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THE ELEPHANT IN THE ROOM: FOREWORD: TORTURE AND THE WAR ON TERROR *

Michael P. Scharf † and Rory T. Hood ††

I. INTRODUCTION

"Sobiraetes' li vi govorit' o slone v komnate?" After a short pause, the Russian-accented voice in my headset translated: "Are you going to be addressing the elephant in the room?" That was the first question asked as I began a week-long human rights training program in Prague (March 12-19, 2006) for fifty judges from former Soviet Republics under the auspices of the U.S. Department of Justice. The individual who posed that question, an appeals court judge from a Eurasian country, said that he and his colleagues wanted to know how representatives of the United States could expect to be taken seriously in speaking about the importance of human rights law when the United States itself has recently done so much that is contrary to that body of law in the context of its so-called "Global War on Terror."

I began my answer to this difficult question by acknowledging that in the aftermath of the September 11th attacks, the United States government, with the support of a majority of the American people, decided that it was necessary to employ unconventional methods in fighting the War on Terrorism. But, I explained, in the context of multiple revelations—about the mistreatment of detainees at U.S. detention centers in Iraq, Afghanistan, and Guantanamo Bay; about the practice of "irregular rendition" as a means of outsourcing torture; about the existence of U.S.-created "black sites" where "ghost detainees" are interrogated abroad; and about the content of the leaked "White House Torture Memos"1 which opined that torture constituted only acts that result in life-threatening and permanent injury, that the prohibition of torture did not apply to actions taken outside of the United States, that the Geneva Conventions did not apply to persons captured in the

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* First person references in the text are to Michael P. Scharf.
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1 The series of "White House Torture Memos" are reproduced as an appendix to this Issue. Symposium, Torture and the War on Terror, 37 CASE W. RES. J. INT’L L. app. (2006).