Professor Trauble is a member of the Moscow Academy, Professor of Law at the Moscow University and a leading member of the Extraordinary State Commission for the Investigation of German Crimes which was established by the Soviet Government on November 21, 1944. His book appeared in July 1944 and expresses not only Professor Trauble's opinion but also the official attitude of the Soviet Government.

The title indicates how the author approaches the problem. He does not limit his study to "war crimes" strictly so-called (violation of laws not making of war), but deals with the social responsibility of the criminals for all their crimes, in the first place for their crimes against mankind. He stresses the role of criminal law, both national and international, in the repression and prevention of German criminality.

In my paper on Soviet Penal Law which was circulated among the members of our Commission, I explained its general principles (the criminal acts, the criminal codes, the criminal punishments) as a method of political repression, as a means of social control. In this paper I proved that the general principles of Soviet Penal Law are to a great extent identical with those of the modern criminal law of other Allied nations.

I. The present war and the problem of social responsibility in the system of international law.

1) In this chapter, Professor Trauble first of all characterizes the present war as conducted by the Allies as purely legal, without any political or social consequences. He states that the present war is conducted by the Allies as purely legal, without any political or social consequences.

2) The author points out that the new relations between the nations must be organized in such a manner that aggression must still be impossible. The maintenance of international order for all the nations requires the establishment of the individual responsibility of political leaders for the consequences of their acts.

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The author then quotes some declarations of other Allied nations at the same time, the so-called "International War of the Businessmen" - especially the statements of the Emigrants - especially Roosevelt's of August 1922 and Churchill's of September 28th, 1922, which both stress the importance of the situation by tribunals.

3. The crimes of the Histo bullet are genuine international crimes; there are wars on the very frontiers of the International community. The author stresses the importance of international law against this kind of crime. International Criminal law is not a perfect instrument for the purpose but, in spite of the defects it is, in cooperation with National Criminal Law, a sufficient legal basis for the punishment of all the crimes of the Histo bullet. These consist of:

a) Crimes against peace, and
b) Crimes against the laws and customs of war.

II.

The concept of International Crime.

1. In the second chapter the author describes the attempts by experts in International Criminal Law to define international crimes. He mentions the difficulties and doctrines of Fichte, Savit, and others.

2. Some other experts regard as the source of International Criminal Law various international conventions concluded for the prohibition and suppression of crimes in the struggle against certain categories of crimes, such as trading in drugs and other drugs, trading in arms, and crimes against children, and so on. The author does not regard the crimes committed in these conventions as breaches of the general regulations of international crimes. They are ordinary crimes carried under the criminal law of the respective States. Their international character consists only in the fact that their omission is not confined to the territory of a single State, but this is not an intrinsic characteristic of an international crime.

3. Much more important for the development of International Criminal Law dealing with genuine international crimes are works of some scholars dealing with Articles 15 of the Covenant. The author quotes some of these. Professor Fichte, for instance, says that the omission of war in violation of Article 16 of the Covenant must be regarded as a crime. No. 2 is seen by Article 16 of the Convention of 1920, and Professor Ziegler says that Article 15 is the general code of the League of Nations. In the opinion of Professor Traut, these omission seems...
trying to define international crime as aggression in violation of the concept of international peace is the solution "general" in Article 1. It was the first step. Unfortunately, Article 56
was never brought into operation and renounced a real letter, although it was carried on being a very useful starting point for penal actions against aggressors and gave a starting point for the development of
a general international criminal law.

4. The constitutional crimes of the victors have revealed the
weaknesses and insufficiencies of formal constructions of international
crime, and the necessity to seek for a conception in accordance with
the real nature of this criminal behavior. The author admits that
international crime is a complicated and familiar phenomenon, distant
from offenses under the national criminal law. He regrets the following
features as characteristic of an international crime.

a) It is an attack on the existence and functioning of international

   community.

   i) The fundamental principle of national criminal law "maliens
   armed and calls armed men armed" cannot be strictly applied to
   international crime as "maliens armed and calls armed" their population.
   In the sphere of international law there is no such "call" because there is
   no legislative body and international law does not provide penalties
   for individuals.

   e) But the principle of "general and overall responsibility
   for violation of international agreements was clearly expressed in
   the Hague Regulations (Article 36), in the Geneva Convention (Article 99),
   and essentially in Article 3 of the Hague Convention 1929
   according to which violation of the Convention by an attack against a
   merchant ship would be regarded as a "war crime" and punished by the
   Court of the High Court as done under the perpetrator.
   The author even sees the recognition of this principle in the Nuremberg
treaties in the provisions relating to the Nuremberg.

3) Finally, international crime, in the first place "violation of
   law and customs of war", are punishable by the penal codes of
   individual States.

Thus, the United Nations have, if not formally perfect, at least
a completely sufficient legal basis for the definition of an international
crime as a "fundamental attack on the foundations of the international
community" (p.59).

III. Classification of International Crimes

1) To say that international crime is an "attack on the
   foundations of the international community", would be to give a
   concrete definition of international crime, but this general action
   manifests itself in many species of international crime.

2) The fundamental condition for the existence of the international
   community is adherence to general principles between the nations.
   War disrupts these relations and carries the very foundation of
   international life. Thus peace is the most valuable thing in
   international life. The first and most dangerous category of
   international crimes are crimes against peace. The first crimes of this
category is aggression. Penal expression of aggression should not be
limited to this direct and most dangerous crime, but should be extended to aggression for aggression. There are four main species of such preparatory actions:

1. Aggression for aggression, with the purpose of preparing for aggression,
2. Violation of peace agreements, treaties, and agreements.
3. Aggression in the form of aggression which makes aggression, articles, plans, and agreements as well. An example is the assignment of the United Nations to supervise a cease-fire agreement.
4. Aggression in the form of aggression which makes aggression, it is for this reason that this assignment causes the number of the league of nations to conclude the conventions against aggression (1927) which, of course, deal only with the purposes of international crime.
5. As long as it is impossible to prevent war, it is necessary to establish a "legal frame of war", in order to limit the horrors of war to a minimum, to protect prisoners, wounded and sick officers, and the whole civilian population. Attitudes in this climate of humanity and civilization, the "violations of laws and customs of war", are the second great category of international crime.

In conclusion, the author establishes the following classifications of international crime, (1938):

I. First group—Attacks on normal relations between nations,

1. Aggressive acts
2. Aggression for aggression
3. Conclusion of agreements for the purpose of aggression
4. Violation of agreements for the purpose of aggression
5. Preparation for the purpose of disturbance, powerful relations between States
6. Terrorism
7. Submission of armed force (fifth column)

II. Second group—Crimes associated with the conduct of war

1. Crimes against prisoners of war, wounded and sick officers
2. Crimes against the life, health, honor and property of peaceful inhabitants
3. Destruction of towns and villages
4. Destruction or robbery of material or cultural values.

This classification, the author states, cannot be considered as exhaustive.

IV. Crimes of the authorities against peace

1. The author enumerates the acts of the German authorities and the commanders of the German armies and the actions of the great mass of
German criminals are the ones of its classification. Thus, he examines five types of crimes against peace, he begins with a short analysis of Hitler's famous book "Mein Kampf", and he demonstrates with the help of this book the criminal activities of the Hitlerites which they accomplished by invasion and occupation of foreign territories according to a previously well-established plan and program.

2) The author further describes the preparation for these original German aggressions: a regime of terror in Germany, mobilization of the entire German industry, propaganda for aggression, incitement of internal troubles in the countries to be invaded, and in the end - in order to deceive those countries and the peoples within - recognition of older and even conclusion of new pacts and agreements in favor of peace (Machtergreifung Party, non-aggression or friendship Pacts).

V.
Crimes of the Hitlerites connected with the conduct of War.

1) The system of State brutality which characterized Hitlerite Germany manifests itself in peace-time in internal terrorizing, in preparation for war, and in systematic provocation of armed conflict.

Having achieved its purpose by launching aggressive and total war, Germany directed its system of State brutality and its criminal machinery against the life and independence of free peoples against culture and civilization and against material possessions of foreign peoples. Germany is using criminal methods and means in conducting the present war.

2) The author divides the crimes considered into four main groups:

a) Crimes against prisoners of war, wounded and sick soldiers,

b) Crimes against the civilian population,

1. a) torture and violence
2. b) establishment of a regime of slavery and deportation into "society",
3. c) robbery,
4. d) destruction of homes and other inhabited places,
5. e) plunder and destruction of cultural values.

The author proves that Germany, by violating the "laws and customs of war", especially the Hague Regulations and the Geneva Conventions, is violating at the same time one of the principal provisions. He quotes as an example the German Law issued by the Hitlerite Government in August 1938 relating to the International and Jurisdiction of military courts in time of war. This law contains in Section 6, para. 72, a direct reference to the Geneva Convention of 1929, repeals the main provisions of this Convention and does away with the necessity of observing them. Not in contradiction with and violation of this law the Hitlerite Government ordered crimes to be committed against prisoners of war, wounded and sick soldiers. The author gives an impressive number of such criminal crimes issued by the German Government, the German High Command, or the commanders of various units of the German army. One thing is in order before we finish this report on the crimes against the civilians and their property of indiscriminate and uncontrolled violence and destruction of property of unknown individuals.
The author deals with the crimes committed against the civilian population and process, by getting government assurance, the planned and intentional character of these crimes and gives some outstanding examples of them. Finally, the author gives the German laws of Nazi Germany, which are still in force in Germany, which after committing some violations of the law and customs of war, and other crimes are contrary to the Fundamental concept of international law. The laws of Justice justify in all cases and the crime of arbitrary living in the world of all civilized nations have breached them as crimes against the legal conscience of mankind. To those who have clearly violated the laws of honour and justice there cannot be return be granted equal rights (p.92)

VI.

To show is responsibility for international crimes to be attributed to the authorities for such crimes.

1) The author deals with the question whether the whole German nation or some sections of it, or alternatively, only the Nazi regime, should be held responsible for the crimes which the German has committed.

2) He explains the complicated character of a crime which is committed in behalf of a State by the state machinery. The problem of responsibility for such a crime is a difficult one. The question arises, "who can be held guilty responsible?" The author mentions some reports of criminal law who hold that even a corporation, for instance a State, can be legally responsible for its acts. He refers to the well-known theory of "corporate liability," and especially to the theory of Professor Palka on the collective guilt and penal responsibility of States. The author rejects this theory. Penal responsibility presupposes a guilty mind (intention or negligence), only an individual is capable of having a guilty mind. A State cannot have a guilty mind. A State cannot be put on trial before a Court for a crime. A State cannot be punished by imprisonment or execution. Consequently it is only politically and materially that a State can be made to answer for its acts. It may, for example, be made to do so politically by being shamed and materially by being forced to pay damages. But to treat it as responsible in criminal law is, in the author's opinion, impossible.

3) This does not mean, of course, that the acts committed in the name and on behalf of the State and with the help of the state machinery, i.e., acts which could be regarded as single crimes or acts of State默认, have no penal consequences. The author states the principle laid down by the Sales Peac Code of 1927 (Article 23) according to which an act on behalf and in the name of a corporation is, jointly and primarily, responsible for those acts of the corporation which amount to crimes, (p.73). The author also states that if the acts of a State are legally and penal responsible (presumably for them), in other cases, crimes committed by a State through the State machinery are strictly those of the person who governs the State, of its political and military leaders, and of the individuals who carry out crimes to commit such crimes. Both groups are fully responsible under criminal law.

The author rejects the attempt made by the German expert Stapp to accept representatives of State from penal liability and demonstrates the absurdity of such a theory (p.73). He emphasizes that attribution of penal responsibility to persons acting on behalf of a corporation has been accepted by Soviet criminal law and practice. It is now shown to what extent responsibility for international crimes is attributable, via:
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b) the State bears the political and material responsibility.

c) the person or persons who act on behalf of the State bear in addition a personal moral responsibility. This is the normal situation. The act must be executed on a position which would be assigned to various groups of the criminal criminals.

VII.
The different classes of German criminals.
The author puts the question: "What group, what one, should be regarded as insurgents, organizers, helpers and perpetrators of serious crimes and bear the personal responsibility for these?" (p. 79).

It is a question of "the possible parties to a crime".

This question, the author stresses, is a difficult one in the sphere of national criminal law, and is far more difficult in the sphere of international crimes.

The main figure in the perpetration, says the author.

In the sphere of national criminal law this is the man who "directly accomplishes the criminal act, who pactizes, steals, rapes" (p. 80), but the perpetrators of international crimes do not accomplish the "black work" themselves.

The peculiarity of their role and the danger of their activity consisted in the fact that they used a complicated machinery for the purpose of their crime.

So here, in such cases, is the opinion of the author, the group of perpetrators, who are responsible as parties to the first category, the main perpetrator - "the man who deepens the crime", he uses Rong's words - and the man who accomplishes the criminal act, both are perpetrators. But while the main perpetrator consists of international crime by violating, for instance, the Geneva Convention of 1929, the other perpetrator consists of armed crime by violating a provision of the national criminal law (military).

To the group of the master criminals, both from the point of view of national and of international criminal law, belong the first phase figures and the members of the German concentration.

This is the most dangerous and formidable group of international criminals. They play the central role in perpetrating, organizing, and accomplishing the greatest catastrophe in the history of mankind. Consequently Hitler and his Ministers must bear responsibility as the main, the central group of international criminals.

With this first group are indistinguishably connected the leaders of the Nazi party.

The law of December 16, 1933, the purpose of which was "to secure the unity of Party and State" established such a close union between the democratic state and the Nazi party that the Nazi leaders and officials were in the same time Party leaders and officials by virtue of their party function, and were not only members of the Party but also "leaders of officials" and officials from the unity of Party and State. The Party "leaders" and bear a common moral responsibility for the serious crimes with the State "leaders". In this sense the "leaders" are also leaders.
In the case position, so far an original responsibility is concerned, see the provisions of the German law who organized the criminal activity of that fascist group. Thus, the first class of German criminals is added by the author to be I.

Hitler and his admirers, the leaders of the Nazi party, German military command, the commanders of the German government who directly carried out a policy of their ministry, consisting of planned and systematic accomplishment of international criminal peril of good or evil, terror, violation of international obligations, violation of the laws and customs of war, organization of military hostility.

But this leading class of German criminals has the "criminal basis" in a very close of industrial and financial "Pharaohs".

Their political position is clear, they form the second group of the fascist government machinery, but still in their position from the point of view of criminal law.

The author studies this question on the basis of the Soviet criminalistic theory about hostility.

It seems to the conclusion that this group is collectively responsible with the first group, as their acts and activities. For all the crimes committed by this leading class of criminals, all these individuals are collectively responsible for all the crimes committed by the criminal group as a whole.

Finally, all the men who individually and not generally accomplished the crimes, the great bulk of the actual perpetrators who did the "black work", must bear their personal penal responsibility for their criminal acts.

In conclusion the author sums up the classes of German criminals who should be punished:

1) Hitler and his admirers, the leaders of the Nazi party, the commanders of the German army. These are organizers and perpetrators of the crimes.

2) The leaders of the industrial and financial concern. These are organizers and "admirers and admirers".

Members of both groups are partly personally responsible for the growth efforts in the foundation of the international criminality of some morality. They are at the same time the main protectors of a group of international criminals but also organizers of innumerable masses (criminal) criminals.

3) The actual individual offenders, these latter, if they have already been captured, cannot plead that a prisoner of war cannot be tried and judged against themselves by the law of superior courts. Both pleas were rejected by the Nuremberg trial.

VIII.

Jurisdiction in respect of the above-mentioned groups.

The author deals with the problem of the relations between national and international jurisdiction.
In general, the territorial principle could be regarded as a sufficient basis for jurisdiction. This principle was recognized as a legal basis of the jurisdiction in the decision of the Supreme Court of the U.S.S.R. of December 15th, 1945. It was also expressly recognized in the Moscow Declaration of December 23rd, 1945. But the author admits that it is not sufficient so far as the following groups of crimes are concerned:

a) Crimes committed on the territory of Germany and her allies against the citizens of the Allied nations. In this case instead of the territorial jurisdiction, the principle of the so-called "real jurisdiction" must be brought into operation. The courts of States against whose citizens and interests crimes were committed on German territory are entitled to try such crimes.

b) Crimes committed by Hitler and his clique. The author refers to the Moscow Declaration and stresses the particular importance of organizing a Court (obviously he has in mind an inter-allied Court) for the trial of Hitler and his clique. But he adds that the guilt of Hitler and his clique is so obvious that a judicial procedure could be regarded as superfluous. The author then admits the possibility of a political verdict pronounced by the Governments of the victorious Allied Nations.

II.

Conclusion of the United Nations in the struggle against international crimes.

After the defeat of Germany, the United Nations will have to:

a) to organize tribunals for the punishment of the Hitlerites,
b) to establish penal laws as a protection against a revival of Hitlerism in any form.

The author suggests that the United Nations should conclude a convention defining international crimes, fixing the penalties and establishing the Court which is to punish them. This Convention should be a part of the future system of international security and contains the measures necessary for the struggle against Hitlerite crimes. The most important measures to be taken are the apprehension and extradition of the Hitlerite criminals. In this connection the author suggests the establishment of an agency entrusted with the prosecution of the criminals, especially on German territory. Finally, he deals with the problem of the execution of the sentences.

I am up to my personal opinion on Professor Trautlin's booklet:

In spite of some defects which are only natural in view of the gigantic and in some respect unprecedented nature of the subject, Professor Trautlin's booklet is one of the most critical and provocative contributions to the problem which is called "punishment of war criminals". He treats the problem in true character as the problem of penal responsibility for crimes against peace and crimes against the laws and customs of war. Both classes of crimes are closely connected with one another. The second is the continuation of the first. Both are "war crimes" in a popular sense, and both are parts of the same criminal system, acting against mankind, as such they must be studied, understood, prosecuted, tried and punished.