

# Harold Koh is the Gollum of Foggy Bottom

By: [Gene Healy](#) | *Examiner Columnist* [Follow Him @genehealy](#) | 06/20/11 8:05 PM

"No more ignoring the law when it's inconvenient," then-Sen. Barack Obama proclaimed on the campaign trail; as president, he'd show the world "that the law is not subject to the whims of stubborn rulers."

So, last week must have been tough on the half-dozen or so liberals still naive enough to believe that.

On Thursday, the president answered House Speaker John Boehner's request for an explanation as to why, 90 days into our Libyan misadventure, he isn't in violation of the War Powers Resolution, which requires him to terminate U.S. engagement in "hostilities" after 60 days in the absence of congressional authorization.

"We are acting lawfully," said Harold Koh, the State Department's top legal adviser. You see, since we're hitting Tripoli with offshore missiles and unmanned drones, and the Libyans can't hit back, we're not engaged in "the kind of 'hostilities' envisioned by the War Powers Resolution."

There's a lot to be said about the bald-faced absurdity of that rationale. But one of the most interesting developments is Koh's role in crafting the administration's line.

Considering Koh's background, the whole episode offers a cautionary tale about the corrupting effects of power.

Harvard's Jack Goldsmith notes that "for a quarter century before heading up State-Legal, Koh was the leading and most vocal academic critic of presidential unilateralism in war." On the strength of that reputation, Koh rose to the deanship of Yale Law School in 2004.

And Koh seemed to take the War Powers Resolution pretty seriously. In 1994, for example, he wrote to the Clinton Justice Department to protest the planned deployment to Haiti, which was carried out without a single shot being fired:

"Nothing in the War Powers Resolution authorizes the President to commit armed forces overseas into actual or imminent hostilities in a situation where he could have gotten advance authorization."

Yet the implications of Koh's position today are that the president can rain down destruction via cruise missiles and robot death kites anywhere in the world, and unless an American soldier might get hurt, neither the Constitution nor the War Powers Resolution are offended.

On Friday, Koh went before the American Constitution Society, the progressive alternative to the Federalist Society, to give a self-congratulatory speech about maintaining one's integrity in "public service."

"I never say anything I don't believe," Koh insisted; that includes "the administration's position on war powers in Libya." "I've lived the life I wanted to live," Koh proclaimed, "I still believe in my principles." The only thing missing was the refrain, "I did it myyyyy wayyyy!"

Perhaps Koh really believes that he still believes in his principles. In a way that's more unsettling than the thought that his late-inning conversion to presidential imperialism was purely cynical.

John Dean, who served prison time for his role in the Watergate cover-up as a young White House counsel to Richard Nixon, once said that young people should be kept away from top executive posts.

They lacked the life experience and independence needed to resist falling under the spell of presidents who want them to bend or break the law.

Koh was in his mid-50s when he joined the administration, coming off a distinguished career built on opposition to the Imperial Presidency. Yet the lure of being "in the room" when the big decisions are made seems to have turned him into the Gollum of Foggy Bottom.

It's the kind of story you hear again and again in D.C. -- on the right and the left -- of principles sold out for the dubious rewards of "access" and "relevance." This town is "Hollywood for the Ugly" in more ways than one.

*Examiner Columnist Gene Healy is a vice president at the Cato Institute and the author of "The Cult of the Presidency."*

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