

April 27, 2009

HAND DELIVERY

Senator John F. Kerry, Chairman
Senator Richard G. Lugar, Ranking Minority Member
Committee on Foreign Relations
United States Senate
Dirksen Senate Office Building
Washington, D.C. 20510

Re: Confirmation of Dean Harold Hongju Koh as Legal Adviser, Department of State

Dear Chairman Kerry and Senator Lugar:

We write to express our strong support for President Obama's nomination of Harold Hongju Koh, Dean and Gerard C. and Bernice Latrobe Smith Professor of International Law at the Yale Law School, to serve as Legal Adviser of the Department of State and urge a favorable report by your Committee on Senate confirmation of Dean Koh. While we have listed our professional affiliations for identification, each of us speaks only in a personal capacity.

Each of us has personal knowledge of Dean Koh's ability, accomplishments and reputation through our professional activities as government officials, international civil servants, practitioners, law professors, and active participants in the real-world application and scholarship of international law. We are joined together in our belief that Dean Koh has the integrity, intellect, professional experience and personal commitment to excellence that are required to advise Secretary of State Clinton on the challenging legal issues that she will face over the next several years. We share a deep respect for his talent and character, which we believe admirably equip him to fulfill with distinction the responsibilities of Legal Adviser.

In October 1990, a Joint Committee of the American Branch of the International Law Association and the American Society of International Law completed a two-year study titled "The Role of the Legal Adviser of the Department of State" (85 *Am. J. Int'l L.* 358 (1991)). The thirty-four members of the Joint Committee included nine former Legal Advisers and a former counsel to the President. An Advisory Group that assisted the Joint Committee included two former Secretaries of State, a former U.S. Attorney General and other former U.S. and foreign government officials. The Joint Committee's final report analyzes in depth the complex responsibilities of the Legal Adviser. It discusses the many difficulties – legal, bureaucratic, and practical – that even the most qualified occupant of that office faces. The 1990 report recommends that the President and Secretary of State, "in considering the qualifications of candidates for Legal Adviser

of the Department of State, should give substantial weight to the desirability of prior experience and standing in the field of international law.”

We believe that Dean Koh’s career exemplifies the experience that the Committee had in mind in making this recommendation and that he enjoys the high standing in our profession that the Joint Committee emphasized. In particular, we believe that Dean Koh would admirably fulfill what the 1990 report called the “first responsibility” of the Legal Adviser – “to tell the Secretary of State and Administration candidly and objectively what existing law is or requires in a given situation” and to ensure that they receive “competent, objective and honest advice as to the legal consequences of proposed courses of action and decisions” so that they can make “informed and intelligent foreign policy judgments or properly balance the national interests involved.” We are confident that Dean Koh would support and advance United States foreign policy options that would respect not only our national interests and values but also our Nation’s legal obligations and international standing.

Each of us appreciates this opportunity to present our views to your Committee and would be happy to speak further with you or your staff about our enthusiastic support for Dean Koh’s confirmation by the Senate.

cc: Dean Harold Hongju Koh

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