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**US STATE DEPT LEGAL ADVISER LAYS OUT OBAMA ADMINISTRATION**

**POSITION ON ENGAGEMENT, "LAW OF 9/11"**

WASHINGTON, DC – The American Society of International Law’s (ASIL) 104<sup>th</sup> Annual Meeting today featured a keynote address by the Legal Adviser to the U.S. State Department, Harold H. Koh. Koh’s wide-ranging remarks on the Obama administration’s international law policies included a specific affirmation of the administration’s approach to the use of force, including the use of unmanned aerial vehicles (UAVs), which has recently come into question by some legal experts. Among Koh’s statements regarding the use of UAVs are the following.

“...[I]t is the considered view of this administration...that targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles (UAVs), comply with all applicable law, including the laws of war....As recent events have shown, Al Qaeda has not abandoned its intent to attack the United States, and indeed continues to attack us. Thus, in this ongoing armed conflict, the United States has the authority under international law, and the responsibility to its citizens, to use force, including lethal force, to defend itself, including by targeting persons such as high-level al Qaeda leaders who are planning attacks....[T]his administration has carefully reviewed

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the rules governing targeting operations to ensure that these operations are conducted consistently with law of war principles, including:

- First, the principle of *distinction*, which requires that attacks be limited to military objectives and that civilians or civilian objects shall not be the object of the attack; and
- Second, the principle of *proportionality*, which prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, that would be excessive in relation to the concrete and direct military advantage anticipated.

In U.S. operations against al Qaeda and its associated forces – including lethal operations conducted with the use of unmanned aerial vehicles – great care is taken to adhere to these principles in both planning and execution, to ensure that only legitimate objectives are targeted and that collateral damage is kept to a minimum.”

Responding to some recent arguments made against the use of UAVs, Koh defended the administration’s policy saying:

“[S]ome have suggested that *the very use of targeting* a particular leader of an enemy force in an armed conflict must violate the laws of war. But individuals who are part of such an armed group are belligerent and, therefore, lawful targets under international law....[S]ome have challenged *the very use of advanced weapons systems*, such as unmanned aerial vehicles, for lethal operations. But the rules that govern targeting do not turn on the type of weapon system involved, and there is no prohibition under the laws of war on the use of technologically advanced weapons systems in armed conflict – such as pilotless aircraft or so-called smart bombs – so long as they are

employed in conformity with applicable laws of war...[S]ome have argued that the use of lethal force against specific individuals fails to provide adequate process and thus constitutes *unlawful extrajudicial killing*. But a state that is engaged in armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force. Our procedures and practices for identifying lawful targets are extremely robust, and advanced technologies have helped to make our targeting even more precise. In my experience, the principles of distinction and proportionality that the United States applies are not just recited at meeting. They are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with all applicable law...Fourth and finally, some have argued that our targeting practices violate *domestic law*, in particular, the long-standing *domestic ban on assassinations*. But under domestic law, the use of lawful weapons systems – consistent with the applicable laws of war – for precision targeting of specific high-level belligerent leaders when acting in self-defense or during an armed conflict is not unlawful, and hence does not constitute ‘assassination.’”

To view video of the relevant portion of Koh’s address to the Society, visit <http://fora.tv/v/10561>.

ASIL is a nonprofit, nonpartisan, educational membership organization. It was founded in 1906, chartered by the U.S. Congress in 1950, and has held Category II Consultative Status to the Economic and Social Council of the United Nations since 1993. ASIL’s mission is to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice. The Society’s 4,000 members (from nearly 100 countries) comprise attorneys, academics,

corporate counsel, judges, representatives of governments and nongovernmental organizations, international civil servants, students, and others interested in international law. ASIL events, such as its 104<sup>th</sup> Annual Meeting, generally deal with one or more of the Society's seven thematic focal areas: Human Rights and Humanitarian Law, International Institutions, International Law and Development, International Security, Science and Technology, Trade and Investment, and Transnational Litigation and Arbitration. For more information, visit [www.asil.org](http://www.asil.org).