

**Senate Committee on Foreign Relations**  
**Senator Richard G. Lugar**  
**Opening Statement for Hearing on Koh Nomination**  
**April 28, 2009**

Today, the Committee meets to consider the nomination of Harold Koh to be Legal Adviser to the Department of State. He has had a distinguished career as a scholar, teacher, and advocate. He is Dean of one of the nation's leading law schools, and he has written widely on issues of Constitutional and international law. Dean Koh has been a strong advocate on questions of human rights, including representing Haitian and Cuban asylum seekers and filing numerous friend of the court briefs in a range of cases involving human rights issues. He enjoys support from lawyers he has worked with on these matters, as well as those - including former Solicitor General Kenneth Starr - whom he has litigated against in these cases. He has also worked on human rights issues in government, having served as Assistant Secretary of State for Democracy, Labor, and Human Rights from 1998 to 2001.

If confirmed, Dean Koh will be the principal source of legal advice for the Secretary of State and other State Department officials. This will involve a different kind of role from that of a professor or an issue advocate. The Legal Adviser's primary role is to provide objective advice on legal issues, not to advocate for particular policy outcomes. The Legal Adviser must be prepared to defend the policies and interests of the U.S. Government, even when they may be at odds with his personal preferences or positions he has taken in a private capacity. In applying laws applicable to the State Department's work, the Legal Adviser must take account of and respect prior U.S. Government interpretations and practices under those laws, rather than considering each such issue as a matter of first impression. The Legal Adviser must also be a practical problem solver, employing legal tools and methods to assist policy makers in achieving desired policy goals in the national interest.

These considerations are particularly critical in light of the range of important issues that will face the next Legal Adviser. He will advise on questions of U.S. and international law applicable to ongoing military operations in Iraq and Afghanistan and broader U.S. efforts to combat terrorism. He will provide guidance to U.S. treaty negotiators involved in efforts to conclude an extension of the START treaty with Russia and a potential multilateral instrument to address global climate change. He will also have a lead role in interpreting and promoting implementation of the broad range of treaties and international agreements to which the United States is already a party.

In the course of these responsibilities, the next Legal Adviser must work closely with this Committee and with other members of the Senate. On treaty matters in particular, effective cooperation between the Administration and this Committee is essential to the development, adoption, and implementation of agreements that will advance U.S. interests. The power to make treaties is shared between the Executive Branch and the Senate, and prospects for securing Senate advice and consent to treaties are greatly enhanced when the Executive Branch consults with the Senate early and often in the treaty process. The Committee also has an important role in overseeing the Executive Branch's application of treaties to which the Senate has already provided advice and consent, including any proposed changes in the interpretation of such treaties. In all of these areas, the Legal Adviser must actively engage with the Senate and with this Committee to ensure a smooth treaty process.

I had the opportunity to meet with Dean Koh last week as part of his confirmation process. I submitted a series of forty questions for the record that he has answered in advance of this hearing. I appreciate very much his diligence in answering these extensive questions in a timely manner. His responses to these questions were posted on my website last Friday and have been made available to all members of the Committee. I hope this material will be helpful to members as they consider Dean Koh's nomination.

I look forward to our discussion with the distinguished nominee.

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