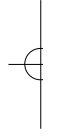
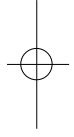


# National Security Law Documents



# National Security Law Documents

*Second Edition*

**John Norton Moore**

**Guy B. Roberts**

**Robert F. Turner**

**CAROLINA ACADEMIC PRESS**

Durham, North Carolina

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ISBN 1-59460-024-4  
LCCN 2005937552

CAROLINA ACADEMIC PRESS  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

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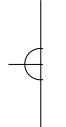
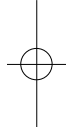
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# Preface

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Four years have passed since horrendous terrorist attacks demonstrated that a post-Cold War America continues to face serious threats to its national security. Not surprisingly, the consequences of this realization included a dramatic increase in interest in various aspects of national security law—a legal specialty area pioneered here at the University of Virginia School of Law more than three decades ago. Most law schools now offer at least one course or seminar in this area, and the Association of American Law Schools has now designated national security law as a recognized specialty. Conflicts in Afghanistan and Iraq have brought once esoteric provisions of the 1949 Geneva Conventions to the front pages, while the USA PATRIOT Act has led some to fear even for the civil liberties of Americans in the global war on terrorism. In sum, today these issues are every bit as important as they were at the height of the Cold War.

When two of the editors of this volume co-founded the Center for National Security Law twenty-five years ago, Virginia remained the only law school teaching national security law, and one of our first priorities was to prepare teaching materials so that others could join us in teaching this new field. First published in 1990, with a new edition released in 2005, *National Security Law* remains the most comprehensive text on the subject, featuring contributions from both leading scholars across American (and around the world) and key present and former practitioners.

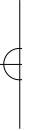
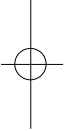
The first edition of *National Security Law Documents* was published in 1995 to provide a convenient collection of primary documents for students and to serve as a free-standing desk reference for practitioners. In addition to excerpts from key treaties, statutes, executive orders, and other legal instruments, the volume also includes such important non-legal documents as President George Washington's *Farewell Address* and George Kennan's *Long Telegram*.

Like the casebook, *National Security Law Documents* is comprehensive and interdisciplinary in its approach. It includes key documents concerning U.S. foreign policy, institutional modes of conflict management, norms concerning the initiation of coercion, human rights, war crimes, international terrorism, arms control, separation of constitutional powers, and intelligence—to name but a few of the included topics. The editors believe that *National Security Law Documents* represents the most useful collection of documents relating to the field of national security law available today in a single volume.

Through the wonders of the Internet, most of the documents excerpted in this volume are now available online. Readers will find URLs included in most of the footnotes. A list of selected key Web sites is also appended.

John Norton Moore  
Guy B. Roberts  
Robert F. Turner

December 3, 2005  
Charlottesville, Virginia



# Acknowledgments

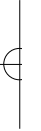
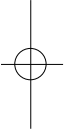
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The second edition of *National Security Law Documents* is the product of the efforts of many, and the editors wish to express appreciation to all those who worked diligently on both the first edition and this major revision.

Our editorial assistants have spent many hours researching and collecting official documents, inputting data, proofreading, and otherwise working to make sure this edition is comprehensively and accurately updated. For these fine efforts we thank Judith A. Ellis, David M. Edinger, Elyse H. Hunter, and Joanna C. Murdick. A number of Center student research assistants have also helped in the task of collecting and preparing documents for inclusion; and for this work we are grateful to Alexander B. Patterson, Cameron N. Brown, and Ji Lee. Ms. Donna Ganoë, the Center's Executive Administrator since 1987, has also been particularly helpful in overseeing and coordinating the editorial and student assistants.

Additionally, Taylor Fitchett and research librarians Rob (Robert C.) Richards and Ben Doherty at the Morris Law Library at the University of Virginia School of Law have provided crucial assistance in cite-checking the footnotes, and to them we are deeply indebted.

The second edition of *National Security Law Documents* builds on the first edition which was published in 1995. We continue to be grateful to the many people who labored extensively to produce it: Frederick S. Tipson, the former Chief Council to the Senate Foreign Relations Committee, Susan Broadwater-Chen, Freda Berman, Irum Hassan-Khan, Kathy Wood, Kay Wood, and student research assistants Suzanne Anselmo, Bill Aniskovich, Julia Bunck, Matt Cuscias, Mark Hoch, Paula Hopping, Thomas Plochan, Patty Summers, and Robert Vander Lugt.



## The Editors

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**John Norton Moore** is the Walter L. Brown Professor of Law at the University of Virginia School of Law where he teaches numerous international and national security law courses. He also directs the University's Center for National Security Law and the Center for Oceans Law & Policy and was the Director of the Graduate Law Program at Virginia for more than twenty years. Viewed by many as the founder of the field of national security law, Professor Moore chaired the American Bar Association's prestigious Standing Committee on Law and National Security for four terms. He is the author or editor of 32 books and more than 175 scholarly articles and served for two decades on the editorial board of the *American Journal of International Law*. He is currently an honorary editor of the *Journal*. He is a member of the Council on Foreign Relations, on the Board of Directors of Freedom House, the American Law Institute, the American Society of International Law, the Order of the Coif, Phi Beta Kappa, and numerous other professional and honorary organizations. His most recent books include *Solving the War Puzzle* (2004) and *Civil Litigation Against Terrorism* (ed. 2004).

In addition to his scholarly career, Professor Moore has a distinguished record of public service. Among seven Presidential appointments, he has served two terms as the Senate-confirmed Chairman of the Board of Directors of the United States Institute of Peace and, as the first Chairman, set up this new agency. He also served as the Counselor on International Law to the Department of State, as Ambassador and Deputy Special Representative of the President to the Law of the Sea Conference, Chairman of the National Security Council Interagency Task Force on the Law of the Sea, and as a member of the United States' legal team before the International Court of Justice in the *Gulf of Maine* and *Paramilitary Activities* cases (a Deputy Agent for the United States in the *Paramilitary Activities* case). Professor Moore served as a Member of the Director of Central Intelligence's Historical Review Board from 1998–2002.

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**Guy B. Roberts** is the Deputy Assistant Secretary General for Weapons of Mass Destruction Policy and Director, Nuclear Policy Planning Directorate for the North Atlantic Treaty Organization (NATO). In that capacity he is responsible for developing

policy on issues related to combating the proliferation of weapons of mass destruction and overseeing NATO's nuclear deterrence posture. Prior to his current position Mr. Roberts was the Principal Director for Negotiations Policy in the Office of the Secretary of Defense. In that capacity he was responsible for advising the Assistant Secretary for International Security Policy and other senior DoD officials on the entire range of United States arms control and non-proliferation policies, and for implementing policy guidance and Defense Department positions for current and emerging proliferation issues in multilateral arms control and disarmament fora. Prior to that Mr. Roberts was the Associate Counsel (Arms Control) for the Department of the Navy. His responsibilities included reviewing all departmental programs to ensure compliance with international treaty obligations and to advise the Chief of Naval Operations and the Secretary of the Navy on arms control and nonproliferation issues.

Mr. Roberts also served for twenty-five years in the United States Marine Corps before retiring with the rank of Colonel. During that time he held a number of positions including representing the Department of Defense at the United Nations Conference on Disarmament and the International Atomic Energy Agency, and serving as the senior legal advisor for major combatant commands. He has also participated in numerous negotiations with foreign governments on military issues, served as a prosecutor and defense counsel in courts-martial, and was an infantry company and platoon commander.

Mr. Roberts received his law degree from the University of Denver, and he holds master's degrees in international and comparative law from Georgetown University and in international relations from the University of Southern California. He also has a master's degree in strategic studies from the Naval War College where he graduated with highest distinction and won the Stephen B. Luce Award for academic achievement. He is admitted to practice in Colorado, California, Arizona and before the Military Court of Criminal Appeals and the U.S. Supreme Court. Mr. Roberts has written extensively on nonproliferation, arms control, terrorism and law of war issues.

**Robert F. Turner** holds both professional and academic doctorates from the University of Virginia School of Law, where in 1981 he co-founded the Center for National Security Law with Professor Moore. A former Army Captain who served twice in Vietnam, he left the military in 1971 to accept a position at the Hoover Institution on War, Revolution and Peace at Stanford University, where he was a Public Affairs Fellow and Associate Editor of the *Yearbook on International Communist Affairs*. His extensive federal government service includes five years as national security adviser to Senator Robert P. Griffin, a member of the Foreign Relations Committee, and subsequent assignments as Special Assistant to the Under Secretary of Defense for Policy, Counsel to the President's Intelligence Oversight Board at the White House, and Principal Deputy Assistant Secretary of State for Legislative and Intergovernmental Affairs. He served as the first President of the congressionally established U.S. Institute of Peace and during 1994–95 held the Charles H. Stockton Chair of International Law at the U.S. Naval War College. He has also been a Distinguished Lecturer at the U.S. Military Academy at West Point and a Silverman Lecturer at the U.S. Supreme Court Historical Society.

In addition to teaching advanced national security law seminars with Professor Moore at the Law School, for many years Professor Turner also taught International Law, U.S. Foreign Policy, Foreign Policy and the Law, and a seminar on the Vietnam War in what is now Virginia's Woodrow Wilson Department of Politics. Each summer he runs the Center's National Security Law Institute for training law professors and gov-

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ernment attorneys who wish to teach or practice in this growing new field. A former three-term Chairman of both the ABA Standing Committee on Law and National Security and the Committee on Executive-Congressional Relations of the ABA Section of International Law and Practice, for many years he served as editor of the ABA *National Security Law Report*. Turner has testified before more than a dozen committees of Congress, is the author or editor of more than a dozen books and has published in numerous law reviews and professional journals. He has contributed to the editorial pages of the *New York Times*, *Wall Street Journal*, *USA Today*, *Washington Post*, and most other major American newspapers, and is a member of the Council on Foreign Relations and the Committee on the Present Danger.





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