Professor Trankle is a member of the Russian 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 21st, 1944. His book appeared in July 1944 and expresses not only Professor Trankle'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" stricto sensu (violation of laws and practices of war), but deals with the legal responsibility of the Ghitlers for all their crimes, in the first place for their crimes against humanity. He stresses the state of criminal law, both national and international, in the expression and prevention of German criminality.

In my paper on Soviet Penal Law which was circulated among the members of our Commission, I explained the general principles of the criminal law of the Soviet Union. It is based on the fundamental principle that the criminal legislation must be applied with the same measure and severity against all persons by reason of rank or position, whether they be the leaders or the officials of the Nazi state or the ordinary criminals. The law recognizes no exceptions to the rule of equal punishment for equal offenses. The criminal legislation of the Soviet Union, in this respect, is identical with the criminal legislation of the Soviet Union. The main principles of the Soviet Penal Law are the same as those of any other international law.

I. The present war and the principles of criminal responsibility in the system of international law.

1) In the first chapter, Professor Trankle first of all characterizes the present war as conducted by the CNTP (Comintern) against the United States and the Union of Soviet Socialist Republics. The author emphasizes that the war is not a war of aggression, but a war of self-defense, to protect Soviet peace as well as world peace. The author stresses the importance of international law in the present war.

2) The author points out that the new relations between the nations must be organized on such a basis that aggressors will not only be punished, but also prevented from committing similar crimes in the future. The author stresses the need for international law to be applied in dealing with international crimes.

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The author concludes that the present war is a war of self-defense, and that the laws of international law must be applied in dealing with international crimes.
The author then quotes some declarations of other Allied states at the same goal, the Judicial penalties of the Hitlerites — especially Roosevelt's of August 1942 and Churchill's of September 1942, which both stress the punishment of Hitlerites by tribunals.

The crimes of the Hitlerites are genuine international crimes, they are not criminal or common law crimes. The author proceeds to the important role of national criminal law against this kind of crime. International Criminal Law is not to present 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 Hitlerites.

These consist of:

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

II.

The conception of International Crime.

1) In the second chapter the author describes some attempts by experts in International Criminal Law to define international crimes. He mentioned the definitions and doctrines of Helle, Goldring, and others.

2) Some other experts regard as the source of International Criminal Law various international conventions concluded for cooperation in the struggle against certain dangerous types of crimes, such as trading in opium and other drugs, trading in arms and children, and so on. The author does not regard the crimes mentioned in these conventions as belonging to the sphere of genuine international crimes. They are ordinary crimes falling under the criminal law of the signatory states. Their international character consists only in the fact that their execution 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 some authors dealing with Article 38 of the Covenant. The author quotes some of them. Professor Weis, for instance, says that the inactivity of war in violation of Article 15 of the Covenant must be regarded as a crime. Mr. C. H. Neumann of University of Munich, with a number of others says that Article 15 is the legal code of the League of Nations. In the opinion of Professor Weis, these crimes are considered

4) The author then goes on to describe the guilt of the Hitlerites, the methods of punishment, and the international tribunals.

5) The author concludes that the crimes of the Hitlerites are genuine international crimes and that International Criminal Law is a sufficient legal basis for their punishment.
trying to define international crime as aggression in violation of the concept of international criminal law as the subject of Article 56
in Article 10. It was the first case. Unfortunately, Article 56
was never brought into operation and remained a dead letter, although
it was capable of being a very useful starting point for penal actions
against aggressions and gave a starting point for the development of
a genuine international criminal law.

4) The notorious crimes of the dictators have revealed the
weaknesses and inconsistencies of formal constructions of international
law and the necessity to seek for a conception in accordance with
the real justice of this criminal behavior. The author admits that
international crime is a complex and peculiar phenomenon, distant
from offenders under the national criminal law. He regards the following
features as characteristics of an international crime.

a) It is an attack on the existence and foundations of international
community.

3) The fundamental principle of national criminal law "nullus
actus reus nisi reus majus" cannot be directly applied to
international crime as "nullius actus quis iniuria" of their paradigm.
In the sphere of international law there is "nusqua nisi actus officiis
causa" because there is no legislative body and international law does not provide penalties
for individuals.

b) Not the principle of personal and general responsibility
for violation of international agreements was clearly expressed in
the Hague Regulations (Article 56), in the Geneva Convention (Article 29),
and especially in Article 3 of the Nanking Convention 1937,
according to which violation of the Convention by an attack against a
neutral city would be regarded as a "war crime" and punished by the
Courts of the signatory states in the same words than the perpetrators.
The author even sees the recognition of this principle in the Versailles
treaties in the provisions relating to the Eternal

3) Finally, international crimes, in the first place "violations
of laws and customs of war", are punishable by the penal codes of
individual States.

Thus, the United Nations here, if not formally perfected, at least
a completely sufficient legal basis for the definition of an international
crime as a "punishable attack on the foundations of the international
community" (p.30).

II.
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 notion
includes itself in any species of international crime.

2) The fundamental condition for the existence of the international
community is maintenance of peaceful conditions between the nations.
War disrupts these relations and destroys the very foundation of
international life. Thus peace is the most valuable title to
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 preparation for aggression. There are four main species of such preparation acts:

a) preparation for aggression with the purpose of preparing for aggression,

b) violations of peace agreements securing the peace of peace,

c) preparing of international conflicts,

d) preparation in form of aggression which uses speeches, articles, films and agreements acts as well. An example was the announcement of the Minister of Foreign Affairs, Nett of Norway. Aggression is one of the most dangerous international crimes which serves to prepare for a criminal war.

It is for this reason that this announcement caused the justices of the League of Nations to conclude the conventions against terrorism, (1927) which, of course, deal only with the species of international crime.

3) As long as it is impossible to prevent war, it is necessary to establish a "legal regime of war", in order to limit the horrors of war to a minimum, to protect prisoners, wounded and sick soldiers and the peaceful civilian population. Attacks on this shelter 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 crimes. (1940)

I. First group. (Attacks on essential relations between nations)

1) aggressive acts,
2) agreements for aggression,
3) conclusion of agreements for the purpose of aggression,
4) violations of agreements securing the peace of peace,
5) preparation for the purpose of disturbance peace relations between States,
6) terrorism,
7) offenses of great scope (fifth category).

II. Second group. Crimes connected with the conduct of war.

1) crimes against prisoners of war, wounded and sick soldiers,
2) crimes against the life, health, honor and property of peaceful inhabitants,
3) destruction of homes and villages,
4) destruction or robbery of material or cultural values.

In this classification, the author underlines, cannot be considered as exhaustive.

IV. Crimes of the authorities against peace.

1) The author enumerates the acts of the German Government and the commanders of the German armies and the crimes of the great mass of
German atrocities on the scene of its classification. Thus, he examines first those 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 intentions 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 régime of terror in Germany, rearmament, militarization of the whole German industry, propaganda for aggression, instigation of internal troubles in the countries to be invaded, and at the same time, in order to deceive these countries and the general public - recognition of older and even conclusion of new pacts and agreements in favor of peace (Schulendshiding Pact, Anti-aggression or Friendship Pacts).

V.

Crimes of the Hitlerites connected with the conduct of War.

1. The system of State terrorism which characterizes Hitlerite Germany manifests itself in peace-time in internal terrorisms, in preparation for war, and in systematic provocation of armed conflict.

During the conduct of its purpose by launching aggressive and total war, Germany directed its system of State terrorism and its criminal machinery against the life and independence of free peoples against culture and civilisation 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.
   a) murder and violence
   b) establishment of a régime of slavery and deportation into "labor camp".
c) plunder.
c) destruction of homes and other inhabited places.
d) plunder and destruction of cultural values.

The author proves that Germany, by violating the "law and customs of war", especially the Hague Regulations and the Geneva Conventions, is violating at the same time one of the main legal principles. He quotes as an example the German law issued by the Hitlerite government in August, 1938 relating to the administration of military courts in time of war. This law contains in Section 3, para. 10-12, a direct reference to the Geneva Convention of 1929, which the main provisions of this Convention and transferred the necessity of observing them. Yet in co-ordination with this violation of this law the Hitlerite government criminal acts against prisoners of war, wounded and sick soldiers. The author quotes an impressive number of such criminal acts issued by the German Government, the German High Command, or the commanders of various units of the German army. Thus in an order issued in behalf of Hitler by the German High Command on January 14th, 1944, forbidding expressly any form of humiliating treatment of prisoners of war.
VI.

To whom is responsibility for international crimes to be attributed? Responsibility of 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 Germans have committed.

2) He explains the complicated character of a crime which is committed on 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?". The author mentions some reports in criminal law who hold that even a corporation, for instance a State, can be guilty for its acts. He refers to the well-known theory of "corporate liability", and especially to the theory of Professor Jellinek in the collective guilt and personal responsibility of States. The author rejects this theory. Personal 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 denounced as materially by being forced to pay damages. But to treat it as responsible in criminal law is, in the author's opinion, inexpedient.

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 state crimes or acts of State authority, have no penal consequences. The author got the principle laid down by the Sudan Penal Code of 1917 (Article 277) according to which an act is an act of the corporation or guilty and personally responsible for those acts of the corporation which amount to crimes (p.75). But those crimes in behalf and in the name of the State are usually and properly responsible for them. In other words, crimes committed by a State through the State machinery are really crimes of the men who govern the State, of the political and military leaders, and of the individuals who carry out orders to commit such crimes. Both groups are fully responsible under criminal law.

The author rejects the attempts made by the German expert Strang, to exempt representatives of State from penal liability and demonstrates the absurdity of such a theory (p.77). He emphasizes that attribution of penal responsibility to persons acting on behalf of a corporation has been accepted by English criminal law and practice. It is thus shown to whom certain responsibility for international crimes is attributable, viz:
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b) the State bears the political and moral responsibility.

c) the man who acts on behalf of the State bears in addition a personal moral responsibility. This is the personal responsibility. The fine must be calculated and the position of the defendant shall be assigned to various governments of the United Nations.

VII.

The different classes of German criminals.

The author puts the question: "What group, what one, should be regarded as invaders, organizers, helpers and perpetrators of criminal crimes and who bears the penal responsibility for these?" (p. 76).

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 task is the perpetuation, says the author.

In the sphere of national criminal law this is the man who "literally accomplishes the criminal act, who swears, steals, robs" (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.

In habe in such cases, in the opinion of the author, the group of perpetrators, both responsible as perpetrators in the first sense the main perpetrator - "the man who desertives the sentence", he was Knoop's word - and the man who accomplishes the criminal act, both are perpetrators. But while the main perpetrator commits an international crime by violating, for instance, the Geneva Convention of 1929, the other perpetrator commits the same crime by violating a provision of the national criminal law (misdemeanor).

To the group of the criminal criminals, both from the point of view of national and of international criminal law, being in the first place Hitler and the members of the German government.

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

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

The law of November 14th, 1933, the purpose of which was "to deprive the Party of its office" established such a close union between the German State and the Nazi Party that the Party leaders and officials were in the same time Nazi leaders and officials by virtue of their party office. In other terms they had been elected and are elected from this unity of Party and State. The Party "members" hold here a common penal responsibility of the criminal crimes with the State "members." In this claim the "members" also believe.
In the case position, so far an original responsibility is concerned, see the resolutions of the Soviet army who organized the original nergy of that fascist army. Thus, the first class of German criminals is said by the author to be I.

Hitler and his ministers, the leaders of the Nazi party, German military commanders, the commanders of the German government who directly carried out a policy of their country, consisting of planned andKatarchist accomplishment of international crimes, pernicious aggression, terror, violation of international obligations, violation of the laws and customs of war, organization of military training, etc.

But this leading class of German criminals has the "moral basis" in a vast group of industrial and financial "people".

Their political position is clear, they form the second rank of the Nazi government ministry, but they are in their position from the point of view of criminal law.

The author mentions this question on the basis of the Soviet criminal political theory about morality.

So comes to the conclusion that this group in collectively responsible, with the first group, in other words and beholders, 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 gang as a whole.

Finally, all the men who individually and personally participated in the crimes, in 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 ministers, 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 commerce. These are organizers and "orders and executioners".

Members of both groups are personally personally responsible for the greatest crimes and the planning of the international community of economic policy. They are at the same time not only implementers of a group of international criminals but also organizers of innumerable masses (civilians) crimes.

3) The actual individual offenders, these latter, if they have already been captured, cannot plead th at a presence of the criminal to his trial and acquit themselves by the plea of superior orders. Such pleas were rejected by the Khorsov trial.

VIII.

Jurisdiction in respect of the Nazi criminals.

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 jurisdiction in the decision of the Supreme Court of the U.S.A. of December 12th, 1916. It was also expressly recognized in the Moscow Declaration of November 1st, 1943. But the author admits that it is not sufficient so far as the following groups of crimes are concerned:

1) 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.

2) 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. He adds that the guilt of Hitler and his clique is so obvious that a judicial procedure should be regarded as superfluous. The author then admits the possibility of a political verdict pronounced by the Governments of the victorious Allied Nations.

II.

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

After the defeat of Germany, the United Nations will face two tasks:

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 contain the measures necessary for the struggle against Hitlerite crimes. The most important measure to be taken are the apprehension and extradition of the Hitlerite criminals. In this connection the author suggests the establishment of an agency instructed with the prosecution of the criminals, especially on German territory. Finally, he deals with the problem of the execution of the sentences.

I sum up my personal opinion on Professor Trainin's booklet:

In spite of some defects which are only natural in view of the gigantic and in some respects unprecedented nature of the subject, Professor Trainin's booklet is one of the most creative and progressive contributions to the problem which is called "punishment of war criminals." It 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 clearly connected with 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 conduct, crimes against mankind, in such that must be studied, understood, prosecuted, tried and punished.