

Foreword

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Welcome to the third International and Operational Law edition of *The Army Lawyer*!¹

The proposition that all judge advocates (JA) and paralegals need a solid foundation in International and Operational Law is an understatement. As of this writing, there are over 600 legal personnel deployed to combat zones² and countless others stationed around the world, including Haiti.³ There is no indication that the number of deployed JAs will decrease any time soon. Although the U.S. mission in Iraq will expire at the end of 2011,⁴ the number of JAs deploying to Afghanistan is increasing. As the armed conflict against transnational terrorists continues with no end in sight, conventional forces may find themselves venturing beyond the borders of Afghanistan. The recent devastating earthquake in Haiti demonstrated that members of the Judge Advocate General's Corps (JAG Corps) must be ready on a moment's notice to successfully advise commanders on the full spectrum of legal issues in the international and operational law disciplines.

The law of armed conflict has been under intense scrutiny since 11 September 2001 and this is particularly true when it comes to discussing the law applicable to the conflicts in Iraq and Afghanistan and the status, treatment, and rights of terrorists. In addition to debates and arguments in all three branches of our Government, not surprisingly, the terrorism debate has led to an exponential increase in legal scholarship, to include new and updated textbooks,⁵ articles published in legal journals,⁶ and numerous non-fiction books that help keep lawyers abreast of changes to the legal landscape.⁷

* For the 2009–2010 academic year, the International and Operational Law Department was composed of nine resident JAs: Lieutenant Colonel (LTC) Jeff A. Bovarnick (Chair); Commander (CDR) Trevor A. Rush (U.S. Navy) (Vice-Chair through March 2010); Captain (CAPT) Brian J. Bill (U.S. Navy); Lieutenant Colonel (LtCol) J. Porter Harlow (U.S. Marines Corps); LTC Christopher R. Brown (Army National Guard of the United States), Major (Maj) J. Jeremy Marsh (U.S. Air Force) (Vice-Chair as of April 2010); Major (MAJ) Shane R. Reeves; MAJ Robert E. Barnsby; and MAJ Gregory S. Musselman. Our Administrative Assistant is Ms. Terri Thorne. Commander Rush deployed to Afghanistan in April 2010.

¹ This is the second annual edition of *The Army Lawyer* dedicated to International and Operational Law, and the third overall. Last year, my predecessor, COL Michael Lacey, began the trend followed by our other three academic departments of publishing timely and relevant articles in a symposium issue. In the May 2009 edition, five of the six articles were drafted by faculty members; one article was co-authored by a professor and a brigade judge advocate. For the current edition, six of the eleven articles were drafted by International and Operational Law Department faculty members, and five submissions were provided by outside contributing authors, including Mr. Dick Jackson (Special Assistant for Law of War Matters, International and Operational Law Division, Office of The Judge Advocate General), LTC Chris Jenks (Chief, International Law Branch, Office of The Judge Advocate General), MAJ Richard Taylor (Student, 58th Graduate Course), Captain (CPT) Ron Alcalá (Editor, *The Army Lawyer*), and Ensign (Ens.) Scott Glabe (U.S. Navy Reserve and J.D. candidate, Yale Law School).

² See TJAG/DJAG Deployed JA Overview (June 15, 2010). Of the 646 total JAG Corps officers and enlisted personnel that are deployed, the vast majority are in Iraq (369) and Afghanistan (204). The 646 total includes 436 active duty, 124 National Guard, and 86 Reserve component servicemembers. Of the total, there are 302 officers, 333 enlisted, and 11 warrant officers.

³ On 12 January 2010, a 7.0 magnitude earthquake devastated Haiti, and within days, members of the 82d Airborne Division and XVIII Airborne Corps deployed to Haiti. See Donna Mills, *82nd Airborne Soldiers Begin Haiti Deployment*, U.S. DEP'T OF DEF. NEWS (Jan. 14, 2010), available at <http://www.defense.gov/news/newsarticle.aspx?id=57522>. In January 2010, the XVIII Airborne Corps Office of the Staff Judge Advocate (OSJA) sent a legal team to Haiti and later transitioned the legal mission to a team from the U.S. Army South OSJA. Interview with Lieutenant Colonel Charles Poché, Director, Center for Law and Military Operations (CLAMO), in Charlottesville, Va. (Apr. 14, 2010).

⁴ See Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities During Their Temporary Presence in Iraq, U.S.-Iraq art. 30(1), Nov. 17, 2008 [hereinafter Security Agreement]; Commander Trevor A. Rush, *Don't Call It a SOFA! An Overview of the New U.S.-Iraq Security Agreement*, ARMY LAW., May 2009, at 59 n.264.

⁵ See, e.g., GARY D. SOLIS, *THE LAW OF ARMED CONFLICT: INTERNATIONAL HUMANITARIAN LAW IN WAR* (2010); *THE MANUAL OF INTERNATIONAL HUMANITARIAN LAW* (Dieter Fleck ed., 2d ed. 2009); ROBERT COLB & RICHARD HYDE, *AN INTRODUCTION TO THE INTERNATIONAL LAW OF ARMED CONFLICTS* (2008); GEOFFREY S. CORN, ET AL., *THE WAR ON TERROR AND THE LAWS OF WAR: A MILITARY PERSPECTIVE* (2009); A.P.V. ROGERS, *LAW ON THE BATTLEFIELD* (2d ed. 2004) (1996).

⁶ See, e.g., *THE WAR IN AFGHANISTAN: A LEGAL ANALYSIS*, 85 INT'L L. STUD. (Michael N. Schmitt ed., 2009) (U.S. Naval War College International Studies); Laura S. Dickinson, *Military Lawyers on the Battlefield: An Empirical Account of International Law Compliance*, 104 AM. J. INT'L L. 1 (Jan. 2010) (incorporating interviews of at least twelve students from the 56th Judge Advocate Graduate Course in October 2007 about their experiences in Afghanistan and Iraq); AM. BAR ASS'N, 31 NAT'L SEC. LAW REPORT (2009), available at <http://www.abanet.org/natsecurity>.

⁷ See, e.g., JACK GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE BUSH ADMINISTRATION* (2007); LOUIS FISHER, *THE CONSTITUTION AND 9/11: RECURRING THREATS TO AMERICA'S FREEDOMS* (2008); and JONATHAN MAHLER, *THE CHALLENGE: HAMDEN V. RUMSFELD AND*