

March 8, 2015

To members of the NYU Law community

I am writing in response to the “statement of no confidence” in Harold Koh which is circulating now in the law school. It is endorsed by the Coalition on Law and Representation, as well as a group of students and community members. I urge those who are considering signing it to know the real story about Harold Koh and urge those who already have signed it to reconsider.

For the past two years I have been a professor at NYU Stern. I teach business and human rights (including a course for law and business students) and co-direct a new center on business and human rights. From 2009-2013, I worked with Harold at the State Department, where I served as Assistant Secretary of State for Democracy, Human Rights and Labor. And prior to that, I spent three decades at Human Rights First (formerly the Lawyers Committee for Human Rights), as Executive Director and then President.

The statement of no confidence is wrong on the merits and misleading in its characterization of the role Harold played in government on national security issues. In a larger sense, it reflects a failure to appreciate the vital importance people like Harold play when they serve in government.

As many in the NYU community appreciate, Harold has a distinguished thirty-year career as a human rights advocate. He served with distinction as my predecessor as Assistant Secretary for Democracy, Human Rights and Labor from 1998-2001, and before that as head of Yale’s Schell Center for Human Rights. He is one of the most prominent and respected international lawyers and human rights scholars in the country. Harold is a wonderful teacher and is highly qualified to teach human rights at NYU or any other law school.

The focus of this particular statement is on the use of drones. It implies incorrectly that the use of drones in any circumstance is wrong and a violation of international law. In fact, drones are weapons of war. Like any weapon, they can be used in war subject to legal limitations. As Harold himself has argued, the deployment of drones should be regulated by law, subject to a determination that such use is necessary and proportionate and that they are deployed in a manner that minimizes civilian casualties. The debate within our government is not about whether drones can ever be used. Rather, the debate is about how, where and when drones can be deployed and how their use should be regulated and circumscribed.

We need skilled human rights lawyers serving in government arguing for standards and limits to guide drone usage. While serving as Legal Adviser in the State Department, it was Harold’s job to shape and influence the U.S. government’s consideration of these difficult issues. I had a ringside seat in the internal debates about the use of drones for four years, and saw Harold in action on a daily basis. I saw the essential role that Harold played in advancing a rights-based approach in these discussions; at no time did he deviate from his deep commitment to human rights and the rule of law. To the contrary, he worked tirelessly and passionately to advance human rights principles, which are his north star. I was in dozens of meetings with him on the full range of national security issues, including very contentious

debates with people at senior levels of our government. Harold was a brilliant and passionate advocate for the strongest human rights position, without exception.

This does not mean that he and I and others like us won every internal fight. We did not. Nor does it suggest that the use of drones has been adequately constrained. As Philip Alston and many others have argued, the deployment of drones in Pakistan and elsewhere have led to significant civilian casualties. It is important for critics, both inside government and out, to keep advocating for stronger internal rules and tighter restrictions on the use of drones. Indeed, Harold has similarly advocated for such rules in his speech "[How to End the Forever War](#)," delivered at Oxford in May 2013.

But it is absurd and inaccurate to describe Harold as "a key legal architect of the Obama Administration's extrajudicial killing program." To the contrary, Harold was our government's strongest and most effective advocate for policies rooted in the rule of law and human rights principles relating to the use of drones and other weapons of war.

Perhaps the most troubling aspect of the "statement of no confidence" is the inference that because Harold Koh decided to go into government, he somehow became a "functionary" and should be punished or ostracized because the government sometimes took the wrong actions during his tenure. I spent three decades leading an advocacy organization that fought against human rights violations, including by our own government. When Secretary Clinton asked me to serve, I went into government knowing that often my views and policy prescriptions would not prevail, but confident that the debate would be stronger because voices like mine were heard. When I left the State Department in 2013, I was proud of my service to our country. Having human rights advocates at the table when contentious issues of national security are being decided makes for better policy in any government. We need more Harold Kohs in government, not fewer, and "statements of no confidence" of this type will discourage able advocates from giving essential government service.

During my tenure as the United States' senior human rights diplomat, I had no better friend or more important ally than Harold Koh. NYU is extraordinarily lucky to count Harold among its faculty. He is unmatched in his principled commitment to human rights, knowledge of the law, and indefatigable belief in the capacity of governments and people to progress toward a more rights-respecting world. I have the deepest confidence in Harold as an educator, a lawyer, a policymaker, and an advocate. He deserves a medal for his principled and passionate service and commitment to human rights, not a statement of no confidence.

Sincerely

Michael Posner