A. USSR

[Source: Final Record of the Diplomatic Conference of Geneva of 1949, vol. I, Federal Political Department, Berne, pp. 355-356; available on http://www.icrc.org/ihl]

Reservations made upon signature and maintained upon ratification [12.12.1949; 10.05.1954]:

General SLAVIN, Head of the Delegation of the Union of Soviet Socialist Republics: [...]

(3) On signing the Convention relative to the Treatment of Prisoners of War, the Government of the Union of Soviet Socialist Republics makes the following reservations: [...]

Article 85

“The Union of Soviet Socialist Republics does not consider itself bound by the obligation, which follows from Article 85, to extend the application of the Convention to prisoners of war who have been convicted under the law of the Detaining Power, in accordance with the principles of the Nuremberg trial, for war crimes and crimes against humanity, it being understood that persons convicted of such crimes must be subject to the conditions obtaining in the country in question for those who undergo their punishment.” [...]

B. Poland

[Source: Final Record of the Diplomatic Conference of Geneva of 1949, vol. I, Federal Political Department, Berne, pp. 350-351; available on http://www.icrc.org/ihl]

Reservations made upon signature and maintained upon ratification [08.12.1949; 26.11.1954]:

Mr PRZYBOS, Polish Minister in Switzerland, made the following reservations concerning the four Geneva Conventions: [...]

(3) “On signing the Geneva Convention relative to the Treatment of Prisoners of War, I declare that the Government of the Polish Republic adheres to the said Convention, with reservations in respect of Article [...] 85. [...]

“In regard to Article 85, the Government of the Polish Republic will not consider it legal for prisoners of war convicted of war crimes and crimes against humanity in accordance with the principles set forth at the time of the Nuremberg trials, to continue to enjoy protection under the present Convention, it being understood that prisoners of war convicted of such crimes must be subject to the regulations for the execution of punishments, in force in the State concerned.” [...]

C. Hungary

[Source: Final Record of the Diplomatic Conference of Geneva of 1949, vol. I, Federal Political Department, Berne, pp. 346-347; available on http://www.icrc.org/ihl]

Declarations and reservations made upon signature and maintained upon ratification [08.12.1949; 03.08.1954]: [...]

“The express reservations made by the Government of the Hungarian People’s Republic on signing the Conventions, are as follows: [...]

(4) “The Delegation of the Hungarian People’s Republic repeats the objection which it made, in the course of the meetings at which Article 85 of the Prisoners of War Convention was discussed, to the effect that prisoners of war convicted of war crimes and crimes against humanity in accordance with the principles of Nuremberg, must be subject to the same treatment as criminals convicted of other crimes. [...]

Discussion

1. Why do you think so many States (Albania, Belarus, Bulgaria, Chinese People’s Republic, Czechoslovakia, German Democratic Republic, Romania, Ukraine, People’s Republic of Vietnam, and Angola, in addition to those above) made a similar reservation to Art. 85 of Geneva Convention III?

[N.B.: Hungary, Belarus, Bulgaria and Romania have withdrawn their similar reservations.]

2. a. Should those prisoners of war, who violated the laws of war, still be permitted to claim that law’s protection? Should the law of war be applicable to them at all? At least until prima facie evidence of guilt is established? Until a sentence has been pronounced against them? Are not prisoners of war extremely vulnerable in enemy hands and thus in greatest need of the legal safeguards provided for them under international law? According to Art. 85 of Geneva Convention III, until when are the benefits of that Convention applicable to prisoners of war who committed war crimes? b. Which safeguards does Geneva Convention III provide for prisoners of war? Are such safeguards less or more extensive than most national legislation? Should an alleged war criminal be deprived of safeguards which national legislation routinely provides for even the worst criminals? Does Geneva Convention III raise any obstacle to the trial or sentencing of prisoners of war by the Detaining Power? Or to them serving a sentence as do criminals

convicted of other crimes? Which provisions of Geneva Convention III on the treatment of prisoners of war go beyond what is guaranteed by international human rights law to any convicted prisoner?

3. a. What is meant by the “principles of the Nuremberg trial” referred to in various ways by the reservations above? Is it a reference to those principles of international law recognized in the Charter of the Nuremberg Tribunal as formulated by the UN International Law Commission and through the judgement of the Tribunal? Are war crimes and crimes against humanity thus to be understood as the International Law Commission defined them? b. Why is it important that the reservations do not include crimes against peace? If such crimes were included, what potential ramifications could that have for prisoners of war? Under IHL, for which offences committed prior to capture may a prisoner of war be punished? c. In the reservation of the USSR, is it clear when the benefits of the Convention would be withdrawn from prisoners of war? What recourse do States Parties have if a reservation is open to various interpretations? Are any and all reservations to a treaty permitted? If not, then which ones are not permitted? d. Do the three other reservations have the same effect as the reservation of the USSR?