

US Army officer faces court martial for refusing Iraq deployment order

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On January 16, a US military judge ruled that an officer cannot justify resisting deployment to Iraq by demonstrating the illegality of the war. This significant pre-trial decision was delivered as Army Lieutenant Ehren Watada, the first military officer to refuse orders to serve in Iraq, faces up to six years in prison when he is court-martialed next month.

Watada, stationed at the Seattle, Washington-area Ft. Lewis, is charged with one count of missing troop movement after he refused to deploy with his Stryker Brigade last June. Watada has explained that he had a duty as a soldier to disobey unlawful orders, including participation in the unauthorized, illegal, preemptive invasion of Iraq. To do so, he argued, would be a violation of Nuremberg Principles and the US Constitution, making him a party to war crimes.

The Nuremberg Principles explicitly state that a war of aggression is a crime against peace, and in participating in such a war, "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him."

January 23, Watada told "Democracy Now"'s Amy Goodman that, in preparation for his own deployment, he began in late 2005 to research the events that led up to the US invasion of Iraq. "And as I found out the answers to the questions I had, I became convinced that the war itself was illegal and immoral, as was the current conduct of American forces and the American government on the ground over in Iraq. And as such, as somebody who has sworn an oath to protect our Constitution, our values and our principles, and to protect the welfare and the safety of the American people, I said to myself that's something that I cannot be a part of, the war. I cannot enable or condone those who have established this illegal and immoral policy. And so, I simply requested that I have my commission resigned and I separate completely from the military, because of those reasons, and I was denied several times, and I was basically given the ultimatum, 'Either you deploy to Iraq or you will face a court-martial.'"

Watada's civilian attorney, Eric Seitz, had sought to introduce the question of the war's legality into the case so that Watada could explain his reasons for defying deployment orders. The military judge, Lieutenant Colonel John Head,

rejected this motion. Head claimed that whether the war was lawful or not was a political, not a legal, concern.

Seitz contended that assertion in pre-trial arguments. "The legality of the Iraq War is not merely a political question," he said. "Lt. Watada's specific intent was to avoid unlawful actions in Iraq. For the sake of due process, we need the opportunity to raise this issue."

In his written decision, Head stated, "A hearing on the 'Nuremberg defense' would consist of witnesses who would testify that the war in Iraq was a crime against peace, a war of aggression, and a violation of the United Nations Charter, other international law, and US law. The accused would testify that his refusal to go to Iraq was based upon the belief that he would be committing war crimes because the United States was involved in a war of aggression and a crime against peace."

The judge concluded, "The accused's motive not to deploy and his belief about the lawfulness of the Iraq war are not elements of the offense. Motive is, therefore, irrelevant on the merit. Even had the defense been granted the full hearing they requested, the decision would be no different."

In addition to the charge for missing movement, Watada faces four charges of "conduct unbecoming an officer" for public antiwar comments. These charges carry a maximum sentence of four years.

The present case is the first instance since the Vietnam War in which the military has utilized unbecoming-conduct charges to prosecute an officer for political dissent.

Specifically, the unbecoming conduct charges were leveled against Watada for four statements made in 2006. Three were enumerated in a friend-of-the-court brief filed by the American Civil Liberties Union (ACLU) in August (PDF at <http://new.aclu-wa.org/document.cfm?id=509>):

* "I could never conceive of our leader betraying the trust we had in him.... As I read about the level of deception the Bush administration used to initiate and process this war, I was shocked. I became ashamed of wearing the uniform. How can we wear something with such a time-honored tradition, knowing we waged war based on a misrepresentation and lies? It was a betrayal of the trust of the American people. And these lies were a betrayal of the trust of the military and the Soldiers.... But I felt there was nothing to be done, and this

administration was just continually violating the law to serve their purpose, and there was nothing to stop them.... Realizing the President is taking us into a war that he misled us about has broken that bond of trust that we had. If the President can betray my trust, it's time for me to evaluate what he's telling me to do."

* "I was shocked and at the same time ashamed that Bush had planned to invade Iraq before the 9/11 attacks. How could I wear this [honorable] uniform now knowing we invaded a country for a lie?"

* "It is my conclusion as an officer of the Armed Forces that the war in Iraq is not only morally wrong but a horrible breach of American law.... As the order to take part in an illegal act is ultimately unlawful as well, I must as an officer of honor and integrity refuse that order.... The wholesale slaughter and mistreatment of Iraqis is not only a terrible and moral injustice, but it's a contradiction to the Army's own law of land warfare. My participation would make me party to war crimes."

A fourth charge for "disgraceful" remarks was issued following a warmly received speech Watada delivered at the August Veterans for Peace National Convention. The entire speech was identified as unbecoming conduct, and bears quoting at some length:

"Today, I speak with you about a radical idea. It is one born from the very concept of the American soldier (or service member). It became instrumental in ending the Vietnam War—but it has been long since forgotten. The idea is this: that to stop an illegal and unjust war, the soldiers can choose to stop fighting it.

"Now it is not an easy task for the soldier. For he or she must be aware that they are being used for ill-gain. They must hold themselves responsible for individual action. They must remember duty to the Constitution and the people supersedes the ideologies of their leadership. The soldier must be willing to face ostracism by their peers, worry over the survival of their families, and of course the loss of personal freedom. They must know that resisting an authoritarian government at home is equally important to fighting a foreign aggressor on the battlefield. Finally, those wearing the uniform must know beyond any shadow of a doubt that by refusing immoral and illegal orders they will be supported by the people not with mere words but by action.

"The American soldier must rise above the socialization that tells them authority should always be obeyed without question. Rank should be respected but never blindly followed. Awareness of the history of atrocities and destruction committed in the name of America—either through direct military intervention or by proxy war—is crucial. They must realize that this is a war not out of self-defense but by choice, for profit and imperialistic domination. WMD, ties to Al Qaeda, and ties to 9/11 never existed and never will. The soldier must know that our narrowly and questionably elected officials intentionally manipulated the evidence presented to

Congress, the public, and the world to make the case for war. They must know that neither Congress nor this administration has the authority to violate the prohibition against pre-emptive war—an American law that still stands today. This same administration uses us for rampant violations of time-tested laws banning torture and degradation of prisoners of war. Though the American soldier wants to do right, the illegitimacy of the occupation itself, the policies of this administration, and rules of engagement of desperate field commanders will ultimately force them to be party to war crimes. They must know some of these facts, if not all, in order to act."

(Video of the speech is available at Watada's web site: <http://www.thankyoult.org/>)

The defense argued that the content of Watada's public statements did not fit the description of unbecoming conduct—"dishonesty, unfair dealing, indecency, indecorum, lawlessness, injustice, or cruelty"—as set forth in military code, and that Watada's statements were protected by the First Amendment.

In the midst of overwhelming opposition to the current course, Watada by no means expresses an unpopular, let alone inaccurate, view of the war and Bush administration. However, Lt. Col. Head ruled against the defense. In addition to finding that military personnel were not accorded the same amount of freedom as citizens in political expression, the Army has subpoenaed several independent journalists who interviewed Watada to testify on behalf of the prosecution at the court martial.

Taken together, the decisions assume the legal legitimacy of the war where none exists, and seek to classify criticism of this assumption as unprotected speech and a punishable offense within the military. Further, the Army is seeking to curtail dissent by forcing journalists to testify against antiwar personnel.

The ruling violates the Constitution and serves the purpose of silencing and intimidating political opposition to the Iraq war and the entire program of global violence and militarism supported by both major parties, particularly from within the military. Watada deserves the broadest support from the American and international public.

ACLU brief (PDF): <http://new.aclu-wa.org/document.cfm?id=509>

Ft. Lewis Public Affairs Office:
<http://www.lewis.army.mil/pao1/media.htm>

Transcript of the Veterans for Peace Convention speech:
<http://www.truthout.org/cgi-bin/artman/exec/view.cgi/63/21805>



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