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History of Conscientious Objectors' Day

01 May 2002 — warresisters

Rudi Friedrich

International Conscientious Objectors' Day is closely linked to the International Conscientious Objectors' Meeting (ICOM). Between 1981 and 1997, ICOM was organised every year by groups affiliated to War Resisters' International. It was held in the Netherlands, Spain, France, Slovenia, Austria, Hungary, Turkey, Colombia, and Chad, among others. While in the first years the focus was on the exchange of ideas and international networking among active conscientious objectors, later an additional objective was added. In countries where the situation of conscientious objectors was particularly difficult (and in some cases still is), the international presence of activists lead to a strengthening of the COs living in the country and their initiatives. Not only the strategy of conscientious objection was developed, but on a very
practical level the importance of the group in the country itself was increased. Unfortunately there was no such meeting for years now.

ICOM, in which regularly 100 activists from more than 20 countries participated, forms the background of the International Conscientious Objectors' Day. For the first time ICOM 1985 decided to use 15 May, and to develop a focus for action on conscientious objection. This was meant to raise awareness for the difficult situation of conscientious objectors in specific countries or for thematical links on the international level. Focus countries were Greece (1986), Yugoslavia (1987), Poland (1988), South Africa (1989), Spain (1990), Turkey (1992), former Yugoslavia (1993), Colombia (1995). There were thematical focusses too: forced service for women (1991), and asylum for women and men who refused military service or deserted from the army (1993). In 2001, the War Resisters' International Council Meeting decided to focus on the situation of conscientious objectors and deserters in Angola. The focus for 2002 will be the Balkans region.

Although ICOM didn't meet for years, 15 May is established as a joint day of action. In many places groups refer to 15 May in their work on conscientious objection. At the same time public meetings, vigils, demonstrations, actions, seminars, campaigns and may other activities are taking place in many parts of the world. Although nowadays many groups use the day for their own specific issue on conscientious objection, and there is only a limited joint focus, it is still a day which highlights that the issue of conscientious objection is not a national, but an international issue, and that international networking provides the special strength of the conscientious objectors movement.

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CONSCIENTIOUS OBJECTION AND NUREMBERG PRINCIPLES

Published on Friday, October 20, 2006 by the The Nation
I recall two plays from the time I was a boy growing up here in New York City. One was Waiting for Lefty, by Clifford Odets. Some students at my high school put it on and I played the part of Fats, the crooked union boss. The other play was by a man named Irwin Shaw and was called Bury The Dead. I never saw it. I think I read it: In my mind's eye I can see a page of the text. But all I can remember from the play is one line: “Someday they'll have a war and nobody will come.”

I presume that this is the thought that brings us all here tonight. I am immensely honored to have been asked to initiate this series of annual lectures, but I am only one of many in the room--some of whom I know, and some of whom I do not know--who have created the tradition and culture that we are gathered to honor.

Let's honor George Houser. He was one of the Union Theological Seminary Eight who, David Dellinger included, not only refused to fight but refused to register for the draft. David says in his autobiography that at Danbury Prison, George Houser was also one of three war resisters who were the best Ping Pong players in the joint. When the Union Eight were released from prison, Union offered them readmission on condition that they would avoid any course of action that would publicize their draft resistance. Mr. Houser was one of five who refused and went instead to Chicago Theological Seminary.

Let's honor David Mitchell. David pioneered in the 1960s the position that is also the position of Lieutenant Ehren Watada, which I wish to explicate tonight. David then, like Lt. Watada today, said that he was not a pacifist. He refused to participate in the Selective Service process because he believed that the actions of the United States in Vietnam were war crimes, as war crimes had been defined at Nuremburg after World War II. He spent two years in prison.

David's wife Ellen Mitchell is also here tonight, despite the fact that it is her birthday. David recently sent me a speech that Ellen made in support of her imprisoned husband at the April 1968 antiwar demonstration in New York City. Let's honor Ellen.

Finally, Elizabeth Peterson made the trip from Vermont to be here with us, along with a younger Dellinger. While David was doing his second prison term for war resistance, Betty was pregnant. David tells in From Yale to Jail how when he was on hunger strike at Lewisburg the warden came to his cell and said: “She's dying. She has sent a message telling you to go off the strike so she can die in peace.” David said, “Take me to her.” The warden refused and David concluded, correctly, that the warden was lying. The prisoners won one
of the major goals of their hunger strike, concerning the censorship of mail. David was given a pile of letters from Betty telling him that she was well and supported the strike. The Dellingers' oldest child, Patchen, was born soon after. Betty, your presence does us honor.

In the company of these heroes and heroines we turn to the message of another hero, Ehren Watada. In the military system of justice—the system that Congress recently turned its back on in setting up military commissions—there is a proceeding similar to the convening of a grand jury. It is called an Article 23 hearing. The hearing officer decides whether there is sufficient evidence to justify a court martial. This past August 17, at Fort Lewis, Washington, there was an Article 23 hearing for Lt. Watada. Early in the hearing the prosecution played video clips from his recent speeches. In one of these speeches, to the national convention of Veterans for Peace, Lt. Watada said: "Today, I speak with you about a radical idea...The idea is this; that to stop an illegal and unjust war, the soldiers...can choose to stop fighting it."

Of course in itself this was not a new idea. It was another way of saying, Someday they'll have a war and nobody will come.

But what is unusual is Lt. Watada's basis for saying No. Like David Mitchell in the 1960s, Ehren Watada is not a pacifist. He offered to go to Afghanistan but refused to go to Iraq. He refused to go to Iraq for the same reason David refused to go to Vietnam, not because of objection to all wars, but because of a conviction that war crimes were being committed in this particular war, giving rise to an obligation, under the principles declared at Nuremburg, to refuse military service.

Take a minute to recognize how radical a change this would be. The concept of Conscientious Objection, as set forth in Selective Service law during and after World War II and in the existing regulations of all the military services, is based on the Christian teaching of forgiveness of enemies, of doing good for evil, of turning the other cheek, of putting up the sword. To become a conscientious objector the applicant must, first, object to "war in any form", which is to say, to all wars, and second, do so on the basis of "religious training and belief."

This is a noble idea. I happen to adhere to it, personally. But it is unlikely ever to be the conviction of more than a tiny minority of persons of military age. It is a legal system written to accommodate the tender consciences of members of certain small Christian sects that came into being during the Radical Reformation: Quakers, Amish, Mennonites, Brethren, and the like. And let's be honest, Conscientious Objection thus defined exists because the powers that be know that it will never be the worldview of
more than a handful of persons.

In a volunteer military, there will be very few persons who object to war in any form. Had this been their belief, why would they have volunteered in the first place? True, it is possible to become a conscientious objector while serving in the military. Certain remarkable individuals like Camillo Mejia and Kevin Benderman will deploy to Iraq, be horrified by what they experience, and on reflection conclude that they will never again fight in any war. But common sense tells us that such conscientious-objectors-from-experience will be few.

The system can tolerate traditional conscientious objectors. For those who remember Herbert Marcuse's concept of "repressive tolerance," this is an example: precisely by making room for such atypical refuseniks, the system as a whole can continue undisturbed.

But it might be otherwise if the David Mitchell-Ehren Watada approach became law. Then you might have hundreds, thousands of service men and women saying, in effect: "I can't tell you how I might feel in another war. But I can tell you where I stand about this one. This particular war is a war that requires the commission of war crimes. It may even be a war that as defined at Nuremburg is a war crime in its totality, because it is an aggressive war, a crime against the peace. I ain't gonna study this war no more."

If that idea were once let loose in the land, one might indeed have a war to which very few would come.

So let's try to form a more precise idea of refusal to fight based on the belief that a particular war involves war crimes.

For more than a half century, the verdicts at Nuremberg in trials of German leaders after World War II have provided the fundamental standards by which alleged war crimes are to be assessed. The Charter of the International Military Tribunal (IMT) identified three kinds of war crimes:

War crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds, in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in
violation of domestic law of the country where perpetrated.

Crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

Apart from the definition of war crimes, three principles set forth in the Charter are of particular importance here. The first is that the defense of "superior orders" is expressly rejected. The second is that aggressive war is a crime no matter what nation may commit it. The third is that international law must take precedence over the law of any particular nation.

The nations which framed the Charter, the judges of the Tribunal, and in particular, the representatives of the United States, considered that henceforth the crimes defined at Nuremberg should apply to all nations, including those that conducted the trials. Among these crimes was the "crime against peace" of aggressive war.

Robert Jackson, associate justice of the United States Supreme Court and chief counsel for the United States during the Nuremberg proceedings, reported that the definition of aggressive war occasioned "the most serious disagreement" at the conference which drafted the Charter. Jackson stated that the United States "declined to recede from its position even if it meant the failure of the Conference." He described the conflict this way:

"The Soviet Delegation proposed and until the last meeting pressed a definition which, in our view, had the effect of declaring certain acts crimes only when committed by the Nazis. The United States contended that the criminal character of such acts could not depend on who committed them and that international crimes could only be defined in broad terms applicable to statesmen of any nation guilty of the proscribed conduct."

Telford Taylor corroborates Jackson's account. According to Taylor, "the definition of the crimes to be charged . . . was an important question of principle which at first appeared to be intractable." The Soviets, Taylor says, wanted to charge the Nazi leaders with "[a]gression against or domination over other nations carried out by the European Axis . . . ." The Soviets were willing to define "war crimes" and "crimes against humanity" as violations of international law no matter by whom committed. But the Russians -- and the French -- resisted creating a new crime of aggressive war.

At the final meeting of the London conference, the Soviet qualifications were dropped and agreement was reached on a generic definition acceptable to all. In his opening statement to the Tribunal, Justice Jackson articulated the consensus reached by the United States, France, Great
Britain and the Soviet Union. "[L]et me make clear that while this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn aggression by any other nations, including those which sit here now in judgment."

Taylor quoted this solemn affirmation by Justice Jackson on the first page of Taylor's subsequent book on Nuremberg and Vietnam. To the same effect, an important modification of the language of the Charter by Law No. 10 was that the latter dropped phraseology limiting the jurisdiction of the tribunals to persons "acting in the interests of the European Axis countries," making way for expansion of the Nuremburg Principles beyond the immediate prosecution of agents of the defeated European powers. As Taylor wrote, "Nuremburg is a historical and moral fact with which, from now on, every government must reckon in its internal and external policies alike." Recalling the declaration of the Tribunal regarding the impartial application of its principles to all, Taylor wrote: "We may not, in justice, apply to these defendants because they are Germans, standards of duty and responsibility which are not equally applicable to the officials of the Allied Powers and to those of all nations."

And on the last page of his book on Nuremberg, published shortly before his death, Taylor once again affirmed what he obviously considered to be the heart of the Nuremberg proceedings. Reflecting on the growing demand in the 1990s for the establishment of a permanent tribunal for the trial of international crimes, Taylor recalled that the Nuremberg Tribunal had jurisdiction only over "the major war criminals of the European Axis countries." Considering the times and circumstances of its creation, it is hardly surprising that the Tribunal was given jurisdiction over the vanquished but not the victors. Many times I have heard Germans (and others) complain that "only the losers get tried."

Taylor continued: "Early in the Korean War, when General Douglas MacArthur's forces landed at Inchon, the American and South Korean armies drove the Koreans all the way north to the border between North Korea and China, at the Yalu River. About a week later the Chinese attacked in force and their opponents were driven deep into South Korea.

"During the brief period when our final victory appeared in hand, I received several telephone calls from members of the press asking whether the United States would try suspect North Koreans as war criminals. I was quite unable to predict whether or not such trials would be undertaken, but I replied that if they were to take place, the tribunal should be established on a neutral base, preferably by the United Nations, and given jurisdiction to hear charges not only against North Koreans but South Koreans and Americans (or any other participants) as well."

And Taylor concluded: "I am still of that opinion. The laws of
war do not apply only to the suspected criminals of vanquished nations. There is no more or legal basis for immunizing victorious nations from scrutiny. The laws of war are not a one-way street.

It is crystal clear, then, that after the Nuremberg trials, the United States was committed to having its own conduct judged according to the principles of international law applied in those proceedings.

Expansion and clarification of the Nuremburg Principles was carried forward by the UN International Law Commission in 1950, when it adopted and codified them in broad application to international law, drawing in some cases on the judgments of the Tribunal.

Here the Commission highlighted at the outset the principle “that international law may impose duties on individuals directly without any interposition of internal law,” and, as a corollary, that individuals are not relieved of responsibility under international law “by the fact that their acts are not held to be crimes under the law of any particular country.” The Commission went on to point out that this implies “what is commonly called the ‘supremacy’ of international law over national law,” and to cite the declaration of the IMT that “…the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State.”

The Nuremburg Precedent

During and after the Vietnam war, United States courts and military tribunals were asked to apply the Nuremberg Principles to the conduct of individual soldiers. The civilian judicial system washed its hands of the issue and (to use another Biblical metaphor) passed by on the other side. Military tribunals were far more forthright than their civilian counterparts in facing the problem but did not succeed in resolving the dilemma.

When David Mitchell was found guilty by the trial court and the federal court of appeals, his attorneys sought a writ of certiorari from the United States Supreme Court. The Supreme Court of the United States denied certiorari. Justice William Douglas dissented from the denial of certiorari. He stated in part that petitioner’s ...defense was that the "war" in Vietnam was being conducted in violation of various treaties to which we were a signatory, especially the Treaty of London of August 8, 1945, declares that “waging of a war of aggression” is a "crime against peace," imposing "individual responsibility." Article 8 provides: "The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment...

Mr. Justice Jackson, the United States prosecutor at
Nuremberg, stated: "If certain acts in violation of treaties are crimes, they are crimes whether the United States does them or Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us."

Article VI of the Constitution states that "treaties" are a part of "the supreme law of the land; and the Judges in every State shall be bound thereby." There is a considerable body of opinion that our actions in Vietnam constitute the waging of an aggressive "war."

This case presents the questions: whether the Treaty of London is a treaty within the meaning of Article VI, cl. 2; whether the question of the waging of an aggressive "war" is in the context of this criminal prosecution a justiciable question; whether the Vietnam episode is a "war" in the sense of the Treaty; whether petitioner has standing to raise the question; whether, if he has, it may be tendered as a defense in this criminal case or in amelioration of the punishment.

These are extremely sensitive and delicate questions. But they should, I think, be answered.

In Mora et al. v. McNamara et al., three young men already drafted into military service--Dennis Mora, James Johnson, and David Samas --refused to deploy to Vietnam. They offered essentially the same defense as had David Mitchell, adding the provisions of the US Army Field Manual, The Law of Land Warfare . This time two justices of the United States Supreme Court, Justices Douglas and Potter Stewart, dissented from denial of certiorari.

Captain Howard B. Levy, M.D., also a draftee, refused to teach medicine to Green Beret soldiers at Fort Jackson, South Carolina. His too sought review by the Supreme Court of the United States. In Parker v. Levy (1974), the high court reversed a decision of the Third Circuit Court of Appeals which had held that Articles 133 and 134 of the Uniform Code of Military Justice were unconstitutionally vague and overbroad. The Supreme Court upheld the validity of the UCMJ and of Levy's court martial conviction. Justice Stewart angrily read his dissenting opinion from the bench.

Whereas the Supreme Court focused on First Amendment doctrine in relation to the UCMJ, the court martial gave much more attention to Vietnam. And in the course of a ruling on other matters, Colonel Earl Brown, the law officer, suddenly injected the possibility of a defense based on Nuremberg: "...Now the defense has intimated that special forces aidmen are being used in Vietnam in a way contrary to medical ethics. My research on the subject discloses that perhaps the Nuremberg Trials and the various post war treaties of the United States have evolved a rule that a soldier must disobey an order demanding that he commit
war crimes, or genocide, or something to that nature. However, I have heard no evidence that even remotely suggests that the special forces of the United States Army have been trained to commit war crimes, and until I do, I must reject this defense."

In colloquy with the prosecutor that followed, Colonel Brown stated that if the airmen were being "trained to commit war crimes, then I think a doctor would be morally bound to refuse" to train them.

Counsel for Dr. Levy were given one extra day to assemble witnesses to put on a Nuremberg defense. The defense found three witnesses. Donald Duncan was a former Special Forces Sergeant, who became disaffected while serving in Vietnam and resigned from the Army. Robin Moore was the author of a bestselling book, The Green Berets. Captain Peter Bourne was an Army psychiatrist who had served in Vietnam. The defense also proffered as exhibits 4,000 articles describing war crimes in Vietnam, including war crimes by the Special Forces, and a brief by Professor Richard Falk, an international law expert at Princeton, assisted by Richard Barnet of the Institute for Policy Studies. Finally, the defense submitted a list of thirty-eight witnesses to be called should Col. Brown determine that a prima facie case of Nuremberg violations had been made out.

An out-of-court hearing followed. The Law of Land Warfare prohibits assassination of enemy soldiers or civilians. Duncan and Moore described assassination by United States forces and by the Vietnamese personnel that they trained. The Law of Land Warfare prohibits "putting a price on an enemy's head," but Duncan and Moore testified that in Vietnam it was a common practice. Most riveting, it seems, was defense testimony about torture and murder of unarmed prisoners, although The Law of Land Warfare prohibits killing prisoners "even in the case of . . . commando operations."

Assessing the Nuremberg defense presented by Dr. Levy's counsel, Professor Strassfeld comments: "It could have been argued that the Geneva Conventions were largely inapplicable to South Vietnam and U.S. conduct in South Vietnam, especially as it affected civilians. However, the U.S. did not adopt that position. Application of the Nuremberg principles to Levy would arguably extend them beyond existing precedents because of his attenuated relationship to Special Forces conduct in Vietnam."

Instead of grounding the denial of the defense in one of these arguments, Brown simply ruled that Levy had failed to make a prima facie showing.

The evasion of Nuremberg by the United States Supreme Court in the Mitchell, Mora, and Levy cases continues to cast a long shadow. Military tribunals quote and rely on the
high court's pronouncement in Parker v. Levy that "the military is, by necessity, a specialized society," and hence "the fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it."

However, the United States has now explicitly endorsed the doctrine of preemptive war. In a speech at the 2002 graduation exercises at West Point, President George W. Bush, remarked that for much of the last century, America's defenses had relied on the Cold War doctrines of deterrence and containment. But, the President argued, containment means nothing against "terrorist networks with no nation or citizens to defend...the war with terror will not be won on the defensive," and the United States must be prepared for "preemptive action when necessary." In September 2002, the Bush Administration promulgated a new National Security Doctrine which stated, in part, that "...we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country.

This new doctrine would appear expressly to violate the condemnation of aggressive war on which the United States insisted at Nuremberg. Certainly a conviction that his country is an aggressor in violation of international law is the essence of Lt. Watada's conclusion that what he is being ordered to do is unlawful. He considers that he is not engaging in "civil disobedience" but rather obeying settled international law that Nuremburg decreed he would disregard at his peril. In his case, then, and in future cases like his, a potential or actual soldier may be entitled to refuse orders not only because they require "war crimes" or "crimes against humanity," but also because they demand obedience to a "crime against peace": aggressive war.

Someday, and would it could be tomorrow, they'll have a war in Somalia to which nobody will come. Someday the Tamal Tigers, without surrendering their vision of liberation, will find a way to pursue it without arms. Someday nobody in Fatah or Hamas will continue fratricidal war in Gaza. Someday in Colombia, and in Ecuador and Oaxaca and Bolivia and Argentina, they'll continue to create picket lines, and blockades, and occupations, but no longer go to war. My daughter had a companero from Chile. Roberto said that when he and other draftees were told to shoot at working-class demonstrators, they fired into the air. I told him I had been discharged from the Army as a subversive. He asked me, Were you tortured? Someday they'll have a war, and try to torture those who say No, and nobody will come.

And soon, very soon, when soldiers are summoned to have a war in Baghdad and Basra, or in Kabul and Kandahar, let alone Teheran, Damascus or Pyonyang, why, they may
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PROTESTING KILLING CIVILIANS IN IRAQ 2007: JOSH STIEBER 
INTERVIEW OF JOSH STIEBER BY ROB KALL: http://www.opednews.com/articles/Collateral-Murder-Wikilea-by-Josh-Stieber-100409-170.html Josh Stieber was in the same Bravo company as the men whose voices were captured on the Wikileaks video. Josh was there in Baghdad at the same time, in the same company. His message is a powerful one. A few days before the Wikileaks video was taken, Josh tells me, he refused to fire randomly on civilians. Otherwise, he may have been on that mission that, listening to it, causes us revulsion. His assessment of the situation is not an easy one to face or accept. He's also written a blog that he permitted us to reprint. RK strongly suggest you read the blog “Collateral Murder? Wikileaks, Soldiers Speak” and then listen interview. Together, they are very powerful, especially when you consider they come from a 22 year old veteran-- a former warrior who sought and achieved conscientious objector status.

The interview is just under 30 minutes. It's worth a listen. Thanks to OEN managing editor Cheryl Biren for producing and researching the show. There's a reason the senior editorial team calls her Cherlock.

By Josh Stieber
http://contagiousloveexperiment.wordpress.com/2010/04/08/collateral-murder-wikileaks-soldiers-speak/ Bravo Company 2-16, the company I was deployed with to New Baghdad has more fanfare than we ever wanted. An online whistleblower site released a video yesterday of a mission that 2-16 was a part of, titled COLLATERAL MURDER. Yes, I am a conscientious objector and yes, I had pissed some of my leaders off a few days earlier and was not trusted on missions for a few weeks so was left back at the base while this event took place..

By Rob Kall
Rob Kall Speaks to Veteran of "COLLATERAL MURDER" Company WikiLeaks Reported
Josh Stieber, a former U.S. Army Specialist, is speaking out. A member of the Bravo Company 2-16 whose acts of brutality made headlines this week with the Wikileaks release of the video "Collateral Murder," Stieber says such acts were not isolated incidents, but were commonplace during his tour of duty.[bold added, D] "After watching the video, I would definitely say that that is, nine times out of ten, the way things ended up," says Stieber

BOOKS and FILMS
--Kovac, Jeffrey. History of Civilian Public Service Camp #21 at Cascade Locks. Oregon SUP, 2009. Rev. Fellowship (Spring 2010). About 50,000 men refused to be conscripted in WWII. Some of them were sent to Cascade.
--Elster, Ellen and Majken Jul Sorensen, eds. Pref. Cynthia Enloe. Women Conscientious Objectors: An Anthology. War Resisters International, 2010. Women in one country after another have created for themselves the concept, analysis, and practice of a distinctive feminist antimilitarism. Perceiving that militarization is not just the existence of armies, but the deformation of daily life in myriad ways, these
women chose to object. The book also exposes the links between patriarchy and militarism as central to countering the sources of war; changing masculinities and femininities is integral to reducing militarism and war.


END OF NEWSLETTER #1 FOR INTERNATIONAL CONSCIENTIOUS OBJECTORS ‘ DAY