

**U.S. Senate Committee on Foreign Relations**  
**Chairman John F. Kerry**  
**Opening Statement for Harold Koh Nomination Hearing**  
**April 28, 2009**

## **Chairman Kerry Opening Statement At War Powers Hearing**

WASHINGTON, D.C. – Today, Senate Foreign Relations Committee Chairman John Kerry (D-MA) released the following opening remarks at the nomination hearing for Harold Koh, President Obama’s nominee to be the U.S. State Department’s legal adviser.

*Full text as prepared is below:*

We are here today to consider the nomination of Dean Harold Koh to be Legal Adviser to the Department of State. Dean Koh, thank you for being here today. I see you have several members of your family with you, and I’d like to welcome them as well – I hope you’ll take a minute to introduce them to the Committee when you give your opening remarks.

Dean Koh is one of the foremost legal scholars in the country and a man of the highest intellect, integrity, and character. We are fortunate to have such an extraordinarily well-qualified candidate for this critical position.

If confirmed, Dean Koh will be the Secretary of State’s chief legal counsel, and the top adviser within the Executive Branch on legal matters related to our foreign policy. He will advise on the legal aspects of the most complex and important national security matters facing the country, covering issues ranging from detainee policy to arms control negotiations.

Dean Koh brings a very impressive record of achievement to this post. He received his law degree from Harvard, where he was an editor of the law review, and two master’s degrees from Oxford University, where he was a Marshall Scholar. As a young lawyer, he clerked on both the D.C. Circuit Court of Appeals and the United States Supreme Court. He has served with distinction in both Democratic and Republican Administrations, beginning his career in government in the Office of Legal Counsel in the Reagan Administration.

Dean Koh left government to teach at Yale Law School, where he went on to serve as Dean until his nomination to serve in the current Administration. As a renowned scholar and leading expert on international law, he has published or co-authored 8 books and over 150 articles.

In addition to his impressive academic resume, Dean Koh understands firsthand how the State Department works. He served as Assistant Secretary of State for Democracy, Human Rights, and Labor in the Clinton Administration—a post for which he was unanimously confirmed by the Senate in 1998.

Throughout his career, Dean Koh has been a fierce defender of the rule of law and human rights. A letter in support of Koh from former high-ranking military officers was eloquent on this point. They wrote: “Dean Koh understands that it is not a Rule of Law if it is invoked only when it is convenient, and it is not a Human Right if it applies only to some people. He knows that our nation is stronger and safer when our government adheres to fundamental American values.”

Dean Koh understands that the United States benefits as much or more than any country from an international system governed by the rule of law. He also recognizes that the United States must play its part by respecting its international obligations.

At the same time, his personal commitment to America’s security and to the defense of our Constitution are indisputable. It is no surprise that not everyone agree with Dean Koh, who often tackles controversial issues.

But accusations that his views on international or foreign law would undermine the Constitution are simply unjustified.

As Dean Koh explained in response to a question from Senator Lugar on the use of foreign law in constitutional interpretation:

My family settled here in part to escape from oppressive foreign law, and it was America's law and commitment to human rights that drew us here and have given me every privilege in my life that I enjoy. My life's work represents the lessons learned from that experience. Throughout my career, both in and out of government, I have argued that the U.S. Constitution is the ultimate controlling law in the United States and that the Constitution directs whether and to what extent international law should guide courts and policymakers.

While disagreements on legal theory are perfectly legitimate, some of the attacks against Dean Koh on the internet and in some media outlets are beyond the pale. Some have actually alleged that he is against Mother's Day – I'm sure Professor Koh's mother, who is here today, would be happy to set the record straight on that.

Regardless of any policy differences, we should all be able to agree on Dean Koh's obvious competence to serve in the post for which the President has chosen him. In fact, we have received an outpouring of support for this nomination from all corners. We have heard from over 600 law professors, over 100 law school deans, over 40 members of the clergy, 7 former State Department legal advisers, the Society of American Law Teachers, the Lawyers Committee for Human Rights, and many others.

Perhaps most remarkable has been the enthusiastic support from those who don't necessarily see eye to eye with Dean Koh, but still felt compelled to speak out publicly on his behalf – including former Solicitor General Ted Olson and former White House Chief of Staff Joshua Bolten.

In fact, no less a conservative legal authority than Kenneth Starr wrote that: "The President's nomination of Harold Koh deserves to be honored and respected. For our part as Americans who love our country, we should be grateful that such an extraordinarily talented lawyer and scholar is willing to leave the Deanship at his beloved Yale Law School and take on this important, but sacrificial form of service to our nation."

So while I understand there will be healthy debate on Dean Koh's nomination, it is clear that Dean Koh is widely respected across the legal and political spectrum, and that he is unquestionably qualified for this position. I urge my colleagues to support his nomination.

With that, I will turn it over to Senator Lugar for his opening statement. Then Senator Lieberman and Senator Dodd will be introducing Dean Koh, after which he will give his opening statement.

Dean Koh, I hope you will keep your statement to about 5 minutes – you can of course submit the balance of your comments to the record.

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