Lt. Watada's War Against the War
By Jeremy Brecher and Brendan Smith, TheNation.com

In a remarkable protest from inside the ranks of the military, First Lieut. Ehren Watada has become the Army's first commissioned officer to publicly refuse orders to fight in Iraq on grounds that the war is illegal. The 28-year-old announced his decision not to obey orders to deploy to Iraq in a video press conference June 7, saying, "My participation would make me party to war crimes."

An artillery officer stationed at Fort Lewis, Washington, Watada wore a business suit rather than his military uniform when making his statement. "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," he said. "Although I have tried to resign out of protest, I am forced to participate in a war that is manifestly illegal. 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."

A native of Hawaii who enlisted in the Army after graduating from college in 2003, Watada differs from other military personnel who have sought conscientious-objector status to avoid deployment to Iraq.

Watada told Truthout's Sarah Olson that at first he gave the Bush Administration the benefit of the doubt as it built the case for war. But when he discovered he was being sent to Iraq, he began reading everything he could, such as James Bamford's Pretext for War. He concluded that the war was based on false pretenses, ranging from the nonexistent weapons of mass destruction to the claim that Saddam had ties to Al Qaeda and 9/11 to the idea that the United States is in Iraq to promote democracy.

His investigation led him to question the very legality of the war. In an interview with Democracy Now!, he explained that as he read articles by experts on international and constitutional law, reports from governmental and nongovernmental agencies, revelations from independent journalists, writings by the Iraqi people and the words of soldiers coming home, "I came to the conclusion that the war and what we're doing over there is illegal."

First, he concluded that the war violates the Constitution and War Powers Act, which, he said, "limits the President in his role as commander in chief from using the armed forces in any way he sees fit." Watada also concluded that "my moral and legal obligation is to the Constitution and not to those who would issue unlawful orders."

Second, he claims the war is illegal under international law. He discovered that "the U.N. Charter, the Geneva Convention and the Nuremberg principles all bar wars of aggression." The Constitution makes such treaties part of American law as well.
These are not wild legal claims. Watada’s conclusions are supported by mountains of evidence and experts, including the judgment of U.N. Secretary General Kofi Annan, who in 2004 declared that the U.S. invasion was "not in conformity with the U.N. Charter, and from our point of view ... was illegal."

Watada said he came to recognize that the military conduct of the occupation is also illegal: "If you look at the Army Field Manual, 27-10, which governs the laws of land warfare, it states certain responsibilities for the occupying power. As the occupying power, we have failed to follow a lot of those regulations." He told ABC News that the "wholesale slaughter and mistreatment of the Iraqi people" is "a contradiction to the Army's own law of land warfare."

While ongoing media coverage of the protest debates whether Watada’s action is one of cowardice or conscience, so far the seriousness of his legal claims have been largely ignored. Watada's position is different from that of conscientious objectors, who oppose all wars. "I’m not just against bearing arms or fighting people. I am against an unjustified war," he said.

Can such a claim be heard in a military court? In 2004, Petty Officer Pablo Paredes refused to board his Iraq-bound ship in San Diego Harbor, claiming to be a conscientious objector. At his court-martial, Paredes testified that he was convinced that the Iraq war was illegal. National Lawyers Guild president-elect Marjorie Cohn presented evidence to support his claim. The military judge, Lieut. Cmdr. Robert Klant, accepted Paredes's war-crimes defense and refused to send him to jail. The government prosecutor’s case was so weak that Cohn, in a report published on Truthout, noted that Klant declared ironically, "I believe the government has just successfully proved that any seaman recruit has reasonable cause to believe that the wars in Yugoslavia, Afghanistan and Iraq were illegal."

One of Germany's highest courts heard a case last year regarding a German soldier who refused to participate in military activities as part of the U.S.-led coalition in Iraq. The Federal Administrative Court issued a long and detailed decision in his favor, saying, "There were and still are serious legal objections to the war against Iraq...relating to the U.N. Charter’s prohibition of the use of violence and other provisions of international law."

Watada’s case comes amid a growing questioning of the Iraq war in all levels of the military. A February Zogby poll found that 72 percent of American troops serving in Iraq think the United States should leave the country within the next year, and more than one in four say the United States should leave immediately. While the "generals' revolt" against Defense Secretary Donald Rumsfeld didn’t challenge the legality of the war perse, many retired military leaders have strongly condemned the use of torture and other violations of international and military law.

According to USA Today, at least 8,000 service members have deserted since the Iraq War began. The Guardian reports that there are an estimated 400 Iraq War deserters in
Canada, of whom at least twenty have applied for asylum. An Army spokesman says that ten other servicemen besides Watada have refused to go to Iraq.

Resistance in the military played a critical role in ending the French war in Algeria, the Israeli occupation of Lebanon and the American war in Vietnam. Such resistance not only undermines the capacity of a government to conduct wars; it also challenges the moral claims that are used to justify them and inspires others to examine their own responsibilities.

Watada's action comes as the issue of U.S. war crimes in Iraq is inexorably creeping into the public spotlight. Senator John Warner has promised to hold hearings on the alleged Haditha massacre. The U.N. Committee Against Torture has declared that the United States is engaging in illegal torture at Guantánamo and elsewhere. An investigation by the European Union has found overwhelming evidence of the rendition of prisoners to other countries for torture.

Watada's highly publicized stand will no doubt lead others to ask what they are doing to halt such crimes. Unless the Army assigns him somewhere besides Iraq or permits him to resign his commission, he will now face court-martial for refusing to serve as ordered and possibly years in prison.

According to an ominous statement released by the Army commanders at Fort Lewis in response to Watada's press conference: "For a commissioned officer to publicly declare an apparent intent to violate military law by refusing to obey orders is a serious matter and could subject him to adverse action."

Watada's decision to hold a press conference and post his statements online puts him at serious risk. In theory, if the Army construes his public statements as an attempt to encourage other soldiers to resist, he could be charged with mutiny under Article 94 of the Uniform Code of Military Justice, which considers those who act "with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny." The conservative group Military Families Voice of Victory is already "demanding the Army prosecute Lt. Watada to the fullest extent under the Uniform Code of Military Justice."

Watada told Truthout's Olson that when he started to question the war, he felt, like so many in and out of the military, that "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." But he realized that there was something he personally could do: "It is my duty not to follow unlawful orders and not to participate in things I find morally reprehensible."

"The one God-given freedom and right that we really have is freedom of choice," Watada says, echoing the profound message of Mohandas Gandhi. "I just want to tell everybody, especially people who doubt the war, that you do have that one freedom. And that's
something that they can never take away. Yes, they will imprison you. They'll throw the
book at you. They'll try to make an example out of you, but you do have that choice."

Even facing prison time, Watada is firm. "When you are looking your children in the eye
in the future, or when you are at the end of your life, you want to look back on your life
and know that at a very important moment, when I had the opportunity to make the right
decisions, I did so, even knowing there were negative consequences."

Watada's recognition of his duty provides a challenge not only to those in the military but
to all Americans: "We all have a duty as American citizens for civil disobedience, and to
do anything we can within the law to stop an illegal war."