Furthermore, the draft treaty that would have been adopted was much weaker than the one envisaged by those who initiated the process in the first place. And so while this particular course has ended without a treaty, it is by no means the end of the road for an ATT altogether. The discussions over the past month have further demonstrated the need to develop such a treaty, and the need to do though a non-consensus based process.

Speculation continues as to why the United States decided to scuttle the conference. A US State Department press release argued that the conference “ran out of time to reach a consensus text,” although, by the end of the month the text had been significantly weakened in order to meet all of the US government’s red lines. Indeed, the US delegation admitted it did not have any “core” objections to the draft treaty. Some believe the Obama administration caved to pressure from the National Rifle Association, allowing domestic politics to undermine the development of international law. However, other governments opposed to the ATT might have blocked its adoption if the US delegation had not; Russia, as well as the others mentioned above, were vocally disgruntled with the process as well as the text and might have called for more time regardless of the US position.

Yet the countries standing against adoption of the treaty were the vast minority. 90 countries delivered a joint statement on Friday expressing their disappointment. These countries, which included several of the major arms exporters such as Germany and France, indicated that the draft treaty

developed by the conference had “the overwhelming support of the international community as a base for carrying forward our work.” However, as the *ATT Monitor* repeatedly pointed out (e.g. No. 17 and No. 18), the draft ATT had significant loopholes that would have undermined its ability to truly diminish human suffering as a result of the irresponsible arms trade. Thus not only did the consensus-based process fail to result in any treaty, but it had already extended negotiations to the point where the treaty on the table did not actually establish the highest possible common standards for regulating international arms transfers.

The United States recognized this problem from the outset, which is ostensibly why it voted against the 2008 UN General Assembly resolution establishing an open-ended working group on the ATT. In an explanation of vote, the US delegation argued, “Any ATT would require the support of the major arms exporters to be effective, and we believe that some major arms exporters would refuse to agree to an ATT that required meaningful, effective conventional arms transfer controls policies. The only way to convince all major arms exporters to sign on to the ATT would be to weaken its provisions.” This is, of course, exactly what happened throughout the July negotiations, as the draft texts became weaker and weaker in order to accommodate the demands of the USA, Russia, and China, as well as major importers such as India.

In this same explanation of vote, the US delegation also recognized that “[c]oncluding a weak ATT would legitimise an international standard based on a lowest common denominator that would not address the problem of illicit and irresponsible arms transfers.” By Friday, this indeed was in danger of happening, due to the refusal of the USA and other major exporters to accept high standards. The draft treaty did not set the highest standards and its weak provi-

continued on next page

Editorial, cont'd

sions could indeed have legitimized irresponsible transfers, providing legal cover to those wanting to put priorities of profits and politics above human lives, justice, and dignity.

There is perhaps further irony in the fact that the decision to conduct the ATT negotiating conference on the basis of consensus was made in order to bring the US government on board. Even back in 2009, when the UN General Assembly adopted resolution 64/48 to begin the negotiating process, many governments recognized the potential problems with operating by consensus. Among others, the delegations of Austria, Germany, Ireland, Lichtenstein, Mexico, Netherlands, Norway, Portugal, and Switzerland expressed concern with the consensus rule. The Norwegian delegation argued, “We are concerned that the requirement of consensus could negatively affect the negotiations and reduce the quality of the outcome. Deciding that all states have the right to veto and block the end result from the outset of a negotiating process will seriously undermine the credibility of the process.”

These predictions were accurate. Most of the major exporters, along with several countries concerned that the treaty would be applied with discrimination against their governments, rigorously opposed strong criteria and comprehensive scope, and fought to ensure the text incorporated several major loopholes to undermine the treaty’s implementation.

On the other hand, at least 74 governments were opposed to the weak texts being placed before them. In joint statements on 20 July and 26 July these countries demanded a strong treaty to prevent the authorization of transfers of conventional arms where there is a substantial risk that those weapons would be used for, or facilitate, serious violations of international law, including international human rights law and international humanitarian law, or that they will be diverted to the illicit market and to unauthorized end-users.

Thus the rule of consensus allowed the view of the minority—those states with political or economic concerns about regulating the international arms trade—to win the day. In a statement following the conference, the Mexican government reiterated its displeasure with the consensus rule, which “makes it impossible to reach agreements when there is broad and clear support, which is nullified by the opposition of a minority of states”.

However, they are indeed a minority. And while they might have won the day, they certainly have not won altogether. While the consensus-based process produced a weak treaty that could not be adopted in spite of its mini-

mal standards and its overriding loopholes, the process also demonstrated that the majority of countries do in fact want a strong treaty that would actually make a difference in the lives of those suffering from armed violence. There were many more countries fighting for a strong treaty than there were fighting to undermine it. There were also many more countries demanding the treaty prevent gender-based violence (GBV) than there were arguing against this. While the Holy See said only two states supported GBV while 20 were against it, in fact, 75 countries supported the inclusion of GBV in the treaty.

The ATT process demonstrated that there is already an overwhelming norm against transferring arms when there is a risk of violation of human rights and international humanitarian law, including acts of gender-based violence. It is this norm that must be built upon in the future and codified into international law through a process working with normal UN rules such as a two-thirds majority vote.

After the conference’s failure on Friday, UN Secretary-General Ban Ki-moon said, “I am encouraged that this is not the end of the ATT, and that States have agreed to continue pursuing this noble goal.” The 74 countries that came together during the negotiation conference must continue to work for a strong treaty, perhaps by developing a strong draft for consideration at this year’s UN General Assembly. The draft treaty currently on the table is insufficient to close the gaps in the international arms trade, but a stronger treaty would go a long way towards diminishing the violent consequences of this trade.

That said, an ATT cannot stand on its own to end the consequences of armed violence. Only a cessation of reliance on weapons for security can do this. As Dr. Robert Zuber of Global Action to Prevent War argues in another piece in this edition, “Our hope for an ATT is that it provides new opportunities to stigmatize the staggering arms trade, not to provide new impetus for its growth.” Since the beginning of the ATT process, WILPF has argued that a strong ATT can help build the foundations for not just the regulation but also the *reduction* of the arms trade, along with the reduction of militarism throughout politics and society, reduction of military spending, and redirection of economic resources. As we pause for reflection in the process to develop an ATT, we should keep this nobler goal in mind. •

Moving on and forward

Katherine Prizeman | *Global Action to Prevent War*

As the mandate for the ATT conference expired on Friday afternoon, delegates and civil society alike were disappointed at the failure to adopt a treaty after four weeks of negotiations and, perhaps more importantly, the inability to address the lack of international common standards for the unregulated trade in conventional arms. The President's draft treaty text was listed in the annex to the Report of the Conference, although there was no clear indication of how that text would be treated in the future either in the UN General Assembly (UNGA) First Committee in October or elsewhere. While many delegations expressed regret over the lack of a consensus document, there was general agreement that the process is not over. In a statement to the plenary delivered by Mexico, a group of 90 countries expressed the desire to bring the current text to the GA First Committee to "finalize our work" to achieve "a strong and robust Treaty." The Nigerian delegation explicitly called for a new mandate from the UNGA to complete the work of the ATT on the basis of the President's most recent draft text with further consultations. The delegations of Germany, CARICOM, and Spain called for an ATT to be adopted "in the near future," while others, including Peru, said there was "near unanimity".

While this large majority of delegations is commendable in their desire to continue to identify a way forward to achieve the still elusive goal of an ATT, it is difficult to imagine how, even with more consultations, the present text would become more robust or that member states would be able to reach "unanimity" on the major issues still left unresolved. After four weeks of hard work and difficult, political wrangling, there is much to be disappointed over.

The President's most recent draft text still has significant loopholes and is far from the robust ATT that was aspired to by many delegates and civil society advocates—ammunition and munitions are lacking in the core items listed in the scope; the implementation measures provide for a superseding of the criteria by the vague references to "other instruments" and "contractual obligations under defence cooperation agreements;" records of authorizations do not need to be made public; and amendments can only be adopted through consensus, leaving very little flexibility for substantive future changes in the treaty. The language pertaining to criteria is particularly weak given the structure of the ATT, as it will be driven primarily by national implementation responsibilities (and thus biases related to national interest). Diversion remains a "secondary" consideration in paragraph 6.4 (national assessment) requiring that states only "consider taking feasible measures" to avoid it. These are not insignificant weak-

nesses. They compromise the treaty and its ability to combat and eradicate the illicit and irresponsible trade in arms in a consistent, universal, and legally-binding manner.

Although the particulars of the text could certainly continue to be debated, the question now becomes how to proceed with the process writ large. Although the overwhelming majority of member states have made apparent their intention to continue the ATT process, the specific path forward (and on what basis) does not enjoy the same clarity. The most obvious option would be to bring the draft treaty to the First Committee in October and request another mandate to continue work through a new Diplomatic Conference. This is a position that, although not detailed explicitly on Friday afternoon, would seem to garner significant support among delegations given the commentary in the room. The French delegation noted that states "should not start from zero," which would indicate support for using the draft text as the base forward. Likewise the Chinese, Moroccan, and UK delegations called the President's text "a good basis for future negotiations".

As member states prepare to bring the ATT to the UNGA this fall, it is important to remember that the rule of consensus, and ultimately the *de facto* veto power of each member state, will not necessarily apply to future negotiations. As such, the majority of member states that have called for an ATT with stronger provisions than the ones found in the President's text should propose a text that encompasses more of the provisions that these member states have fought for throughout the negotiations, most notably inclusion of ammunition and munitions in the scope and clear, legally-binding criteria for national risk assessment. The group of 90 states on Friday noted, "Compromises have had to be made, but overall the text ... has the overwhelming support of the international community as a base for carrying forward our work." Ultimately, if the rules of procedure change, then so should the treaty. The compromises made during July should be reevaluated if they only apply to a few select states and a new, stronger text should be presented.

The goal of a universal, legally-binding treaty for the trade in conventional arms was and remains a noble one. A global ATT would certainly serve as a complement to already-existing, but mostly non-binding, agreements such as the UN Programme of Action on small arms, as well as future instruments seeking to contribute to the strengthening of the UN's multilateral security framework. As the next "phase" of this process begins, delegates and civil society should seize the opportunity to adopt a treaty that can make a robust contribution such a framework. •

Summer reading

Dr. Robert Zuber | *Global Action to Prevent War*

The UN General Assembly's mandate for an arms trade treaty (ATT) negotiating conference expired at 6PM Friday with a whimper more than a bang. Many of us in the room wondered whether or not Ambassador Moritán had one more trick up his proverbial sleeve, or one more attempt to transform wariness from some delegations into adopted language.

There was to be no more magic on Friday. It was clear to us that some delegations were willing to run out the clock. Apparently, poll numbers in US swing states and intense (and largely unaddressed) vitriol from the National Rifle Association (NRA) and surrogates proved too much for the US delegation, assuming that it was as enthusiastic about adopting a Treaty as it maintained in the final negotiating days.

Now it is time for a short summer break. Many of the ATT negotiators will need to prepare for their UN Programme of Action on small arms (PoA) Review Conference responsibilities (to take place at the end of August) as well as for the opening of the UN General Assembly in September. We're all tired now, having spent the past month sitting, listening, wondering, probing, and, more practically, sitting on floors to negotiate and looking, often in vain, for translated materials and workable headsets.

Shortly, the 'second guessing' and self-analysis will begin in earnest. What went wrong? What could we have done differently? What do we need to learn that can help us moving forward?

It will take a few days of sleeping late and catching up with other work before most of us will be able to internalize assessment of the long road to last Friday. But it won't be long before we will need to weigh in on next steps, more specifically the process that can and should be mandated in an attempt to finalize a Treaty and also the 'status' of the draft Treaty language.

None of us yet knows enough to accurately and comprehensively outline the learning curves for ATT proponents going forward. But I think that some of these learning themes should include the following:

- We should rethink the policy of acceding to the demands of any one member state regarding working methods for treaty negotiations. The consensus provision turned out to be a burden too extreme to overcome, especially in this instance as it came at the request of a member state that would likely never ratify the final product and whose policies on transfers are already of high quality. At the UN, states can learn to work with treaty and related obligations, as we've seen

in the case of the International Criminal Court and other structures. Accommodating a single state's interests on protocol, working methods, or content must be addressed with extreme caution.

- We should also rethink how we 'sell' the ATT to the global public and avoid generating expectations that put pressure on a document that was never likely to fulfill those expectations. The ATT in its most attractive form might have had an impact on diverted transfers several years down the road. It never was conceived as a disarmament obligation or as necessarily the 'game changer' for the UN system that many of its loudest proponents claimed. We squandered a lot of enthusiasm in my view by misrepresenting the potential of this ATT, and possibly also (if inadvertently) did some damage to the UN's credibility on security issues as well.
- In a similar vein, the lack of interest in the UN—how it works and the diverse agencies that address peace and security issues related to this ATT—was troublesome. The singular focus on this treaty by many NGOs was rarely shared by delegations. As hard as they worked on this treaty, diplomats simply don't have the luxury to ignore all of the complementary concerns, including gender-based violence, international justice, and atrocity crime prevention, that define much of the security-related activity elsewhere in the UN. The ATT never had, and should not have, the burden of defining UN security priorities. This document, even if all its loopholes were closed, fairness between exporters and importers were guaranteed, and human rights language punctuated many of its articles, would be nothing more or less than complementary support for other security related responsibilities for which the UN already has demonstrated considerable robustness. The decision to have the ATT negotiated at the UN should have occasioned more interest in the institution (and its many obligations) that was presumed to 'house' this treaty and help frame its responsibilities.
- The vast leverage of human energy to create a mechanism to regulate transfers has obscured a fundamental problem for at least some of the NGOs who sought to engage the process. For these NGOs, including Global Action to Prevent War (GAPW), the mandate on transfers is to eliminate them and not institutionalize them. While admittedly not always 'realistic,' we are committed to ending the reliance of states on weapons for their security and to free as many funds for mili-

tary purposes as possible and to make them available for social development and environmental health. We participated in the ATT process in part because the negotiators and implementers were our partners in disarmament affairs, but also because a case can be made that regulatory coherence is sometimes a suitable prelude to stigmatization. Our hope for an ATT is that it provides new opportunities to stigmatize the staggering arms trade, not to provide new impetus for its growth. Balancing the strong desire for a minimal arms trade with the responsibility to provide guidance on a regulation-driven arms trade process was a challenge with which GAPW struggled.

There is more, but this is sufficient to suggest a summer assignment for those of us hoping to restore some ATT-related momentum come fall.

One final note: The ‘team’ of organizations that made up the ATT Monitor—but more specifically Ray Acheson and Katherine Prizeman—did their best to provide thoughtful commentary to diplomats from missions and capitals seeking to find consensus on a text that was actually worth consensus. As both of these women have made clear in recent days, the ‘final’ draft treaty language fell short of that standard at several levels. Should we have had a treaty adopted on Friday, some truly regrettable loopholes might have become institutionalized. Those who secretly expressed some relief that this treaty didn’t make it to the ‘finish line’ have a valid point. The lines defining when a treaty becomes more of a liability than an asset were certainly in full view here.

GAPW’s work on the ATT Monitor was intended to prod, to inspire, to illuminate, to support. Many of the people who were negotiating this treaty are longstanding friends of one or more of our various sponsoring projects

and are diplomats trying to do the right thing despite institutional and national policy limitations. The same is true from the NGO side, though our limitations have different sources. The issue from here is not whether or not we are ‘good’ or ‘right,’ but rather how successfully we can adapt to shifting conditions. For this, more than anything, we need to keep our minds fully engaged and our expectations in check. Hopefully, the summer will provide both cognitive and advocacy clarity on our collective responsibilities under the new political and negotiating dynamics that started to take shape as the curtain closed on this chapter of our ATT work. •



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All views expressed in this publication are solely those of the contributing authors and do not necessarily reflect the positions of the supporting organizations.

News in Brief

Ray Acheson | *Reaching Critical Will of WILPF*

Preamble

- Colombia argued the reference to sporting and antique weapons does not have a place in the treaty and therefore should be deleted from preamble.
- Ecuador called for deletion of the paragraph related to “lawful ownership”.

Principles

- USA said the section on principles should be deleted.
- Arab Group, Ecuador, and Syria said the principles should be article 1 and “have agreed as follows” should be moved to above the principles.
- Ghana said human rights can’t be ensured so it should say “protect” or “guarantee” in para 5.
- Djibouti, Ecuador, Syria, and UAE called for a reference to the right to self-determination for peoples under foreign occupation.
- Canada opposed a reference to foreign occupation in the principles.

Scope: items

- Belize, Chile, Colombia, Denmark, Djibouti, Ghana, Liberia, Lithuania, Malawi, Norway, and Slovakia called for ammunition and/or munitions to be included in the scope.
- Arab Gulf States said it is unclear if ammunition is included in the scope or not and argued “this treaty is about arms”.
- Norway said it was glad the reference “at a minimum” is in the scope section.
- New Zealand and Norway said treaty needs to set definitions for weapons covered, not each state party.
- Canada said reference to using “relevant UN instruments” as a minimum for definitions should be deleted; definitions should be up to national authorities.

Scope: activities

- New Zealand said activities should refer to transfer, not trade, in order to capture gifts, loans, etc.

Prohibited transfers

- Syria said 3.1 should not include a reference to UN Security Council resolutions but should be replaced with prohibition of transfer to states involved in foreign occupation.
- Ecuador and Syria said article 3 should prohibit transfers to non-state actors, with Syria specifying especially to terrorists and “armed illegitimate groups”.
- Ecuador and Syria called for adding crimes of aggression to article 3.3.
- USA said article 3.2 is ambiguous.
- Norway said the threshold of “for the purpose of” in 3.3 is too high.

National assessment

- New Zealand said title “national assessment” anchors criteria to national discretion and doesn’t make clear that these are global standards.
- New Zealand said 4.1 should not include assessment of arms contributing to peace and security.
- Nigeria proposed amending 4.2 to read: “prior to authorization and pursuant to national control systems, states parties shall take appropriate measures to ascertain that proposed export will not be used to...”
- New Zealand said term “overriding risk” in 4.5 sets too high a standard.
- Denmark, Liberia, Malawi, and Norway welcomed gender-based violence in 4.6.
- Arab Gulf States, Benin, and Uganda called for deletion of gender-based violence in 4.6.
- Colombia and Ecuador called for deletion of development in 4.6.
- Ecuador called for deletion of corruption in 4.6.
- Belize called for a reference to armed violence.
- Canada said in article 4.6, items a–c should have a chapeau “shall consider” while d and e should have “may consider”.

General implementation

- Bangladesh, Ghana, New Zealand, Norway, and USA said 5.2 undermines the ATT and called for its deletion.
- Chile said the ATT must honour prior commitments.

Specific implementation

- Norway said article 6.3 is inconsistent with article 4; when there is an overriding risk, it should say authorization shall be revoked.
- Colombia and New Zealand said exports in 6.4 should also include munitions.
- Denmark said all criteria including those in article 4.6 should apply to exports of ammunition, munitions, parts, and components in articles 6.4 and 6.5.
- Colombia said exchange of information is important to fight diversion therefore the words “at the request of the state” should be deleted from 6.2 and 9.2.
- Ecuador called for deletion of “where feasible” and “upon request” in article 9.
- Canada said para 8 on brokering should say “each state party shall take appropriate measures to control activities that aid, abet, or facilitate transfers prohibited by article 3,” indicating that it would make a reservation if the current wording is kept.

Reporting

- Lithuania said not making reports public would be a step back from the UN Register on Conventional Arms.

Final provisions

- New Zealand said threshold for entry into force is too high.
- Syria said entry into force should require ratification of the ten biggest exporters and importers.
- Chile and Norway said amendments should be made by 2/3 majority.
- Norway said article 23 does not include transfers of ammunition which is a problem.

Other

- Bulgaria, Lithuania, Luxembourg, Slovakia, and Uganda said regional integration organizations must be allowed to accede to the treaty.
- China said it would not allow regional integration organizations to accede to the treaty unless the EU lifted its arms embargo against China by the end of the day.
- Indonesia said the current text doesn't reflect correct balance of rights of states and responsibility to protect human rights.
- Syria said the text does not correctly balance rights of importers and exporters.
- Russia said the text doesn't fulfill requirement of highest possible standards.
- Venezuela said the text lacks binding principles and safeguards against political abuse of criteria.

- Cuba, DPRK, Russia, USA, and Venezuela called for more time to negotiate.

Working groups

- Delegates from Sweden (national control systems), Uruguay (balance), New Zealand (regional integration organizations), Finland (gender-based violence), Trinidad and Tobago (non-state actors), Mexico (end-use vs. end-user), and Netherlands (ammunition) reported back from their working groups on specific textual issues as indicated. None of the groups reached consensus on the items though many flushed out potential treaty language.

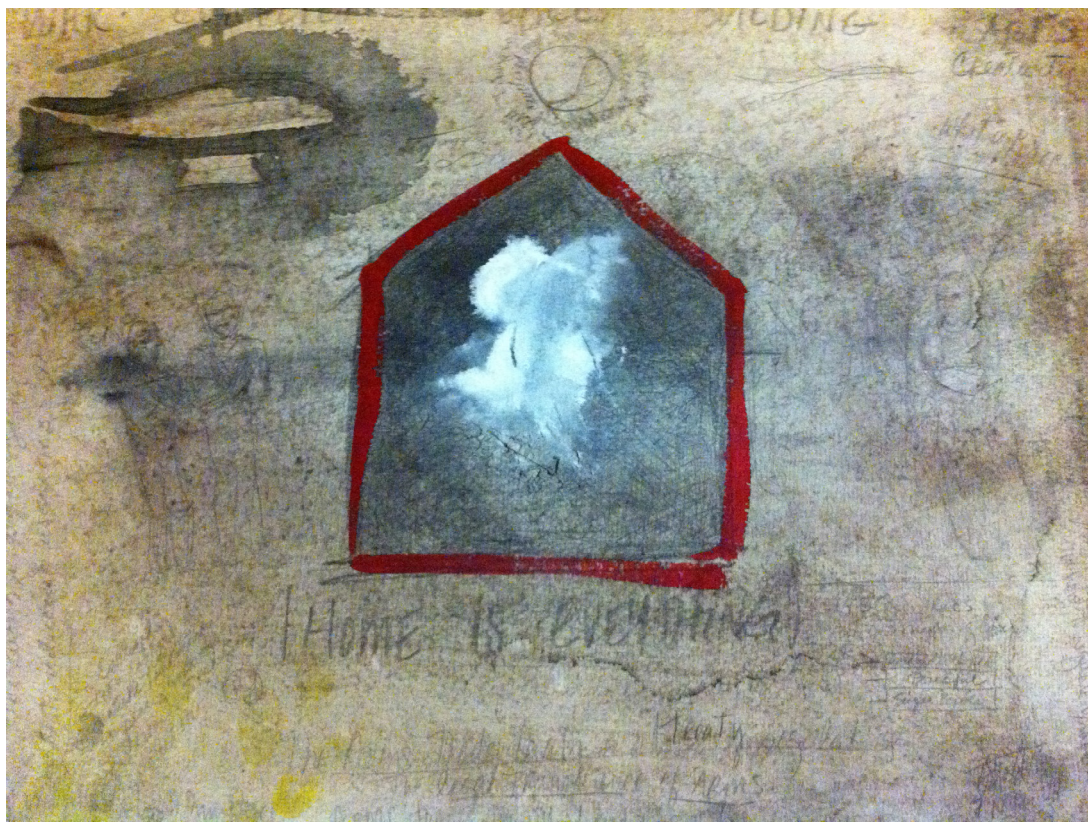
Failure of conference

- 90 countries delivered a joint statement expressing disappointment but indicating they will continue working for a robust ATT.
- African Group, CARICOM, ECOWAS, Brazil, DRC, France, Germany, Mali, Peru, Spain, and UK said work will continue.
- CARICOM, China, and India said the current draft was a good basis for future work.
- ECOWAS and Morocco thanked civil society.
- Algeria and Russia said there was not enough time at this conference. •

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COMMITTEES
 FEASIBILITY
 HUMANITARIANLAW
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 REBEL
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 SYSTEMATIC
 WARCRIME

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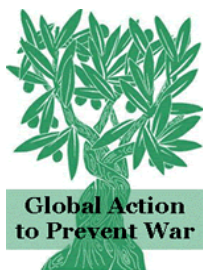
Art by Lin Evola

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