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RIDP *libri*

Gert Vermeulen, José Luis de la Cuesta,
John A.E. Vervaele *(Eds.)*

A Century of Criminal Justice, Human Rights and Humanity across Borders

(Centenary Ceremony of the International Association of Penal Law (AIDP/IAPL), Paris, France, 27 June 2024)

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Edited by

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Maklu

Antwerpen | Apeldoorn | Portland
Maklu Publishers
Somersstraat 13/15, 2018 Antwerpen, Belgium, info@maklu.be
Koninginnelaan 96, 7315 EB Apeldoorn, The Netherlands, info@maklu.nl
www.maklu.eu

USA & Canada
International Specialized Book Services
920 NE 58th Ave., Suite 300, Portland, OR 97213-3786, orders@isbs.com, www.isbs.com

AIDP – Association Internationale de Droit Pénal | The International Association of Penal Law is the oldest association of specialists in penal law in the world. Since 1924, it is dedicated to the scientific study of criminal law and covers: (1) criminal policy and codification of penal law, (2) comparative criminal law, (3) international criminal law (incl. specialization in international criminal justice) and (4) human rights in the administration of criminal justice. The Association's website provides further information (http://www.penal.org).

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ISBN 978-90-466-1276-7
D/2024/1997/45
NUR 824
BISAC LAW026000
Theme: LNF, LAR, JKVP, LBBZ

Summary

PREFACE

Gert Vermeulen, José Luis de la Cuesta and John Vervaele[*]

As a successor to the *Union Internationale de Droit Pénal* (UIDP, 1889-1914), the International Association of Penal Law (AIDP/IAPL) was established in 1924, in Paris, France. Symbolically, the Association celebrated its centenary during its XXIst International Congress, held in Paris on 25-28 June 2024, dedicated to artificial intelligence and criminal law.

This book comprises the main proceedings of the centenary celebration event of 27 June 2024, preceded by a forward-looking introduction by the Association's new president, *Katalin Ligeti.*

John Vervaele respectively *Muriel Ubéda-Saillard* provide rich insights into the history of the creation of the Association and its role in serving and promoting international criminal justice, human rights and humanity across countries.

Raimo Lahti, José Luis de la Cuesta, Ulrich Sieber and *Christine Van den Wyngaert* summarize and assess the Association's scientific outputs and impact in the respective spheres of general criminal law, special criminal law, criminal procedure, and international criminal law.

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INTRODUCTION:
THE FUTURE OF THE ASSOCIATION

Katalin Ligeti[*]

The AIDP celebrated its hundred year anniversary at its Congress in Paris on 27 June 2024. The centenary celebration offered an occasion to pay tribute to the rich and impactful history of our Association, to take stock of its present, and look ahead to its future role. The AIDP, together with its sister associations, the International Society of Criminology[1], the International Society for Social Defence[2] and the International Penal and Penitentiary Foundation[3], are the 'societé savante' of the 19th century embedded in the ideas of modernity, penal reform, and resocialisation.[4] Like its sister associations, the AIDP is clearly a values-based association: according to the by-laws of the AIDP, its main objective is to contribute to the development of a humane and efficient criminal justice. To accomplish this objective, the Association fosters scientific exchange in the framework of its various activities, in particular by bringing together eminent scholars, practitioners, and policy-makers devoted to the study of crime and criminal justice at its international colloquia and quinquennial congresses.

The centenary is certainly an exceptional moment to look back at the AIDP's founding personalities, their ideas and achievements, as well as the evolution of the AIDP through a century that was scarred by two world wars and the cold war and underwent numerous societal transformations. At the same time, the centenary also obliges us to complement this retrospective study with a vision what the AIDP of the future could or should be.

Looking to the future may appear audacious. In my introduction I shall turn to the future to explore the relevance and attractiveness of our Association for tomorrow's criminal justice scholars, practitioners, and policy-makers. My examination shall cover all components of the AIDP, including its governance, structure, and organisation, its activities

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[1] International Society for Criminology (*ISC-SIC*) <http://www.isc-sic.org/web/> accessed 2 December 2024.

[2] International Society for Social Defense (*Defense Sociale*) <https://defensesociale.org/en/> accessed 2 December 2024.

[3] International Penal and Penitentiary Foundation (*ippf-fipp*) <https://www.ippf-fipp.org> accessed 2 December 2024.

[4] Since 1963, the four Associations met every five years at a joint colloquium held in Italy. The coordination between the four sister Associations, all of which have a consultative status with the United Nations, was organised by an international coordination committee that was set up for this specific objective. From the 90s onwards, regular collaboration between the four Associations became less frequent. Most recent examples of their collaboration are their joint visit to the Pope in 2014 and support for the declaration for the abolition of the death penalty.

and working methods, and the way of presenting its output and impact. On the one hand, it questions to what extent it will be suitable to tomorrow's realities and challenges what the AIDP is and represents today, as well as the way it operates and engages with both its members and the larger criminal justice community. At the same time, it is also an assessment for potential evolution, change, and enrichment.

One cannot look to the future without understanding the past. Professor John Vervaele's contribution gives a comprehensive account of the Association's history and its founding principles and their implementation.[5] The other contributions in this volume highlight the impact of the AIDP's resolutions on criminal justice reform in national jurisdictions across the globe and on the development of international criminal law. The detailed reflections and historical accounts offered in these other pieces of this anniversary volume allow me to take the present as my starting point. I thus continue the reflections of the other authors of this volume, albeit with a focus on the AIDP's coming decades. I do so by presenting four perspectives for the future.

1 The AIDP's continued appeal as a global community based on shared values

One of the outstanding aspects of the AIDP is that it undeniably remains attractive for many criminal jurists. Our centenary was celebrated by a community of nearly 50 national groups representing almost 800 active members worldwide. The lists of candidates for individual membership and for creating new national groups is the testimony of the continued interest of criminal jurists in the AIDP. One may think that our old and new members are drawn by the prestige of the AIDP's past. I believe that the majority of the new national groups and new members are also confident in what the AIDP can achieve in the future. The fact that each year dozens of promising young colleagues join the AIDP as fresh young penalist members demonstrates that the AIDP's shared mission to promote 'the development of legislation and institutions with a view towards improving a more humane and efficient administration of criminal justice' remains convincing.

As John Vervaele highlights in this volume, the primary way of serving the AIDP's overall objectives is to organise regular scientific meetings where our members gather and exchange on various topics of relevance for criminal justice.[6] In an age of transformative digitalisation where the role of scientific associations in disseminating knowledge is being questioned, the continued interest of our members in the AIDP is very encouraging. It clearly shows that the AIDP is a forum where criminal justice scholars, practitioners, and policy-makers share an interest in the Association's collective goal.

The events of our Association not only allow participants to better understand the research dynamics in a given field of criminal justice and to identify emerging research

[5] See in this volume: John Vervaele, 'The AIDP: 100 Years of Serving Criminal Justice, Human Rights and Humanity' 21-44.
[6] Ibid 40: section 5 'The Future of the Association Internationale de Droit Pénal'.

areas; these events also often provide a sense of belonging both professionally and personally. This is where the AIDP retained its strong advantage from its conception a hundred years ago, of always having been a community of like-minded people and, indeed, friends. As both honorary vice presidents Reynald Ottenhof and Helmut Epp emphasised at the centenary celebration gala dinner, it is the spirit of mutual respect that has always characterised the relationships of our members and the friendships that exist between so many of us in the Association. As our late president Pierre Bouzat said so eloquently, the AIDP is defined by the trinity of *l'amabilité, l'amitié, et la courtoisie*.[7] Professor Bassiouni added *la convivialité*—and on the occasion of our centenary celebration we added a fifth virtue, *la generosité*. These are essential virtues of the AIDP as a community demonstrating that our Association means much more to its members than simply a scientific meeting or the source of a publication. These virtues build a strong community that will allow the AIDP to make a difference in the 21st century.

These virtues are of heightened importance in a world where armed conflicts and violation of international human rights and humanitarian law are still present. Our societies are not only confronted with the complex challenges of climate change, global inequality, and digital transformation, but, as John Vervaele evokes in his contribution, are also facing threats to core values such as democracy, the rule of law, and human rights.[8] Decades of work by the AIDP have been devoted to promoting international criminal law as well as the protection of international human rights in the criminal justice systems.[9] This work is still very relevant, and our Association must continue its efforts to uphold these values and pursue these objectives.

It is not by accident that our Association would dedicate its next scientific cycle to 'core values of criminal justice'.[10] In a fast-changing world that seems to drift away from multilateralism and in the wake of major conflicts and a challenging geopolitical situation, it is important that the Association upholds the values of a humane criminal justice. I therefore see it as important to provide a regular platform for scientific exchange in the context of these core values in the different regions of the world.

The presence of the AIDP has traditionally been strongest in Europe; we have also managed to build a good and regular presence in Latin America and large part of Asia. The AIDP has been traditionally weak in the common-law countries and has not really established a presence in North America. Neither is our Association present in the Arab world or in Africa. I see it as crucial to change this if we are to ensure that the AIDP can serve

[7] Mahmoud Cherif Bassiouni, 'A Glimpse at the Association's History and Some of the Contributions of its Members' (2015) 86 Revue internationale de droit pénal 817, 824.

[8] Vervaele (n 5) 40: section 5 'The Future of the Association Internationale de Droit Pénal'.

[9] Mahmoud Cherif Bassiouni, 'A Glimpse at the Association's History and Some of the Contributions of its Members' (n 8) and Christine Van den Wyngaert, 'International Criminal Law' in Gert Vermeulen, José Luis de la Cuesta and John Vervaele (eds), *A Century of Criminal Justice, Human Rights and Humanity across Borders* (RIDP Libri 7, Maklu 2024) 119-126.

[10] Reference of the concept paper of André Klip, 'AIDP-IAPL XXIIth International Congress of Penal Law. Existential Values of and for Criminal Justice Systems' (forthcoming).

an important forum of dialogue and scientific exchange beyond Europe. Therefore, covering the Americas, the Arabic world, India, and Africa are paramount.

2 The activities of the AIDP: reinforcing scientific inclusion through multidisciplinary perspectives

The AIDP seeks to accomplish its objectives through its scientific activities and policy work. Traditionally, the activities of the AIDP consisted of general congresses which have taken place every five years since 1924, when the first general congress was held, with the exception of the Second World War.[11] Each AIDP congress is preceded by four preparatory colloquia devoted to studying a specific theme from the angle of the general part of criminal law (section 1), the special part of criminal law (section 2), criminal procedure and the administration of criminal justice (section 3), and international criminal law (section 4).[12]

With regard to the way in which our congresses are organised, congress topics are selected by the Board of Directors at a meeting taking place on the occasion of the AIDP congress. The Board of Directors also appoints a general rapporteur for each section, taking into account geographical and gender diversity as well as the representation of different legal systems and traditions. It is the task of the general rapporteur to draft a questionnaire which is answered by national rapporteurs designated by the AIDP's national groups. A general report and resolutions are then drafted by the general rapporteur based on the national reports. The draft general report and resolutions are debated at the preparatory colloquium of the respective section with the participation of the national rapporteurs. The preparatory colloquium's objective is to adopt the final version of the draft general report and the draft resolutions which are then submitted for further debate and adoption to the congress.

In 2014, in the framework of preparing for the XXth Congress of the AIDP, the Association launched a process examining the adequacy of the above-sketched dichotomy of preparatory colloquia and general congresses. In particular, it was voiced that preparatory colloquia give little visibility to the work of the AIDP because of the closed deliberations that were limited to the national rapporteurs. This led to the initiative of upgrading the former preparatory colloquia into international colloquia open to anyone. The aim of the newly conceived international colloquia is to adopt the final general report and resolutions on a given topic. This new format of international colloquia has had an imminent impact on the format of the congress as well, which no longer (re-)discusses the general reports and draft resolutions of the four sections but is now more open to simply presenting the results of the five-year scientific cycle as well as to other topical presentations.

[11] Vervaele (n 5) 28: section 3 'The Association Internationale de Droit Pénal in the interbellum period (1924-1940)'.

[12] See in this volume: José Luis de la Cuesta, 'Special Criminal Law: Main guidelines of the AIDP resolutions on the special part of criminal law' 75-104.

This reform not only made participation at the international colloquia and the general congress more attractive, but also allowed for a more timely presentation of the scientific outcomes of the Association's activities. At the same time, the international colloquia offer the forum for interactivity and spark debate where scientific arguments are exchanged and improved by all interested members of the scientific community, practice and policy making. Replacing the traditional preparatory colloquia by the more open format of the international colloquia reinforced inclusiveness ensuring that this methodology remains useful and relevant for the future work of the AIDP.

The new format of international colloquia and general congress keeps the traditional comparative methodology. This is, however, no longer confined to the study of national legal systems only but should also consider other perspectives of the international and European legal orders in the format of special reports. Complementing national reports with special reports allows the subject matter of the international colloquia to be studied from both a national and a regional and/or international perspective. It enriches our debates and the general reports.

The XXth and XXIth congresses of the AIDP followed this new format and these can be clearly considered a success. Nevertheless, the digital transformation of our societies forces us to ask whether such activities are still the most effective way of experiencing and practising criminal law in our digitalised world of today, in which we easily connect within seconds. In my opinion, the answer is clear: Yes, in fact, they are. E-books and the massive offer of e-journals of all types have not been able to kill traditional on-paper publications. Online means of communication will not totally replace—at least for a while—meetings in which every attendant can interact directly with each other. The post-pandemic period clearly shows that in-person scientific events are still much sought-after and are often preferred to online formats. Remarkably, the AIDP decided not to organise any of its international colloquia during the pandemic online. Instead, the Association decided to wait until in-person events were possible again and hold all international colloquia related to the XXIth congress in person. Also, our centenary congress was an in-person event only. It is true that in-person encounters allow for much more direct exchange and creativity than online formats and there is also more *convivialité* when we meet. Nevertheless, for promoting inclusion, especially of younger jurists, online formats are very much needed. The avenue to follow therefore seems to be a quest for the optimal combination of means to assemble all the members of the AIDP.

Besides planning more digital events, the comparative method could be also expanded to consider non-legal factors and include aspects of other disciplines beyond the strict legal field in the comparison. In the age of interdisciplinary approaches, the AIDP should also set up a working group to study how interdisciplinary approaches could enhance the quality and impact of the work of our Association.

3 The scientific method of the AIDP: strengthening policy impact

As pointed out above, the AIDP uses the traditional comparative law methodology in the sense of functional legal comparison. Legal systems across the globe often face the same challenges and the value of functional legal comparison is to show how the different methods and approaches adopted to meet those challenges help us to better understand the problems and to learn from approaches adopted elsewhere in the world. However, the work and the methods of the AIDP do not stop at simple comparison. By working on resolutions, the explicit aim of the AIDP is to contribute to improving the law by criminal law reform.

Policy work is therefore an integral part of our Association. Members of the AIDP want to contribute to the development of a more humane and efficient criminal justice. As a *societé savante*, our Association has a special role to play, distinct from NGOs, local practitioners' associations, or activist groups with broad public memberships. Our resolutions are based on independent scientific work backed by all our members.

Our resolutions are directed to national, regional, and international law-makers.[13] Accordingly, the AIDP has participatory status as an independent NGO in the Council of Europe as well as in the United Nations' ECOSOC. Christine Van den Wyngaert's contribution in this volume argues that the AIDP's influence has been 'most strikingly visible' in the development of international criminal law and the establishment of the International Criminal Court (ICC).[14] The personality, exceptional diplomatic knowledge, and persuasive authority of our former president, Cherif Bassiouni, undeniably had a central role in this success.

It is, however, also true that since the establishment of the ICC in 1998, the AIDP's international policy impact has not been the same. In our Association this generated reflection on how we can improve the relevance of the AIDP's work in the reform and the application of criminal law, how we can better channel our resolutions to policy-makers. In an era where universities and research institutions are being increasingly asked to demonstrate the impact of their science, it also becomes increasingly important for the AIDP to engage with policy-makers and practitioners. The AIDP's membership has always included criminal justice practitioners, civil servants of ministries, and collaborators in regional and international organisations. Their interest in the work of the AIDP remains crucial for reinforcing the AIDP's policy impact in the future. As Raimo Lahti highlights in relation to the codification of Finnish criminal law:

[13] See in this volume: Raimo Lahti, 'General Criminal Law. The AIDP's Resolutions on the General Part of Criminal Law from 1926 to 2024' 61-73.
[14] Van den Wyngaert (n 9).

> the resolutions of the AIDP can be utilized when formulating criminal justice policy and codifying criminal law at national level and reforming criminal policy and criminal codes at regional and/or global levels.[15]

At the same time, I believe that we need to do more than just rely on our members.

Creating impact requires more planning and broader engagement by colleagues. The AIDP needs to translate its somewhat more technical legal resolutions into shorter and focused policy recommendations so that our central recommendations are taken up by national, regional, and global policy-makers. Our Association has done this in the past in cooperation with its sister associations:

> [t]he Four Major Associations have met every five years in a joint colloquium in Italy, organized and hosted by Centro Nazionale di Prevenzione e di Difesa Sociale, Milano, to discuss and examine, from their different perspectives, one of the topics of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders (held every five years). The proceedings of these colloquia are published and distributed at the UN Congress as the scientific contribution of The Four Major Associations in the field of criminal justice.[16]

Furthermore, in the past many of the board members of these associations were also members or board members of the AIDP, creating strong institutional ties between the four associations. This legacy continues today; for instance, the president of the International Society of Criminology, Luis Arroyo Zapatero, is honorary vice president of our Association. Stefano Manacorda sits on the boards of both the International Society of Criminology and the AIDP. I am both president of the AIDP and a member of the International Penal and Penitentiary Association's board. These are among many examples of eminent colleagues being active in several of the four associations. Despite these existing ties and our joint legacy, however, collaboration between the four scientific associations has fallen off in recent years. Preparing for the upcoming United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which will take place in Abu Dhabi in 2026, provides an opportunity to revive collaboration with our sister associations and reflect together on the best way to mutually enhance our contribution and impact.

To ensure that our resolutions can be easily channelled and taken up by regional and international organisations, additional work has to be done. One suggestion in our Association has been to appoint, in addition to national and general rapporteurs, specific policy rapporteurs. Their task would be to follow the policy work of the Council of Europe, the European Commission, and the United Nations in AIDP congress topics. This would allow them to elaborate AIDP policy recommendations for diffusion to these regional and international bodies. At the upcoming international colloquia which will be

[15] Lahti (n 13).

[16] Mahmoud Cherif Bassiouni, 'AIDP: Over a Century of Dedication to Criminal Justice and Human Rights' (2015) 86 Revue internationale de droit penal 1095, 1109.

organised on the scientific cycle 2024–2029, the AIDP will appoint such policy rapporteurs for the first time. Their contribution as well as the reinforced collaboration with our sister associations should jointly lead to improving the relevance of the AIDP's work for policy-making.

4 The AIDP and future generations of criminal justice scholars and practitioners

To increase the participation of early-career scholars and practitioners in criminal justice, at the XVIth Congress in Budapest in 1999, the AIDP established the Young Penalist Committee. The Young Penalist Committee is elected by AIDP members younger than the age of 35 years. Its members represent different legal traditions, geographical regions, and genders and participate in all organs of our Association. The main role of the Young Penalist Committee is to plan and organise its own activities dedicated to the young generation. Subject to the approval of the Scientific Committee of the AIDP, the Young Penalist Committee can freely decide on the themes and format of such scientific activities.

It is without any doubt that the past decades demonstrate the great success of subsequent Young Penalist Committees, each organising several conferences with respective resulting publications.[17] This remarkable achievement is a testament to the AIDP's increased importance for future generations in a rapidly changing world filled with uncertainty and misinformation. Here, our Association provides not only a sense of community but benefits young penalists by offering a professional network and recognition. Collegiality, networking, and recognition are important components of professional success. The events organised by the Young Penalist Committee create a place for these interactions which are personal and thus more gratifying than, for instance, publishing a paper.

Keeping up the AIDP's appeal for young penalists will be critical in the future. A new Young Penalist Committee was elected on occasion of the centenary congress and it has already organised its first international conference in a hybrid format in Rio de Janeiro in October 2024. The conference dedicated to the 'Environment and Contemporary Challenges to Criminal Law' was attended by a large number of participants both in presence and online also showing that hybrid events are more suitable in ensuring inclusion of emerging criminal jurists. Besides these international conferences, it is equally important to involve the young generation of criminal scholars and practitioners and in the activities of national groups. To this aim, several national groups already today include a young penalist member in their board.

5 Times ahead

These are times, it seems, calling for guidance and leadership. As the AIDP, we can offer guidance derived from our time-tested values: First of all, of course, humanity, both our supreme means and an end in itself. But we cannot afford to read our core values as

[17] For an overview of the Young Penalists' publications, see 'Publications' (*Young Penalists*) <https://www.youngpenalists.com/publications.html> accessed 2 December 2024.

exclusive these days. We must be appealing, welcoming, approachable, and inviting. As pointed out earlier, the AIDP's virtues of *l'amabilité, l'amitié, la courtoisie, la convivialité*, *la generosité* were just that.

As the AIDP, we can also offer leadership derived from authority—but a persuasive authority. We are a *societé savante* building on a century of academic excellence, cooperation, and mutual understanding. As the AIDP, we not only outlived earlier world crises: we helped to overcome them.

Our Association has had the privilege of exceptional leadership over the past hundred years. There is a president, but the president is surrounded by many dedicated colleagues who assist and, in fact, enable. Thus, I would like to take a moment to express my gratitude to many AIDP colleagues whose friendship and support I have enjoyed over the past 25 years. I had the pleasure to learn from and work with the most distinguished colleagues within our Association, such as Helmut Epp, Reynald Ottenhof, Jean Francois Thony, Jose Luis de La Cuesta, Christine Van den Wyngaert, Mireille Delmas Marty, and John Vervaele as well as with many, many other colleagues, both senior and younger. But I am equally grateful for the friendship of the members of the Executive Committee of the AIDP with whom I have been working closely for the past 10 years.

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Vermeulen G, de la Cuesta JL and Vervaele J (eds), *A Century of Criminal Justice, Human Rights and Humanity across Borders* (RIDP Libri 7, Maklu 2024)

HISTORY

THE AIDP: 100 YEARS OF SERVING CRIMINAL JUSTICE, HUMAN RIGHTS AND HUMANITY

John A.E. Vervaele[*]

1 Introduction

The celebration of the Centenary of the AIDP in June 2024 at the prestigious venue of the Académie des Sciences Morales and Politiques in Paris, is a celebration of the AIDP as a community of nearly 50 national groups worldwide. Commemorating the 100th Anniversary of the AIDP is an exercise by which we look back at the founders, the foundations, their drives and mission. At the same time we reflect upon ourselves today through the eyes of our history. Finally, this historical reflection serves also as a bridge to our future. Our daily reality shows better than never how important the struggle for (international) justice with respect for human rights and humanity remains.

The AIDP been set up as a learned society, in the tradition of the *sociétés savantes* that have been created since the Age of Enlightenment. Indeed, the AIDP brings together experts with specific knowledge in criminal justice and aims to advance scientific knowledge in the field and this not only for academic scholarship but primarily also for justice reforms and for improvement of judicial practice. The field of actions covers mainly 1) Criminal policy and codification of penal law. 2) Comparative criminal law. 3) International criminal law and 4) Human rights in the administration of criminal justice. Thanks to this, the AIDP has consultative status at the UN and the Council of Europe.

The working methodology of the AIDP is well known in the field of criminal justice. The AIDP produces resolutions, based on comparative scientific research and debated in international colloquia and at is its quinquennial congress. However the AIDP is much more, as the national groups of the AIDP hold their own scientific activities under the form of national, regional or word conferences. All this if of course reflected in our publications, mainly in the Revue Internationale de Droit Pénal, that is published since 1924.

The AIDP did also establish in 1972, in cooperation with the Italian authorities, the Siracusa International Institute for Criminal Justice and Human Rights. In its establishment Prof. Bouzat (president of the AIDP 1969-1979) and Prof. Bassiouni (president of the AIDP 1989- 2004) have played a crucial role. The Siracusa Institute is a public foundation with NGO status under the scientific guidance of the AIDP.

In other contributions in this volume we will highlight the impact of our resolutions, but it is obvious that the AIDP has been very influential, from the very beginning, in the field

[*] Honorary President of the AIDP, Emeritus Professor at Utrecht University and Professor in European Criminal Law at the College of Europe/Bruges. This contribution is a reworked and updated version of John A E Vervaele, 'The UIDP/AIDP: 125 years serving Criminal Justice, Human Rights and Humanity' (2015) 86 Revue internationale de droit penal 759-780. For correspondence: <j.a.e.vervaele@uu.nl>.

of comparative criminal law and the elaboration of international suppression conventions and in the field of international criminal justice. V. Pella (president of the AIDP 1945-1952) was already in the 1920's the driving factor of the *Bureau International pour l' Unification du Droit Pénal*, stablished at the League of Nations. Both Donnedieu de Vabres and Pella wrote already in the 1920's very influential books on international criminal justice. And of course Bassiouni is considered as one of the main founding fathers of the ICC.

We are indeed a flourishing association, also thanks to our history. As correctly stated by Prof. Jescheck (President of the AIDP 1979-1989), the AIDP cannot be understood without taking into account the *Union Internationale de Droit Pénal*, as the establishment of the AIDP in 1924 was a refoundation, a renaissance if you want, from the UIDP, founded in 1889 by von Liszt from Germany, Prins from Belgium, and van Hamel from the Netherlands. For that reason, the AIDP is, without any doubt, the oldest international association of criminal science.[1]

2 The *Union Internationale de Droit Pénal* (UIDP, 1889-1914) as the predecessor of the AIDP

The UIDP was created in an era in which the Nation States in Europe had to address serious social problems and increased criminality. It was also an era of political turmoil resulting in the creation of the first liberal and socialist parties and the labour unions. The classic model of *laissez faire and laissez passer* based on economic liberalism had created too much inequality in society. In his famous 1891 'Rerum Novarum' Encyclical on the Rights and Duties of Capital and Labor, Pope Leo XIII made a str**o**ng plea in favour of states that promote social justice through the protection of rights. He described the prevailing atmosphere:[2]

> That the spirit of revolutionary change, which has long been disturbing the nations of the world, should have passed beyond the sphere of politics and made its influence felt in the cognate sphere of practical economics is not surprising. The elements of the conflict now raging are unmistakable, in the vast expansion of industrial pursuits and the marvellous discoveries of science; in the changed relations between masters and workmen; in the enormous fortunes of some new individuals, and the utter poverty of the masses; the increased self-reliance and closer mutual combination of the

[1] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) RIDP; See M Chérif Bassiouni, 'Un siècle de service consacrée à la justice criminelle et aux droits de l'homme' (1990) 61 RIDP 31; Hans-Heinrich Jescheck, 'Der Einflusss der IKV und der AIDP auf die Internationale Entwicklung der Modernen Kriminalpolitik. Festvortrag auf dem XII Internationalen Strafrechtskongress im Hamburg am 17 September 1979' (1980) 92 Zeitschrift für die gesamte Strafrechtswissenschaft 997-1020; Ignacio Berdugo, 'El movimento de politica criminal tendente a la unificación legislativa. Su desarrollo hasta 1940' (doctoral thesis, Universidad Complutense de Madrid, 1976).

[2] Leo XIII, 'Rerum Novarum Encyclical of Pope Leo XIII on Capital and Labor' (Encyclicals, Librería Editrice Vaticana, 1891) <http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html> accessed on 25 October 2024.

> working classes; as also, finally, in the prevailing moral degeneracy. The momentous gravity of the state of things now obtaining fills every mind with painful apprehension; wise men are discussing it; practical men are proposing schemes; popular meetings, legislatures, and rulers of nations are all busy with it—actually there is no question which has taken deeper hold on the public mind.

It was in the context of that economic and political turmoil that the postulates of the classical school of thought in criminal justice, going back to the Enlightenment (Beccaria, Voltaire, Feuerbach, Carrara, Binding, etc.), were strongly questioned. The classical school was itself a reaction to the feudal class-society and the Ancien Régime, with privileges of all kinds for the upper class. The classical school started with the proposition that every individual had the free will to choose how to act. The punishment for committing offences was deterrence by objective sanctions, mostly imprisonment, in order to achieve general and special prevention.

The classical school of thought was based on legal equality and rationalist standards. In practice this equality was a legal fiction, and the prisons were overcrowded with lower-class people who had not always committed serious offences. Already around 1850 interest in 'la question pénitentiaire' was growing. Ducpétiaux published his famous studies, influenced by Quetelet, and the Howard League started its Prison Reform Movement. The International Penal and Penitentiary Commission (IPPC) was established in 1875.[3] The 'question pénitentiaire' was rapidly transformed into an increasing interest in the causes of criminality (criminal etiology, criminal anthropology) and thus into a 'question sociale'. The main focus of the classical school of thought, defining as rationally as possible the relationship between the illegal conduct and the penalty, shifted to the personal and social causes of crime and the ways in which scientific study of crime and crime correction and rehabilitation could prevent and repress it as a social problem. This was the main focus of the new science of criminology and of the modern positivist school of thought in criminal justice, with main figures such as Lombroso, Ferri, Tarde, and Garafalo.

The founding fathers of the UIDP, von Liszt, Prins, and van Hamel, belonged to the new liberal parties and were all members of the Freemasonry movement,[4] also an important social reform actor. UIDP included not only university professors, but also members of Parliament (von Liszt and van Hamel) and the Director of the Penitentiary Institutions (Prins), who had a strong impact on legislative and justice reform in the first decades of the 20th century. The founding fathers of the UIDP clearly

[3] After WOII it was integrated its functions were integrated into the Secretariat of the UN and a group of experts established the actual International Penal and Penitentiary Foundation.

[4] For the interaction between the freemasonry and the modern positivist school see John A E Vervaele, *Rechtsstaat en recht tot straffen* (Kluwer 1991).

supported the criminal policy views of the modern positivist school. In its 1889 founding statutes[5], the mission of the UIDP was laid out in nine points in article II:

- La mission du droit pénal c'est la lutte contre la criminalité envisagée comme phénomène social.

- La science pénale et la législation pénale doivent donc tenir compte des résultats des études anthropologiques et sociologiques.

- La peine est un des moyens les plus efficaces dont l'Etat dispose contre la criminalité. Elle n'est pas le [seul] moyen. Elle ne doit donc pas être isolée des autres remèdes sociaux et notamment pas oublier les mesures préventives.

- La distinction entre les délinquants d'accidents et les délinquants d'habitude est essentielle en pratique comme en théorie: elle doit être la base des dispositions de la loi pénale.

- Comme les tribunaux répressif et l'administration pénitentiaire concourent au même but et que la condamnation ne vaut que par son mode d'exécution, la séparation consacrée par notre droit moderne entre la fonction répressive et la fonction pénitentiaire est irrationnelle et nuisible.

- La peine privative de liberté occupe à juste titre la première place dans notre système de peines, l'Union accorde une attention spéciale à tout ce qui concerne l'amélioration des prisons et des institutions qui s'y rattachent.

- En ce qui concerne toutefois les peines d'emprisonnement de courte durée, l'Union considère que la substitution à l'emprisonnement de mesures d'une efficacité équivalente est possible et désirable.

- En ce qui concerne les peines d'emprisonnement de longue durée, l'Union estime qu'il faut faire dépendre la durée de l'emprisonnement, non pas uniquement de la gravité matérielle et morale de l'infraction commise, mais aussi des résultats obtenus par le régime pénitentiaire.

- En ce qui concerne les délinquants d'habitude incorrigibles, l'Union estime qu'indépendamment de la gravité de l'infraction, et quand même il s'agit que de la réitération des petits délits, le système pénal doit avant tout avoir comme objectif de mettre ces délinquants hors d'état de nuire, le plus longtemps possible.

[5] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 2 RIDP 45-48.

These postulates of criminal policy had been influenced by the famous Marburg Programme[6] of von Liszt and the writing of Italian, French and Belgian penal lawyers like Ferri, Tarde, and Prins, and would later influence the so-called new social defense movement of M. Ancel.[7] In fact, by 1910 Prins had already written his famous book on 'La défense sociale et les transformations du droit penal'.

The UIDP started with 75 members, half coming from Germany, but the organization grew to more than 1,000 members with national groups in many parts of Europe, including Scandinavia, Eastern Europe and Russia. The French were quite slow to set up a national group, but eventually did so in 1905, and the group became very active. However, the UIDP remained unsuccessful in setting up a national group in the United Kingdom.

From the very beginning the UIDP and its national groups were composed of a mixture of university professors and practitioners from the ministerial departments, judiciary, police, forensic criminal sciences, etc. This was fully in line with von Liszt's 'Gesamte Strafrechtswissenschaften'[8], a theoretical concept by which the criminal sciences were composed of criminal law, criminal procedure, criminology, and forensic sciences. Between 1889 and 1914 the UIDP held 14 international conferences in different countries—starting in Brussels—dealing with the study of crime, causes of crime, and tools to prevent and repress crime; and seeking reforms in the domestic criminal justice systems.

Concerning the study of crime, it is astonishing that the main focus remained on classic crimes committed within national territories, like theft and passion crimes. No attention was paid to economic offences. In 1905, international crime or transnational crime was put on the agenda for the first time, specifically in relation to trafficking in human beings and the need to elaborate specific mutual legal assistance regimes. There were a lot of discussions on the constitutive elements of the international criminal offence of trafficking of human beings, and also on the need to set up specialized police agencies with cross-border cooperation mechanisms.[9] However, the UIDP members could not agree on a common definition of the international crime, nor how to tackle it. They decided to ask the Bureau of the UIDP to study the issue further, and it never reappeared on the agenda.

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[6] Franz von Liszt, 'Der Zweckgedanke im Strafrecht' (1883) 3 ZStW 7.

[7] Marc Ancel, *La nouvelle défense sociale nouvelle* (Cujas 1954).

[8] John A E Vervaele, 'La naissance de l'Etat. Providence et le modèle des sciences pénales intégrées (Gesamte Strafrechtswissenschaft)' (1989) Déviance et Société 141-154.

[9] Hans-Heinrich Jescheck, 'Der Einflusss der IKV und der AIDP auf die Internationale Entwicklung der Modernen Kriminalpolitik. Festvortrag auf dem XII Internationalen Strafrechtskongress im Hamburg am 17 September 1979' (1980) 92 Zeitschrift für die gesamte Strafrechtswissenschaft 997-1020; Elisabeth Bellman, *Die Internationale Kriminalistische Vereinigung (1889- 1933)* (Verlag Peter Lang 1994); Franz Kitzinger, *L'Union Internationale de Droit Pénal* (Beck 1905); Leon Radzinowicz, *The Roots of the International Association of Criminal Law and their Significance. A tribute and a re-assessment of the Centenary of the IKV* (Freiburg 1991).

The study of the causes of crime, and the criminal policy standpoint on prevention and repression of crime, became the organization's real battlefield. Both issues were strongly expressed in article II of the founding statutes, articulating UIDP's mission. Although von Liszt insisted on the fact that the criminal code was the criminal's Magna Carta, in the sense that such a person had the right to be punished only under legal conditions and within the limits of the law, the same modern positivist school insisted on, *inter alia,* indefinite terms of sanctions or security measures for recidivists or for persons which behaviour could not be corrected, who were thus not suitable for rehabilitation or resocialisation.

At its congresses, the UIDP was continually discussing the possibilities for compromise between the classical school (legality principle) and the modern school (safety measures, indeterminate sentencing). With the focus on resocialisation, the emphasis shifted from the study of criminal conduct to the study of the perpetrator and the functionality of penalties. The UIDP pleaded for the replacement of short-term imprisonment with fines, for probation sentencing, and for a separate track for juvenile criminal justice. In other words, the criminal penalties were the individualized answer to the question of resocalisation or exclusion in the context of social defence.

In 1897, after tough discussions, the postulates of modern positivist thought, expressed in article II, were removed in full from UIDP's statutes. Too many members were no longer willing to subscribe to its dogmas and postulates without further discussion.[10] From that very moment the UIDP became, on paper, an organization in which all schools of thought were welcome, in other words, an organization based on neutrality. This was, however, not the end of the story.

From the beginning of the century the debate in the UIDP was very much concentrated on criminal policy and justice reform, and on related comparative criminal law and codification issues. Von Liszt tried to have a direct impact on the reform of criminal justice in Germany[11] through major investments in comparative criminal law. Prins had a substantial impact on Belgian criminal legislation, also thanks to incoming socialist Ministers of Justice. Belgium's legislation included laws on juvenile criminal justice and laws on security measures for psychiatric offenders.[12] Most

[10] Tony Peters and John A E Vervaele, 'Aperçu historique et importance actuelle de l'Union internationale de droit pénal. Notions sur le système des sanctions pénales' (1990) 61 RIDP 240-253; Marc S Groenhuijsen and Dirk Van der Landen, 'L'Union International de Droit Pénal dans la zone de tension entre les notions de droit classiques et les conceptions juridiques modernes' (1990) 61 RIDP 143-223; Sylvia Kesper-Biermann, 'Wissenschaftlicher Ideenaustausch und 'kriminalpolitische Propaganda'. Die Internationale Kriminalistische Vereinigung (1889-1937) und der Strafvollzug' in Sabine Freitag and Désirée Schauz (eds), *Verbrecher im Visier der Experten. Kriminalpolitik zwischen Wissenschaft und Praxis im 19. und frühen 20. Jahrhundert* (Franz Steiner 2007).

[11] See Elisabeth Bellman, *Die Internationale Kriminalistische Vereinigung (1889- 1933)* (Verlag Peter Lang 1994).

[12] Brice De Ruyver, *De strafrechtelijke politiek gevoerd onder de socialistische Ministers van Justitie E. Vandervelde, P. Vermeylen en A. Vranckx*. (Kluwer 1988); John A E Vervaele, *Rechtsstaat en recht tot straffen* (Kluwer 1991).

of the UIDP discussions were on the substantive criminal law and related penalties. Sometimes topics of criminal procedure were also touched upon, such as prosecutors' control over the police and reform of the pre-trial investigation, both in relation to certain procedural safeguards for suspects.

In the Association's Bulletins, certainly since 1889, a great deal of attention was paid to comparative criminal justice, or at least to country reports on various topics. The German Group of the UIDP started to publish foreign codes of criminal law[13] and contributed substantially to the German Ministry of Justice's initiative to realize the 'Vergleichende Darstellling des Deutschen und Ausländischen Strafrechts,' published in 15 massive volumes between 1905 and 1908.[14]

On the occasion of its 25th Anniversary in 1914, the publication of the Mélanges reflected the international spirit, the impact, and the modernity of the UIDP's criminal policy ideas. However, it is striking that the topics of criminal procedure were rarely on the agenda and that criminology did not play a more important role.

The First World War resulted in the dissolution of many national groups, and the founding fathers died during or just after the war. After the Great War the divide was so big that it was impossible to go on as usual. However, the German Group (IKV) continued as a national group and did not even join the AIDP after its establishment in 1924 (see *infra* point 2). In fact, they turned down an invitation to participate at the first conference of the AIDP in Brussels in 1926. The IKV was quite influential under the Weimar Republic, when von Liszt scholar G. Radbruch became Minister of Justice, but by the end of that era it had become mired in endless disputes about the social-liberal and authoritarian theories on criminal justice. New members with sympathy for the Nazi movement tried to use von Liszt's criminal policy to adapt criminal justice reform to authoritarian goals. In 1932/33 G. Dahm and F. Schaffstein published their famous book 'Liberales oder autoritäres Strafrecht.' In an IKV meeting in 1932 in Frankfurt, the French criminal lawyer Donnedieu de Vabres, founding father of the AIDP, tried to convince the German IKV to cooperate with the AIDP, but without any success. In elections in 1933, the social-liberal direction of the IKV (the old generation) lost in favour of the young pro-authoritarian group. However, this was also the IKV's last meeting, as with the victory of Hitler in 1933 most of the prominent scholars of criminal justice went into exile or committed suicide. In 1935 the new president resigned, as he considered that the new Nazi Minister of Germany, the President of the Academy of German Law, H. Frank, did not respect the legacy of von Liszt and the IKV. Thus the Nazi regime dissolved the IKV.

[13] Max-Planck-Institut für Ausländisches und Internationales Strafre, *Sammlung Außerdeutscher Strafgesetzbücher* (J Guttentag Publisher 1881).
[14] Verlag Otto Liebermann, Berlin.

3 The *Association Internationale de Droit Pénal* in the interbellum period (1924-1940)

In 1920 Italian E. Ferri tried to reestablish the UIDP, but due to French, Belgian and Swiss objections his initiative did not take off. From 1922 on, the French criminal lawyers prepared to re-launch the organization, and in 1924, under the leadership of Henri Donnedieu de Vabres,[15] the AIDP was founded in Paris. The first President, Carton de Wiart (Belgium), explicitly referred to this re-founding of the UIDP in his inaugural speech at the first AIDP Congress, again in Brussels. The founding statutes are very brief and refer explicitly to neutrality of thought and the comparative study by scholars and practitioners of crime, its causes, and the tools to prevent and combat it. In other words, the AIDP's mission is exactly the same as the 1898 revised mission of the UIDP. However, a third branch introduces an entirely new dimension:

> Elle a pour but (…) de favoriser le développement théorique et pratique du droit pénal international, en vue d'arriver à la conception d'un droit pénal universel, à la coordination des règles de procédure et de l'instruction criminelle.

The starting meeting in Paris in 1924 was a great success and many national groups were present. However the Germans and Austrians were not invited, and the Netherlands—who had been neutral in WWI and refused to extradite the German Kaiser to the Versailles Tribunal—as well as Switzerland (also neutral) and the Scandinavian countries did not join. At the 1926 conference in Brussels the German IKV was invited but refused the invitation. This shows that even 8 years after the Great War the divide was still profound. Nevertheless, the congress in Brussels was a great success with the participation of 22 national groups.

The topics of the congresses during the inter-bellum period illustrate an innovative approach.[16] New topics such as the criminal responsibility of legal persons are addressed (Bucharest, 1929). Much more attention is focused on criminal procedure, administration of justice, and the position of the suspect. The rights of the suspect and legal safeguards are finally on the agenda. The judicialisation of the execution of criminal penalties and security measures and judicial safeguards during pre-trial investigations are discussed in the Palermo Congress in 1933, for instance, and again in the Paris Congress in 1937. The innovations consist not only of an increasing interest in the enforcement of criminal lay, but also in its humanization through the rights and legal safeguards approach. The individual suspect is not only an object of scientific study, as under the modern positivist school, but a citizen with rights and

[15] Donnedieu de Vabres published already in the 1920's very influential textbooks on international criminal law. He was author of *Introduction à l'étude du Droit pénal international* (1922) and *Des principes modernes du Droit pénal international* (1928) and became after WO II Judge at the Nuremburg Tribunal.

[16] Paul Cornil, 'Réflexions sur le cinquantenaire de l'Association Internationale de droit pénal' (1975) 46 RIDP 387; M Cherif Bassiouni, 'L'Association Internationale de Droit Pénal (AIDP): plus d'un siècle de dévouement à la Justice Pénale et aux droits de l'homme' (1999) 18 Nouvelles Etudes Pénales RIDP 13.

safeguards against the '*ius puniendi*' of the state. Criminal justice shifts from an exclusively crime control perspective towards a standpoint that balances crime control and due process or, in French, a combination of the '*fonction epée et function bouclée*', the sword and shield functions of criminal justice.

As innovative as this was, it developed further through comparative criminal justice and the elaboration of international criminal justice, in the form of codification of international crimes and of international prosecutorial and adjudicative jurisdiction for those crimes. We must not forget that WWI had been a new form of warfare, with the use of mustard gas and the killing of millions of people. One of the conditions placed upon Germany in the Versailles Treaty was that Kaiser Wilhelm II, who abdicated in 1918, would be formally tried. It is clear that the Allied forces proposed a new concept, namely that heads of state guilty for international crimes such as war crimes should be prosecuted and adjudicated by an international criminal tribunal. Articles 227–230 of the Treaty of Versailles elaborated on international criminal proceedings, by stipulating the arrest and trial of German officials defined as war criminals by the Allied governments. Article 227 made provisions for the establishment of a special tribunal, presided over by a judge from each one of the major Allied powers—Britain, France, Italy, the United States and Japan. It identified the former Kaiser Wilhelm II as a war criminal, and demanded that an extradition request be addressed to the Dutch government, which had given him asylum in since his abdication in November 1918. The Netherlands refused based on its neutrality, contending that it was not bound by the Versailles Treaty and its Article 227.[17]

That was not the only set-back under the Versailles Treaty. In February 1920, the Allies submitted to the German government a list of another 900 names of individuals accused of committing alleged war crimes. However, the Germans refused to extradite any German citizen to Allied governments, and instead suggested trying them within the German justice system, ie, at the *Reichsgericht* in Leipzig. This proposal was accepted by the Allied leaders, and in May 1920 they handed over to the German government a reduced list of 45 accused persons. At the end, only twelve individuals were brought to trial in 1921. Some of them were found not guilty and others were sentenced to short prison terms for the war crimes they had committed. The whole experience was considered a failure by the international community, because of the small number of cases tried and the perceived leniency of the court.

[17] The Dutch Government seeks advice in December 1918 from legal experts Struycken en Bles. In their advice, that remained confident at the time, they qualify the extradition as possible when it comes from a country with which the Netherlands has an extradition treaty and for ordinary crimes, excluding political crimes. They do however advice the Government to extradite to an independent international crime, seen the type of offences. For more info see André H Klip, 'De keizer-kwestie, over een uitlevering die niet doorging' in Constantijn Kelk, Frans Koenraadt & Dina Siegel (eds), *Veelzijdige gedachten: liber amicorum prof.dr. Chrisje Brants* (Willem Pompe Instituut voor Strafrechtswetenschappen 2013); William Schabas, *the Trial of the Kaiser* (Oxford University Press 2018).

In this context it is not a surprise that the outcry for international criminal justice is included in the Statutes of the AIDP, and that the resolutions of the first Brussels Congress in 1926 are already pleading for the establishment of a permanent international criminal court. In fact, the International Law Association (ILA) had already put this idea forward in its Buenos Aires and Stockholm Congresses of 1922 and 1924. In 1926 the ILA and the AIDP submitted a joint proposal for an ICC to the Inter-Parliamentary Union, a burgeoning international institution gathering parliamentarians from all over the world and serving as the counterpart of the League of Nations. During the AIDP's inter-bellum congresses, the topic was constantly on the agenda. In the 1937 Congress the resolutions called for an international criminal offence prohibiting war of aggression. Without any doubt, during the inter-bellum period the driving force behind the international criminal justice agenda was V.V. Pella, member of the Board of Directors of the AIDP, Romania's minister representative in the League of Nations and the first President of the AIDP after WWII. He also created the 'Bureau International pour L'Unification du Droit Pénal' in 1932 at the League of Nations in Geneva. Pella's address on behalf of the AIDP, given in Bern and in Geneva in 1924 and published by the Interparliamentary Bureau of the League of Nations[18], illustrates the innovative character of the very notion of international criminal justice. Pella insists that his meaning of 'droit penal international' does not correspond to the classic meaning, namely of resolution of criminal jurisdiction conflicts between sovereign states, but refers to a new legal regime dealing with the criminal liability of states for offences against other states or collectivities. It is also interesting that Pella is using basic notions of the modern positivistic school, referring to Tarde, van Hamel and Gierke, in order to understand 'the collective psychology' of states. The scientific study of this 'collective psychology' of states and their war crimes will be the objective basis for the elaboration of a preventive and repressive international criminal justice system. The offences that Pella has in mind are still very much concentrated around the notions of war crimes and do not include all concepts of what we now call international core crimes. Pella also refers to the modern school and the social defence movement for the categorization of offenders. He pleads for a clear distinction between pure political crimes and crimes committed by anti-social actors using political means that mostly end up in dangerous and bloody revolutions.

Very interesting is also Pella's report[19] on the crime of war aggression and the organization of its international repression. This report was written on behalf of the Permanent Commission for the study of legal questions, of which Pella later would become President. The report was presented at the XXIII conference of the Interparliamentary Union of the League of Nations in 1925. In this report, Pella insists on the scientific study of state crime and collective crimes in order to be able to develop a preventive criminal policy. He expands on the basic notions of his 'Code Répressif des Nations,' based on the limitation of the absolute independence of states and of

[18] See M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 4 RIDP 53-62.
[19] See M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 5 RIDP 63-102.

their external sovereignty in order to protect international order and justice. In his elaboration of the constitutive elements of international crimes, he emphasizes the need to develop a system of criminal sanctions that complies with the legality principle—one of the big discussion points in the forerunner to the AIDP, the UIDP:

> Le principe 'nulla poena sine lege' qui est à la base de l'édifice du droit pénal de tout Etat civilisé, doit pareillement constituer un dogme pour le nouveau droit pénal international. Il serait extrêmement regrettable si, dans nos efforts pour établir le règne de l'ordre et de l'harmonie dans les rapports internationaux, nous consentons à que l'arbitraire, qui constitue certainement la négation de toute idée de justice, règne dans l'exercice de la répression.[20]

Pella rejects legal constructions which would require that the Permanent Court of International Justice of the League of Nations determine penalties. Unfortunately his fears were realized after WWII in worse scenarios, as the military tribunals of Tokyo and Nuremberg had to deal with this.

Although Pella pleads for the application of universal jurisdiction for these offenses, he is not in favour of their imprescriptibility, as he insist on legal security and justice in due time. Interestingly, he provides for sanctions against States as well against individuals for international crimes. In fact, he wants to integrate diplomatic, legal (eg, seizure, loss of IPR rights), economic and military sanctions into the criminal justice scheme. In light of the discussion of smart sanctions imposed by the UN sanctions committee, and thus by the executive bodies, this is an interesting aspect of international criminal justice that has been left aside since WWII.

It is also worth reading Pella on criminal procedure and administration of justice. He pleads not only for an international public prosecutor at the League of Nations, but also for an international chamber of indictment to be joined at the Superior Court of Justice. Ideally, he believes that the international public prosecutor should be sustained by an international judicial police force, but due to the fear of too much intrusion into national sovereignty, he opts for the application of rogatory commissions.

Pella concludes with wisdom, certainly in light of what will happen in the decades to come:

> La paix restera précaire aussi longtemps qu'une pareille œuvre répressive ne sera pas réalisée, et que les volontés rebelles ne seront pas contraintes de se soumettre aux nouvelles conditions de la vie internationale. Ce n'est que par une sage politique criminelle internationale, ainsi que par la détermination de la coordination des mesures d'ordre préventif et répressif,

[20] Page 221 of the Report.

> que nous arriverons à mettre un frein à la criminalité de la guerre d'agression et à donner aux nations la possibilité de jouir en paix des avantages de la solidarité humaine.[21]

The establishment of a new regime of international criminal justice did fail in the inter-bellum period. However, in the League of Nations states were willing to agree upon the 1937 Convention for the Prevention of Terrorism, signed on behalf of the Netherlands by van Hamel and on behalf of Romania by Pella. This convention deals not only with the obligation to incriminate terrorist offences and conspiracy to terrorism, as defined under the convention, but also with extensive obligations of mutual legal assistance.

The 1937 Terrorist Convention is complemented by a Convention for the Creation of an International Criminal Court at the League of Nations, with a seat in The Hague to adjudicate terrorist offences[22]. This document is much coloured by a major attack. Several UN States were willing to negotiate and sign these conventions after the King of Yugoslavia and the French Minister of Justice were killed by Croatian terrorists in Marseille. The convention on the international criminal court sets aside the refusal grounds for political offenses and does not deal primarily with foreign states or high state officials but with ordinary nationals committing terrorist offenses. The jurisdiction of the international criminal court would also be limited to adjudication, as investigation and prosecution would be carried out by the High Contracting Party that had seized the ICC (Article 25). The ICC would adjudicate on the basis of national substantive law, as implemented under the 1937 Terrorist Convention. In case of conflict, the least severe law should apply and the ICC shall decide upon the applicable substantive law (choice of substantive jurisdiction in Article 21). The ICC would also establish regulations to govern its practice and procedure (Article 15). Article 23 provides for a notification procedure in case of conflicting national proceedings, but does not contain any complementarity principle.

Scholars have criticized the whole setting of the Terrorist Convention as lacking legal certainty, with broad substantive definitions and net-widening preparatory acts included. The Convention on the ICC has been perceived as a hybrid, ad- hoc response to the situation at the time and was certainly not in line with Pella's main ideas. Due to WWII, the two conventions never came into force and remained a dead letter.

It would be unfair, however, to judge the contribution of the League of Nations on the unification of national criminal law only on this Terrorist Convention. The League of Nations produced important conventions with the aim of suppressing certain forms of crime, such as the Conventions on Slavery (1919 & 1926), the Conventions on Trafficking of Women and Children (1921 & 1933), the Conventions on

[21] Page 242 of the Report.
[22] See M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 6 RIDP 103-112.

Illegal Drugs (1925, 1931 & 1933) and the Convention on Counterfeiting of Currencies (1929). Pella did not succeed in fulfilling his dream of developing an international code of core international crimes and a related ICC, but he succeeded in approximating this through substantive national criminal laws, which were also very important tools to strengthen judicial cooperation in criminal matters.

The 193Os were not easy years for the AIDP. Due to the economic and financial crises, the Palermo conference was postponed from 1932 until 1933, and because of political divisions the Athens conference of 1936 was postponed until 1937 and held in Paris.[23] The Congress scheduled for 1941 could not take place at all because of the dramatic events of WWII.

4 The *Association Internationale de Droit Pénal* since WWII

The restart of the AIDP after WWII could not have occurred at a more symbolic place than the seat of the Nuremberg Military Tribunal, where one of the founding fathers of the AIDP, Donnedieu de Vabres, was magistrate. An interesting group of persons were present at the meeting, held on May 18, 1946[24]. Biddle, who was also a Judge at the Tribunal, represented Carton de Wiart, the President of the AIDP. Attendees also included Tribunal Judge Falco and counselor Houdo, Secretary at the French seat at the Tribunal, as well as Minister Pella, then a member of the Board of Directors of the AIDP and Secretary- General of the Bureau International pour l'Unification du Droit Pénal, and Pierre Bouzat, Secretary-General and later President of the AIDP.

Donnedieu de Vabres underlines that the Nuremberg trial was a unique occasion for criminal scientists, as they had to confront their various legal traditions, doctrines and cultures. From that perspective, he criticized the AIDP for lacking worldwide ambition, and for being too focused on the French-speaking community. He called for a global comparison of the criminal justice systems in order to learn from the Anglo-Saxon, Latin, Slavic and other experiences and build a better system of criminal justice. Pella called for the expansion of the work on comparative law and unification of criminal law. They decided that the seat of the AIDP would remain in Paris, but that a commission would be established to plan the future of the AIDP. The composition of the commission was multilingual and represented different legal families, It included the President of the Nuremberg Tribunal, Lord Justice Lawrence, and Judge Biddle. All of the essentials of the restart were discussed at this meeting, including the mission, seat, and strategies of the AIDP.

In the post-bellum period Pella took over the presidency of the AIDP from de Wiart, who had been President from 1924 until 1946. This period was of course much affected by the horrors of WWII. The Nuremberg Tribunal affirmed in its judgments of 1946 the principle of individual criminal responsibility under international law.

[23] Paul Cornil, 'Réflexions sur le cinquantenaire de l'Association Internationale de droit pénal' (1975) 46 RIDP 387.
[24] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 7 RIDP 123-138.

The Universal Declaration of Human Rights was adopted by the UN's General Assembly in 1948.[25] President Pella and honorary President Donnedieu de Vabres were two of the three experts charged with the drafting of the Convention on the Prevention and Punishment of the Crime of Genocide,[26] also adopted in 1948 and entered into force in 1951. The universalization of human rights and the elaboration of international core crimes went hand in hand, although the relationship between them was not entirely clear yet. Pella kept advocating for the idea of an international criminal court, and in 1950 he presented his proposals for its creation to the International Law Commission of the UN.[27]

A number of eminent AIDP members, including R. Alfaro and J. Spiropoulos, were rapporteurs for the Committee established by the General Assembly in 1947 to develop a draft 'Code of Crimes Against the Peace and Security of Mankind/Projet de Code des Infractions contre la Paix et la Sécurité de l'Humanité', based on the formulation of the principles of international law recognized and reinforced in the Nuremberg Charter and judgments. They completed a text in 1954 and continued to work on that text until 1978, and on the Committee to Establish an International Criminal Court from 1951 through 1953.

The AIDP was also represented in the Special Committee charged with the elaboration of two projects concerning the creation of an ICC, which was established by the UN General Assembly. The shadow of the Cold War, starting in 1947, impeded any agreement and would freeze the file for decades.

The AIDP got consultative status at the ECOSOC Council of the United Nations in 1948. That Council became responsible for the Crime Prevention and Criminal Justice Branch in Vienna,[28] charged with criminal policy elaboration and the organization of the quinquennial UN Congresses on Crime Prevention and Criminal Justice. The UN Standard Minimum Rules (SMR) for the treatment of prisoners were adopted by the ECOSOC Council during its first Congress in 1955, later adopted by ECOSOC in 1957.[29] As the UN became involved in the suppression of crime from its preventive and repressive angles and established regional institutes, organized global and regional conferences and stimulated the sharing of knowledge and expertise, the UN became an even more important institutional reference for the AIDP.

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[25] Universal Declaration of Human Rights [1948] GA Res 217 A (III).

[26] Convention on the Prevention and Punishment of the Crime of Genocide [1948] GA Res 260 (III).

[27] Survey of International Law in Relation to the Work of Codification of the International Law Commission [1949] UN Doc A/CN.4/39.

[28] Eduardo Vetere, 'The work of the UN in crime prevention and criminal justice', in M Cherif Bassiouni (ed), *The contribution of Specialized Institutes and Non-Governemental Organisations in the UN Criminal Justice Programm* (Kluwer Law International, 1995); Freda Adler and Gerhard W Mueller, 'A very personal and family history of the UN Crime Prevention and Criminal Justice Branch', in M Cherif Bassiouni (ed), *The contribution of Specialized Institutes and Non-Governemental Organisations in the UN Criminal Justice Programm* (Kluwer Law International, 1995)

[29] ESC Resolution 663 on the Standard Minimum Rules for the Treatment of Prisoners [1957] U.N. ESCOR, 24th sess, Supp No 1, 11, UN Doc E/3048.

The AIDP organized its first Congress after WWII in Geneva in 1947. Under Pella, a new German national group became affiliated with the AIDP in 1952. Pella left the Presidency of the AIDP in 1953, due to his increasing obligations at the UN. For the new Belgian President Cornil, the neutrality concerning schools of thought was essential to the opening of the AIDP to the US and to the communist countries, including the Soviet Union. Important national groups were established on both sides of the Cold War, and the AIDP was able to function as a global organization that did not suffer from the Cold War divide. From 1964 the Russians had official delegates at the AIDP Congresses.

In the post-bellum there was also a clear shift in topics and approaches. Already the agenda of the 1953 Rome Congress seems to us very innovative and modern, dealing with criminal protection in the international conventions on humanitarian law, protection of personal freedoms during criminal proceedings, social economic penal law, and problems of unification of criminal punishment and criminal measures.

In my opinion the substantive approach of the AIDP after WWII can be summarized under three headings that reflect the main substantive missions: internationalization of criminal justice, humanity and solidarity in the application of criminal justice, and criminal justice and the rule of law/human rights.[30]

The internationalization of criminal justice is high on the scientific and political agenda, and for the AIDP it is certainly not a new topic, considering its activity at the UN in the inter-bellum period and its involvement in the International Law Commission in the aftermath of WWII. The Rome Congress clearly reflects this engagement. The extent of the activity of the AIDP in the field had been impressive and on the occasion of the Rome Congress in 1953, Pope Pius XII addressed this topic[31] in a very explicit way (in light of two world wars) and insisted upon the necessity of developing an international criminal justice system to protect individuals and peoples against injustice and violations of their basic rights, and to avoid the impunity of crimes against humanity. Pope Pius XII saw in the Second World War and in other conflicts inhuman treatment and behaviour, as if the adversaries were not human beings or part of mankind. The denial of their humanity and human dignity was not justified by the conflict. However, the Pope was also very much aware of the fact that in international criminal justice general principles should apply to the elements of the crimes and to their sanctions, and to the construction of criminal liability. He even tackled questions such as the chain of command and criminal liability.

[30] See also the contribution of Burgstaller of 1989, reflecting on and assessing crime control policy from 1898 to 1989, a century of UIDP/AIDP work. M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 13a RIDP 319-346.

[31] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 8 RIDP 139-154.

Jean Graven,[32] from Switzerland, was President of the AIDP between 1963 and 1969, and representative of Switzerland at the Nuremburg trials. He invested in the further elaboration of international criminal justice, as did Hans-Heinrich Jescheck, President of the Max Planck Institute in Freiburg, Germany, and President of the AIDP from 1979 to 1989. Jescheck dedicated his 1949 'Habilitation' to this topic.[33]

Between 1967 and 1968, the AIDP spearheaded the UN's effort to develop the Convention on the Non-applicability of Statutes of Limitations to War Crimes and Crimes Against Humanity. Gerhard O.W. Mueller was the lead on the project, and in 1968 the RIDP published a volume on that subject, in order to enhance state accession to that treaty.

M. Cherif Bassiouni, President of the AIDP in the period 1989-2004, had already instigated several initiatives to put international criminal justice back on the international agenda during his time as Secretary-General[34]. Following the adoption of a Special Resolution against Torture by the Fifth UN Congress on Crime Prevention and Criminal Justice, held in Geneva in 1975, a Committee of Experts was established under the co-chairmanship of Bassiouni and Judge MacDermott, respectively Secretary-General of the AIDP and the International Commission of Jurists (ICJ). The Committee of 20 Experts met in Siracusa in 1977 at the International Institute of Higher Studies in Criminal Sciences (ISISC) and prepared a draft Convention for the Prevention and Suppression of Torture. A commentary was prepared which was published in *48 Revue Internationale de Droit Penal, n. 34 (1977)*. In 1978 Bassiouni submitted, on behalf of the AIDP, a Draft Convention for the Prevention and Suppression of Torture[35] to the UN Commission on Human Rights. Sweden, which was a member of the Committee of Experts meeting in Siracusa, officially proposed the joint AIDP/ICJ text to the Commission. It was supported by Austria and the Netherlands, which were also represented in the Committee of Experts. The text that was approved by the UN Commission on Human Rights in 1984 and which became the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984, was substantially the same as the one that was drafted by the AIDP/ICJ Committee of Experts meeting in Siracusa. It came into force in 1987.

In 1979 the UN Commission on Human Rights charged Bassiouni with drafting a statute for an international criminal court, which served as a model for the draft of the International Law Commission of 1994. In 1995 Bassiouni was nominated Vice-President of the ad-hoc Committee, Vice-President of the Preparatory Committee, and finally President of the Draft Committee of the Statute for the ICC, which resulted in the Rome Statute of the International Criminal Court, entered into force in

[32] See Jean Graven, *Etudes en l'honneur* (Librairie George & Cie S.A 1969).
[33] Hans-Heinrich Jescheck, *Die Verantwörlichkeit der Staatorgane nach Völkerstrafrecht* (Röhrscheid 1952).
[34] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 12a RIDP 267-292
[35] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 11 RIDP 259-266.

2002. As President of ISISC since 1989, he also organised an impressive number of conferences on the topic for scholars and practitioners of criminal justice. All of this work was duly reflected in the AIDP publications.[36] For a more in detail reflection on the Chronology of the Efforts to establish the ICC, I refer to contributions written by Bassiouni in 1993 and by Ottenhof and de la Cuesta in 2010[37]. For all of his efforts, Bassiouni was nominated for the 1999 Nobel Peace Prize by the International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme (ISPAC)[38].

The internationalization of criminal justice was certainly not limited to the elaboration of international criminal law, but was also focused on the international dimension of domestic criminal justice. Bouzat, President of the AIDP 1969-1979, invested in this dimension. He was co-responsible for the creation of ISISC in Siracusa, Italy, in 1972, that enjoys consultative status with the United Nations and the Council of Europe. ISISC has a special cooperation agreement with the United Nations Office in Vienna and became one of the eighteen organizations comprising the United Nations Crime Prevention and Criminal Justice Programme Network (PNI Network). The Network supports the United Nations Office on Drugs and Crime (UNODC) in strengthening international cooperation in criminal matters. Bouzat established also an International Coordination Committee between the four major organisations for criminal sciences: the AIDP, the International Society of Criminology, the International Society for Social Defense and the International Penal and Penitentiary Foundation.[39] Under the AIDP presidency of Bouzat and Jescheck, a great deal was invested in comparative criminal justice in order to improve codification and implementation of the international standards and international suppression conventions.[40]

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[36] M Cherif Bassiouni, 'Draft Statute International Criminal Tribunal' (1989) 9 Nouvelles Etudes Pénales RIDP; M Cherif Bassiouni, 'Draft Statute International Criminal Tribunal' (1993) 10 Nouvelles Etudes Pénales RIDP; M Cherif Bassiouni, 'Commentaries on the International Law Commission 1991 Draft Code on the Peace and Security of Mankind' (1993) 11 Nouvelles Etudes Pénales RIDP; Helmut Epp and Abdel Azim Wazir, 'Crimes by Government Officials, Roundtable of the XVth International Congress of Penal Law' (1995) 12 Nouvelles Etudes Pénales RIDP; M Cherif Bassiouni, 'The International Criminal Court : Observations and Issues Before the 1997-1998 Preparatory Committee and Administrative and Financial Implications' (1997) 13 Nouvelles Etudes Pénales RIDP; Leila Sadat Wexler, 'Observations on the Consolidated ICC Text Before the Final Session of the Preparatory Committee's Text to the Diplomatic Conference, Rome, July 15-July 17,1998' (1998) 17ter Nouvelles Etudes Pénales RIDP; Christopher C. Joyner and M. Cherif Bassiouni, 'Reigning in Impunity for International Crimes and Serious Violations of Fundamental Rights: Proceedings of the Siracusa Conference 17-21 September 1997' (1998) 14 Nouvelles Etudes Pénales RIDP.

[37] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 14 RIDP 377- 406, 17b RIDP 445- 454.

[38] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 16 RIDP 423-426.

[39] In 1979 joined with the World Society for Victimology.

[40] Jean Pradel, 'Procédure pénale comparée dans les systèmes modernes : Rapports de synthèse des colloques de l'ISISC' (1998) 15 Nouvelles Etudes Pénales RIDP; M Cherif Bassiouni, 'Les systèmes comparés de justice pénale : de la diversité au rapprochement' (1998) 17 Nouvelles Etudes Pénales RDIP.

The second topic, humanity and solidarity in the application of criminal justice, became much more prominent than before. The replacement of short prison terms with financial penalties, imprisonment as *ultima ratio*, social work in prisons, the decriminalization of possession of soft drugs, state damages for victims of crimes, etc., are all issues that the AIDP tackled in the decades after WWII. At the 1974 Budapest Congress it was stressed that criminal policy must be based on humanity and respect for human dignity. This is certainly a new dimension to criminal policy as envisaged by von Liszt and the positivist and social defence movements. It is also rooted in a comparative criminal justice approach, a dimension that was at the AIDP's centre of attention under President Jescheck, as he also led the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Germany[41].

In his message in 1953, Pope Pius XII also insisted on the fact that international criminal justice should apply international human rights standards, such as impartiality of judges, the legality principle, due process and the right of defense. In a second message of the Vatican, by Pope of Paul VI on the occasion of the 1969 Rome AIDP Congress, the Pope stated in French, '*A l'égard de tous il faut agir avec humanité et justice*.' He insisted that this especially applies to those suspected of a crime, in order to avoid arbitrary treatment, and against the convicted, in order to assure their reintegration into society.[42]

The humanity dimension of criminal justice is not always directly visible in the topics addressed by the AIDP Congresses, but it is definitely a dominant foundation of all of the work of the AIDP.

The third topic, criminal justice and the rule of law/human rights, is entirely new. The judicial control over pre-trial investigation, pre-trial procedural safeguards and reduction of pre-trial detention were all on the agenda of the Rome Congress in 1953 under the heading protection of personal freedoms during criminal proceedings. In 1961 the Lisbon Congress did put the '*nulla poena culpa*' principle on the agenda. And the social defense movement was aware of the importance, as M. Ancel published on it in 1969 in the *Liber Amicorum* for J. Graven[43], the former President of the AIDP. The 1974 Budapest conference stipulated that criminal policy must be based not only on humanity and respect for human dignity but also on respect for human rights. Since then the topic has been addressed in a permanent way at the Congresses, dealing, for instance, with the protection of human rights in criminal proceedings (Hamburg, 1979), concurrent national and international criminal jurisdiction and the principle '*Ne bis in idem*' (Beijing, 2004), or special procedural measures and respect for human rights (Rio de Janeiro, 2009).

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[41]Ulrich Sieber, 'Hans-Heinrich Jescheck zum Gedächtnis' (2009) 4 ZStW 12; M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 15 RIDP 407-422.

[42] M Cherif Bassiouni, 'A Historical Record of the Association' (2015) 9 RIDP 155-158.

[43] Marc Ancel, 'La protection des droits de l'homme selon les doctrines de la défense sociale moderne' in Jean Graven (ed), *Etudes en l'honneur* (Librairie George & Cie S.A 1969).

President de la Cuesta (2004-2014), together with R. Ottenhof, who had been Secretary-General from 1989 to 1994, reflected back in 2009 on the evolution of the AIDP[44]. Their title refers to service to justice reform, international criminal justice and peace, the internationalization of criminal justice, humanity and solidarity in the application of criminal justice, and criminal justice and the rule of law/human rights. The three main points of the AIDP's mission after WWII are clearly visible in their reflection and serve also as guidance for the future:

> Quant à l'intervention pénale, instrument fondamental, étant donnée qu'elle trouve seulement son sens et sa légitimité au service de la paix et en faveur d'une justice de plus en plus humaine et efficace, l'exigence serait non seulement d'être vigilant sur les questions techniques, mais de travailler aussi au renforcement de son profil démocratique, de façon que, lors de la défense des valeurs fondamentales, en plus de l'axiome de l'humanité, les garanties et la défense des droits et des postulats pénaux et procéduraux primordiaux soit assurée à tous les niveaux.

During his presidency de la Cuesta developed strategic guidelines in order to implement in a more structural way the main mission of the AIDP. He did not only reactivate the AIDP's internal functioning, but invested also in its external dimension by establishing cooperation agreements with scientific institutions worldwide, organizing regional and global conferences, and establishing the Jescheck Prize (in collaboration with the Freiburg Max Planck Institute) for life- long contribution to criminal science and the Siracusa Prize for the excellent work of a young scholar. In the same vein, under his presidency, all of the resolutions of the AIDP were published in French, English and Spanish.[45]

The Beijing Congress and the Rio Congress were certainly the fruit of this effort. In May 2014 Pope Francis wrote to the participants of the Rio de Janeiro AIDP Congress .[46]After President de la Cuesta's response[47], the Pope invited the AIDP to an audience at the Holy See on 23 October 2014. At the initiative of the AIDP, the Pope agreed to receive an extend delegation of the five major world associations of criminal science and the Latin- American Association of Criminal law and Criminology (ALPEC). At the audience, the President of the AIDP, Vervaele, of Belgian-Dutch origins, and the President of ALPEC, Zaffaroni, spoke to the Pope[48]. Pope Francis spoke to the delegation about dignity and humanity in criminal justice. [49] After warning about incitement to revenge and penal populism, Pope Francis discussed a modern catalogue of guiding principles of criminal justice at the service of humanity and peace. The first

[44] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 17b RIDP 445-458.
[45] José Luis De La Cuiesta and Isidoro Blanco Cordero, 'Résolutions des Congrès de l'Association Internationale de Droit Pénal (1926–2014)' (2015) 86 RIDP.
[46] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 20a RIDP 469-476.
[47] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 19 RIDP 467-468.
[48] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 21 RIDP 483-484.
[49] M Cherif Bassiouni, 'A Historial Record of the Association' (2015) 20a RIDP 469-476.

guiding principle is '*cautela in poena*' based on '*ultima ratio*.' The second is dignity of the human person and the '*primatus principii pro homine*.' Under this principle Pope Francis condemns the death penalty, extra-judicial executions, illegal detention, torture and inhuman treatment, and the imposition of criminal penalties on vulnerable persons. Pope Francis is not only looking at restrictions on the use of criminal justice and the negative obligations under human rights in relation to criminal justice, but also upon the duties of the criminal justice system and the positive obligation under human rights to investigate behaviour that seriously infringes upon human dignity, as trafficking in human beings and corruption do.[50]

5 The Future of the *Association Internationale de Droit Pénal*

The actual by-laws of the AIDP were approved at the Rio Congress in 2014. With one significant caveat, the association's mission does not differ much from the one set out in 1924, amended several times after WWII. There is just one substantial difference. Although the neutrality of thought remains central, it must be founded on respect for the humanitarian principles (Article 2(4)). Article 1 also indicates explicitly the aim of achieving a more humane and efficient administration of justice. The impact of the principle of humanity and respect for the rule of law and human rights are now clearly reflected in the AIDP by-laws and are part of its theoretical and practical postulates as well as its mission. Although the AIDP is ideologically neutral, it is a scientific organization that is engaged in improving the criminal justice system through the study and development of:

- Criminal policy and the codification of Penal Law,
- Comparative penal law,
- Human rights in the penal justice system, and
- International criminal law (particularly, international criminal justice).

This is the reason why Pope Francis's address fully corresponds with the mission and aims of the AIDP, and the reason why use and abuse of criminal justice as a tool of authoritarian power and the existence and use of the death penalty or of other forms of extra-judicial execution are not in line with the AIDP's mission.

For being able to release its mission President Vervaele presented in 2014, at the Rio de Janeiro Congress, the Strategic Considerations for 2015-2019 and at the Rome Congress in 2019 the Strategic Considerations for 2019-2024. The promotion of scientific activities and scientific collaboration is the vital goal and *raison d'être* of the association. In fact, the original UIDP was created as a platform designed to facilitate and promote scientific contacts among professionals from universities and practitioners of the criminal justice system. From the substantive point of view, the AIDP

[50] For further information see Pope Francis & World Associations, 'For a real human justice - Por una justicia realmente humana' (Vatican city, 23 October 2014).

should deal with the challenges ahead in the field of criminal justice: the expanding functions of criminal justice, the neo-punitive approach, questions about the significance of codification, questions related to smart sanctions, etc. Both the functions and boundaries of criminal justice are at stake. New demands on the criminal justice system risk converting it into a security tool with flexible human rights standards. Concerning the prevention and suppression of crime, new legal interest in increasing criminal protection may be warranted in certain areas, such as corporate business, protection of the environment, and the cyber world. All this will be done through the AIDP Congress and its preparatory colloquia, the regional conferences and the World conference. This should not only result in resolutions, but also in publications of high value and great visibility.

The AIDP has also shown in its last Congresses in Rome (2019) and in its Centenary Congress in Paris (2024) to be able to address contemporary topics and to elaborate resolutions on this topics that reflect the key values of the AIDP. Topics as Criminal Justice and Corporate Business (Rome Congress) or Artificial Intelligence and Criminal Justice (Paris Centenary Congress) are indeed topics that do not interest only specialist of criminal justice, but also a broader societal audience. AI is moreover a topic that can improve the effectiveness of criminal justice (in relation to prevention, to criminal investigation, prosecution and to sentencing), but that does also risks to undermine key values of a human and fair criminal justice system and of human rights and rule of law compliance in a democratic society.

In 2024 the AIDP celebrated the centenary of its foundation in Paris. This celebration has not only served to revisit our legacy but must also serve as a unique momentum for assessing the essential role of the AIDP in the future. Criminal justice is for us intrinsically related to a human approach and the respect of human rights standards. Criminal justice includes for us by definition the standards of international criminal justice. The tasks are not the same as they were 100 years ago. The further digitalisation and increased use of artificial intelligence in society will continue to challenge the premises and postulates of the criminal justice foundations. And the boundaries imposed by human rights will remain at the centre of the debate, as most criminal justice related human rights don't have an absolute character and are thus of flexible application. Finally, after decades of experiences with international criminal justice for core international crimes, both questions of legitimacy and expansion have come forward.

The value-based approach of the AIDP is essential, as we are living in turbulent times, in which some of this values are under pressure or even fully denied. Penal populism and governing by fear, authoritarian visions on the political use of the criminal justice system, and increasing armed conflicts in which the actors and even the states set aside their obligations under international criminal law, international humanitarian criminal law and human rights lead to a strong erosion of the core values and undermine the legitimacy of the criminal justice institutions at national and international level. In this context, the AIDP must stand firm for its values. This is also the reason why it is important to be

a strong association with many active national groups. I am fully confident that we will be able in the coming decades to contribute as an independent scientific association to the criminal justice agenda and to play our role of *société savante*, thanks to the fact that we are a strong community and thanks to the quality of our work. Whatever the outcomes may be, a scientific world organisation like the AIDP will remain necessary in order to bring together scholars and practitioners, to link intercontinental experiences and debate, and to build global and regional foundations for a real human criminal justice in the future.

The newly elected president at our Centenary Congress in Paris, Professor Katalin Ligeti, is fully prepared for this task. She can count on a strong community and the historic strength of the AIDP. Together with the new vice-president for the scientific agenda, Prof. André Klip, they have prepared the design for the next scientific cycle (2024-2029). Several interesting topics are on the agenda, as criminal law and environmental sustainability or gender and sexual identity and criminal justice, but the main overarching team is rightly addressing the core values for criminal justice systems, including human rights and rule of law compliance. Our second centenary has just started, in turbulent societal times, but under an excellent scientific spectrum.

My best wishes to the centenary AIDP!

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L'HISTOIRE DU ROLE DE L'AIDP EN FAVEUR DE LA JUSTICE PÉNALE INTERNATIONALE

Muriel Ubéda-Saillard[*]

Se pencher sur le rôle qu'a joué l'Association internationale de droit pénal dans l'invention puis l'institutionnalisation de la justice pénale internationale permet, avant toute chose, de rappeler l'heure de gloire vécue par la doctrine dans l'entre-deux guerres. Compte tenu de la décentralisation à la fois de l'ordre juridique international et de l'exercice de la fonction normative, les auteurs publicistes et privatistes ont en effet contribué, par leur présentation rationnelle et explicative des normes – notamment des normes coutumières non écrites, à la conception du droit international, avant l'essor de sa codification et de son interprétation contentieuse. C'est en ce sens qu'il faut comprendre la référence faite à « la doctrine des publicistes les plus qualifiés » comme « moyen auxiliaire de détermination des règles de droit » dans l'article 38 du Statut de la Cour permanente de Justice internationale - inchangé dans le Statut de la Cour internationale de Justice qui lui a succédé.

Loin de se contenter de systématiser les règles du droit existant, ces « faiseurs de systèmes »[1] n'ont pas hésité à suggérer des améliorations *de lege ferenda* dont certaines présentaient, à l'époque, un caractère proprement révolutionnaire. Les propositions formulées par l'AIDP et ses membres au soutien de la création du droit international pénal et d'une juridiction internationale compétente pour en sanctionner les violations témoignaient en ce sens d'une démarche intellectuelle visionnaire qui pèsera de manière décisive sur le cours de l'histoire de la communauté internationale, à un moment où les articles 227 et suivants du Traité de Versailles étaient restés inappliqués[2] et l'interdiction générale de recourir à la force armée dans les relations internationales n'avait pas encore été consacrée. Mais le succès de la doctrine pour influencer la détermination du droit positif ne s'est pas arrêté « au temps du cinéma muet »[3] ! Les travaux de l'AIDP, de même que les réflexions et actions de certains de ses membres éminents, ont ainsi accompagné le développement du droit international pénal et des trois générations de juridictions internationales chargées de l'appliquer – des Tribunaux *ad hoc* à la Cour pénale internationale en passant par les juridictions hybrides telles que les Chambres spécialisées du Kosovo ou la Cour pénale spéciale de la République centrafricaine. Dès sa création le 24

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[1] En écho à l'article du Pr. J. Rivero et à la controverse célèbre avec le Conseiller d'Etat B. Chenot sur le rôle joué par la doctrine dans le droit administratif français, v. not. Jean Rivero, 'Apologie pour les "faiseurs de systèmes"' (1951) Chronique-XXIII Recueil Dalloz de doctrine, de jurisprudence et de législation 99, 7.

[2] V. par ex. William A Schabas, *The Trial of the Kaiser* (Oxford University Press 2018).

[3] Frank Latty, 'Doctrine: eut du succès au temps du cinéma muet' in Hervé Ascensio and others (eds), *Dictionnaire des idées reçues en droit international* (Pedone 2017).

mars 1924, à Paris, l'Association a offert aux enseignants-chercheurs et aux professionnels spécialistes des sciences pénales un cadre institutionnel pour échanger leurs opinions et permettre une circulation horizontale des concepts et idéologies (1), ainsi qu'une tribune pour faire valoir des positions communes et les diffuser auprès des États et de la Société des Nations puis de l'Organisation des Nations Unies et des organes placés sous son égide (2).

1 Les raisons ayant motivé la promotion de la justice pénale internationale

L'AIDP avait expressément pour mandat d'encourager le développement de l'internationalisation du droit pénal, et cette mission a été portée avec dynamisme et talent par certains de ses membres éminents (1.1), convaincus par les vertus pacificatrices de la justice pénale internationale (1.2).

1.1 Une société savante au service de l'internationalisation du droit pénal

1.1.1 Le fondement normatif

Contrairement à l'Union internationale de droit pénal, créée en 1889, qu'elle visait à refonder en 1924 après que celle-ci fut dissoute du fait de la première guerre mondiale, l'AIDP avait expressément pour « pour but (…) de favoriser le développement théorique et pratique du droit pénal international, en vue d'arriver à la conception d'un droit pénal universel, à la coordination des règles de procédure et de l'instruction criminelle »[4]. L'article 2 § 2 de ses statuts révisés en 2014 visera le « domaine du droit international pénal » conformément à la dénomination aujourd'hui retenue – du moins par les internationalistes - pour désigner la poursuite des infractions internationales (crimes de guerre, crimes contre l'humanité, génocide et agression) qui portent atteinte, par leur gravité exceptionnelle, à l'ordre public international, et se distingue de celle des infractions aux droits internes, dont la commission comprend un ou plusieurs éléments d'extranéité et qui nécessite dès lors une collaboration interétatique, au titre du droit pénal international[5]. Au-delà des différences de dénomination, l'hybridité et l'autonomie du régime de la Cour pénale internationale, ajouté à la condition d'organisation internationale de celle-ci, devraient inviter les spécialistes de droit pénal et de droit international à renforcer leurs échanges afin d'harmoniser sinon unifier leurs analyses, au service d'une meilleure compréhension de la justice pénale internationale, notamment dans le cadre des sociétés savantes[6]. D'ailleurs, l'AIDP collabora, avant la Seconde guerre mondiale, avec d'autres organisations comme l'Union interparlementaire et l'*International Law Association*.

[4] 'Actes de Fondations de l'Association Internationale de Droit Pénal (A.I.D.P)'.

[5] Sur cette distinction, v. par ex. Szurek, 'Historique - La formation du droit international pénal' in Hervé Ascensio, Emmanuel Decaux and Alain Pellet (eds), *Droit International Pénal* (2nd edition, Pedone 2012); estimant que le droit pénal international intègre le droit des crimes de droit international, v. Didier Rebut, *Droit Pénal International* (4th edn, Dalloz 2022).

[6] En ce sens Muriel Ubéda-Saillard, *La souveraineté pénale de l'État au XXIème siècle* (Pedone 2018).

1.1.2 Le facteur personnel

Un grand nombre de pénalistes et criminologues de nationalités diverses, membres de l'Association, étaient les fers de lance de la « doctrine des précurseurs »[7] qui se développa dès la fin de la Première guerre mondiale. Ce mouvement était composé d'universitaires ainsi que de professionnels de la justice et de la diplomatie, parmi lesquels figuraient Vespasien V. Pella, Jules Basdevant, Henri Donnedieu de Vabres, Quintiliano Saldaña, Carton de Wiart, Ernest Delaquis ou Gérard Van Hamel – tous membres fondateurs de l'Union. « Ils témoignent du fait que des personnes impliquées font la différence dans le monde »[8] et que le Droit, tant du point de vue de son élaboration que de son application et de sa diffusion, résulte de l'influence des acteurs impliqués, notamment lorsqu'on se situe sur la scène internationale[9].

Ce courant doctrinal gagna en visibilité à partir de 1925, avec la parution de l'ouvrage de Pella, *La criminalité collective des Etats et le droit pénal de l'avenir*, dans lequel l'auteur proposait d'instaurer la sanction pénale à la fois de la décision de recourir à la guerre et des crimes commis durant le conflit armé[10], soulignant ainsi la nécessité absolue de réprimer le crime d'agression – une revendication qu'il ne cessera de réitérer dans la suite de ses travaux en développant notamment une vision critique de la Charte des Nations Unies[11]. La force de proposition de ce professeur pénaliste internationaliste roumain[12], qui présidera l'Association de 1946 à 1952, a eu une grande incidence sur l'évolution du droit international positif car, après avoir été député en Roumanie, il siégea dans la délégation

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[7] Jean-Yves Dautricourt, 'La justice criminelle universelle aux Nations Unies – Réflexions sur un abandon' 35 Revue Internationale de Droit Pénal 245, 273.

[8] Cherif M Bassiouni, 'Aperçu Historique de l'Association et des Contributions de ses Membres' 86 Revue Internationale de Droit Pénal 807, 807.

[9] En ce sens, le célèbre propos de Cesaere PR Romano, 'The Americanization of International Litigation' (2003) 19 Ohio State Journal on Dispute Resolution 89, 91 ('« legal culture is not a mystical influence, but rather the result of concrete practices of multiple agents, not exclusively lawyers, in a multitude of national and international systems').

[10] Vespasien V Pella, *La Criminalite Collective des Etats et le Droit Penal de l'Avenir* (2e edn, Imprimerie de l'Etat 1925).Cet ouvrage vaudra à son auteur une nomination au prix Nobel de la paix en 1925.

[11] Vespasien V Pella, 'Fonctions pacificatrices du droit pénal supranational et fin du système traditionnel des traités de paix : communication à l'Académie des sciences morales et politiques de l'Institut de France' [1947] Revue générale de droit international public 1, 27 ("[L]es Nations Unies, tout en réservant au Conseil de sécurité le droit absolu d'apprécier l'opportunité d'appliquer des sanctions, ne sauraient refuser à l'humanité le droit de savoir en quoi consiste le plus grave de tous les crimes : la guerre d'agression "); Muriel Ubéda-Saillard, *La justice pénale internationale au service de la paix mondiale* (Lefebvre Dalloz 2023).

[12] Concernant l'œuvre prolifique de V.V. Pella, v. not. Aurora Ciuca, *Vespasian V. Pella and the Ideal of Peace through Law* (2022); Aurora Ciuca, 'Romanian Contributions to the Codification of International Law: Vespasian V. Pella' (2018) 5 European Journal of Law and Public Administration 142; Micea Dutu, *Vespasian V.Pella (1897-1952). Founder of the International Criminal Law. Promoter of the Unification of the Criminal Law. Architect of the International Criminal Justice* (Universul Juridic 2012); Andrei Mamolea, 'Vespasien V. Pella, International Criminal Justice as a Safeguard of Peace, 1919-1952' in Frédéric Mégret and Immi Tallegren (eds), *Dawn of Discipline: International Criminal Justice and its Early Exponents* (Cambridge University Press 2020).

roumaine de la Société des Nations où ses projets reçurent par conséquent un écho amplifié. A l'issue de la seconde guerre mondiale, il publia sa dernière œuvre phare *La guerre-crime et les criminels de guerre. Réflexions sur la justice pénale internationale, ce qu'elle est et ce qu'elle devrait être*[13], et exerça comme consultant auprès du Tribunal Militaire International de Nuremberg puis des Nations Unies, en participant notamment, avec Raphaël Lemkin et Henri Donnedieu de Vabres, au comité d'experts, désigné par le Secrétaire Général, en charge de la rédaction du projet de Convention internationale pour la prévention et la répression du crime de génocide. Cette contribution majeure au développement du droit international pénal est aujourd'hui honorée par l'AIDP qui décerne une médaille à l'effigie de Pella à une personnalité dont l'engagement en faveur de la lutte contre l'impunité s'avère particulièrement remarquable.

Il n'était pas le seul membre de l'Association à avoir encouragé de manière décisive l'essor de cette nouvelle discipline. Donnedieu de Vabres a siégé comme juge français au Tribunal militaire international de Nuremberg, où il convoqua, le 18 mai 1946, une réunion de l'AIDP, lui permettant ainsi de reprendre ses travaux. Président de l'Association de 1963 à 1969, Jean Graven représenta la Suisse durant ce procès historique. Quant à M. Cherif Bassiouni, Président de 1989 à 2004, son œuvre doctrinale majeure en faveur de la lutte contre l'impunité lui permit d'exercer des fonctions internationales capitales, et d'assurer notamment la présidence des Commissions d'enquête indépendantes sur les crimes commis dans l'ancienne Yougoslavie (1992) et sur la situation en Lybie (2011), avant de jouer un rôle clé, comme on le verra, dans la création de la Cour. D'autres membres actifs de l'Association ont laissé un précieux héritage académique, telle Mireille Delmas-Marty qui n'a eu de cesse de décloisonner les disciplines pour les nourrir de l'ensemble des – bien-nommées – humanités et pour proposer un projet humaniste de société protégeant la diversité (« le relatif ») tout en promouvant des normes communes sacralisant les interdits fondateurs (« l'universel »)[14].

1.2 Les vertus attribuées à la justice pénale internationale par les membres de l'Association dans l'entre-deux guerre

1.2.1 Le maintien de la paix internationale et la création d'un monde commun

Le mouvement humaniste et pacifiste des Précurseurs prônait dans son ensemble deux grandes idées. En premier lieu, une criminalité exceptionnelle devait appeler une réponse hors du commun. Jean Graven l'exprimait en ces termes : « la "*societas generis humani*" est lésée par certains crimes et ne peut pas rester étrangère à ce qui se passe à l'intérieur des Etats »[15]. Contrairement aux propos célèbres de Goebbels à la tribune de

[13] Vespasien V Pella, *La Guerre-Crime et les Criminels de Guerre Réflexions sur la Justice Pénale Internationale ce qu'elle est et ce qu'elle devrait être* (Pedone 1946).
[14] Mireille Delmas-Marty, *Les Forces Imaginantes Du Droit - Tome 1, Le relatif et l'universel* (Seuil 2004).
[15] Jean Graven, 'De la Justice Internationale à la Paix (Les Enseignements de Nuremberg) (1)' (1946) XXIV Revue de droit international, de sciences diplomatiques et politiques 183, 202.

la Société des Nations - « charbonnier est maître chez soi »[16], la communauté internationale se devait de réagir aux « actes ébranlant le fondement même sur lequel s'appuie la communauté internationale, c'est-à-dire [des] actes mettant en péril la coexistence pacifique des peuples »[17], « de nature à troubler profondément l'ordre public international et à offenser l'universalité du sentiment humain »[18]. En second lieu, la criminalisation de la guerre d'agression contribuerait à la pacification des relations internationales, comme Antoine Sottile l'affirmait avec force en 1945 – majuscules à l'appui :

> Notre thèse découle des principes de la logique. Le droit pénal a été l'un des facteurs qui ont permis à la société de freiner les tendances agressives chez l'individu. Personne ne niera que dans tous les pays du monde c'est le Droit pénal et les tribunaux qui seuls sont capables de maintenir l'ordre public et la paix. Une conclusion, dès lors, s'impose. La voici : Il n'y a aucune raison pour qu'il n'en soit pas de même pour les Etats dans leurs rapports réciproques. […] Appliquée d'une manière appropriée dans le domaine international, […] la sanction pénale serait le SEUL ET LE PLUS EFFICACE DES MOYENS pour garantir l'ordre public international, c'est-à-dire la paix entre les peuples.[19]

Pella semblait avoir davantage conscience des limites de tout raisonnement statocentriste, qui transposerait, par analogie, dans l'ordre international les vertus pacificatrices du droit pénal dans les sociétés nationales, mais il admettait néanmoins une présomption en ce sens :

> Pourquoi les vertus intimidantes et exemplaires de la sanction pénale ne pourraient-elles pas produire leurs effets aussi sur le plan international ? Pourquoi la contrainte psychologique que représente la simple existence de cette sanction, et qui constitue un motif antagoniste destiné à enrayer l'attrait néfaste du mal ne jouerait-elle que dans les rapports entre individus et disparaîtrait-elle dans les rapports entre Etats?[20]

Le Pacte de paix perpétuelle Briand-Kellog, signé par quinze Puissances le 27 août 1928, puis ouvert à l'adhésion universelle et entré en vigueur le 25 juillet 1929, définissait les

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[16] Le texte de la déclaration de J. Goebbels, alors ministre de la propagande du III^{ème} Reich, est reproduit par René Cassin, 'Les droits de l'homme' (1974) 140 Recueil des Cours de L'Academie de Droit International de la Haye 321, 324.

[17] Antoine Sottile, 'Les Criminels de Guerre et le Nouveau Droit Pénal International, Seul Moyen Efficace pour Assurer la Paix du Monde' (1945) XXIII Revue de droit international, de sciences diplomatiques et politiques 228, 238.

[18] Pella, 'Fonctions pacificatrices du droit pénal supranational et fin du système traditionnel des traités de paix : communication à l'Académie des sciences morales et politiques de l'Institut de France' (n 11) 3.

[19] Sottile (n 18) 234–235.

[20] Pella, 'Fonctions pacificatrices du droit pénal supranational et fin du système traditionnel des traités de paix : communication à l'Académie des sciences morales et politiques de l'Institut de France' (n 12) 2.

termes conventionnels d'un « pacigérat positif »[21] incarnant l'idéal kantien, mais afin d'éviter que l'humanité ne connaisse de paix éternelle que « dans le grand cimetière de l'espèce humaine »[22], Pella et ses coreligionnaires estimaient nécessaire l'adjonction de la sanction pénale, dans laquelle ils plaçaient d'ailleurs des espoirs plus profonds. Dans le sillage de Donnedieu de Vabres, qui évoquait la nécessité d'un « sentiment toujours plus net et plus impérieux de la solidarité internationale », Pella nourrissait en effet « la conviction que lorsque le droit pénal exercera son action pacificatrice dans les rapports entre Etats, comme il l'exerce dans les rapports entre individus, le sentiment d'une communauté vivante deviendra une réalité pour les premiers, comme il l'est devenu pour les derniers »[23]. Créer, sur la base d'interdits fondateurs, le « monde commun » évoqué plus tard par Ricoeur[24], tel était son projet, qu'il avait d'ailleurs exposé dans un autre cadre, en ce qui concernait la création d'une « union fédérale européenne »[25]. Le *momentum* Nuremberg constituera, de ce point de vue, un évènement fondateur témoignant d'« une entrée, ou plus exactement une percée de l'éthique, dans le domaine réservé du Droit des gens, sous une poussée irrésistible et soudaine, mais temporaire, de la conscience sociale universelle »[26]. La crise actuelle du multilatéralisme et la prévalence décomplexée de la Force sur le Droit dans l'ordre international montrent toutefois les limites de l'analyse des Précurseurs et si l'on considère, avec Georges Scelle, que « le Droit résulte de la conjonction de l'éthique et du pouvoir »[27], on ne peut que déplorer le recul de la première au profit du second dans les équilibres internes au droit international public aujourd'hui.

1.2.2 Les doutes résiduels

Il subsistait quelques hésitations voire divergences doctrinales chez les Précurseurs, par exemple sur les questions de savoir s'il fallait privilégier une cour pénale internationale permanente à des juridictions *ad hoc*, ou encore s'il fallait poursuivre la responsabilité pénale des individus, celle de l'Etat, ou bien les deux. Ainsi Graven estimait-il, à l'instar de Pella et Sottile, que « [t]oute répression efficace des crimes contre l'ordre public uni-

[21] Baron Edouard-Eugène-François Descamps, 'Le Droit International Nouveau – L'influence de la Condamnation de la Guerre sur l'évolution Juridique Internationale' (1930) 31 Recueil des Cours de L'Academie de Droit International de la Haye 393, 486–487. Pour rappel, le comité de juristes, présidé par le Baron Descamps, avait transmis, en 1920, au Conseil de la Société des Nations un projet de statut d'une cour permanente de justice internationale incluant la proposition – hors mandat - de création d'une haute Cour internationale de justice criminelle.

[22] Emmanuel Kant, *Pour la Paix Perpétuelle (1795) – Projet philosophique, avec un choix de textes sur la paix et la guerre, d'Erasme à Freud* (1985) 51-98 (55).

[23] Pella, *La Guerre-Crime et les Criminels de Guerre Réflexions sur la Justice Pénale Internationale ce qu'elle est et ce qu'elle devrait être* (n 14) 117 et 124.

[24] P Ricoeur, *La mémoire, l'histoire, l'oubli* (Seuil 2000) 208.

[25] Vespasien V Pella, *« Allocution » in Comptes-rendus des assemblées générales de la Fédération internationale des Comités de coopération européenne et du Comité français de coopération européenne* (1935) 10–13.

[26] Dautricourt (n 8) 272.

[27] Georges Scelle, *Manuel de droit international public* (Domat-Monchrestien 1948) 10.

versel est nécessairement fondée sur la création d'une juridiction pénale universelle permanente »[28]. Une répression *ad hoc* des crimes s'apparenterait à « une satisfaction légitime donnée à tous ceux qui en ont été les victimes [plutôt qu'à] une mesure de politique criminelle internationale posant le principe de la répression de tels actes dans l'avenir, afin d'en prévenir le retour »[29], tandis qu'une cour universelle permanente jugerait pour les générations à venir[30].

Par ailleurs, en 1945, Donnedieu de Vabres soutenait le système d'une responsabilité pénale de l'Etat, Lord Phillimore, celui d'une responsabilité pénale individuelle, et Pella, celui d'une responsabilité cumulative. Politis soulignait que « [d]ans les sociétés primitives, après avoir été collective, atteignant tous les membres du groupement dont l'auteur du crime faisait partie, la répression s'est individualisée : par abandon noxal, son groupement livrait l'inculpé au groupement lésé, auquel s'est substitué plus tard l'État qui monopolisa le système répressif »[31]. Le Tribunal de Nuremberg trancha, comme on le sait, avec son célèbre dictum : « ce sont des hommes et non des entités abstraites qui commettent les crimes dont la répression s'impose, comme sanction du droit international »[32]. Pella continua toutefois, comme Donnedieu de Vabres ou Eugène Aroneanu, à considérer l'État comme une personne morale capable de délinquer.

2 Les actions entreprises par l'Association ou ses membres en faveur de la justice pénale internationale

L'AIDP a eu une influence décisive au niveau des sources matérielles du droit international, comprises comme les fondements sociologique, économique, politique et moral, des normes, en diffusant dès 1924 une vision nouvelle de la société internationale, qui sortirait de l'état de nature des relations interétatiques grâce à l'institution juridique de la paix. Il s'agissait à l'époque d'une utopie, qui « se présente toujours comme l'affirmation ou la revendication d'un droit, […] porteuse d'une dynamique qui tend à informer ou à modifier la *lex lata*, mais sans doute plus par subversion que par révolution, plus par infiltration et inondation progressives que par changement brutal »[33]. En portant ces propositions *de lege ferenda* jusque dans l'enceinte des organisations internationales, l'Association a influé, en l'occurrence, sur les sources formelles, entendues comme les modes de création du droit international positif. Elle a communiqué d'innombrables résolutions et projets, souvent publiés à la *Revue internationale de droit pénal* ou dans les *Nouvelles études pénales* – publications largement diffusées au plan international, et pris en compte dans les organes délibérants, d'autant que siégeaient parfois dans ces derniers des

[28] Jean Graven, 'Pour la défense de la justice internationale, de la paix et de la civilisation par le droit pénal' (1964) 1–2 Revue Internationale de Droit Pénal 7, 30.
[29] Pella, 'Fonctions pacificatrices du droit pénal supranational et fin du système traditionnel des traités de paix : communication à l'Académie des sciences morales et politiques de l'Institut de France' (n 11) 7.
[30] Sottile (n 18) 236.
[31] N Politis, *Les nouvelles tendances du droit international* (Hachette 1927) 129–130.
[32] Tribunal Militaire International, *Procès des Grands Criminels de Guerre devant le Tribunal Militaire International Nuremberg, 14 Novembre 1945-1er Octobre 1946* (1947) 235.
[33] Serge Sur, 'Système Juridique International et Utopie', Le droit international (1987) 43.

membres de l'Association. Ses colloques, congrès internationaux, réunions interrégionales ou nationales ont également nourri la réflexion des gouvernements nationaux et permis l'évolution des droits internes. Sans prétendre établir une liste exhaustive des propositions formulées, on peut esquisser une fresque impressionniste découpée chronologiquement en deux temps, autour de la création des premières juridictions pénales internationales (2.1) puis de la première cour permanente à vocation universelle (2.2).

2.1 Les actions entreprises jusqu'à la création des Tribunaux militaires internationaux de Nuremberg et de Tokyo

Entre 1926 et 1937, l'AIDP a organisé quatre congrès internationaux (Bruxelles, Bucarest, Palerme, Paris). Le dynamisme de certains de ses membres s'est illustré dans la rédaction et la proposition d'un certain nombre de projets. Outre son activisme dans le cadre des travaux de la Société des Nations sur la répression du faux-monnayage – question à laquelle il avait consacré un ouvrage[34], Pella chercha ainsi à renforcer l'effectivité des dispositions du Pacte de Paris, conclu en 1928, et notamment l'interdiction cardinale du recours à la force armée dans les relations interétatiques, en produisant des rapports et résolutions dans le cadre de l'Union interparlementaire[35] - un combat qu'il mena également en tant que membre de la délégation de Roumanie à la conférence sur le désarmement (1932-1934). Il imagina aussi la création d'une chambre criminelle au sein de la Cour permanente de justice internationale, et rédigea en 1928 un projet de résolution, transmis au Secrétariat général de la Société des Nations[36]. Dans le cadre de ses fonctions de rapporteur général de la conférence de la Société des Nations pour la prévention et la répression du terrorisme, dont Jules Basdevant était le vice-Président, il s'impliqua ensuite dans la rédaction de la Convention internationale consacrée à cette infraction spécifique et de son Protocole pour la création d'une Cour pénale internationale, ouverts à la signature à Genève le 16 novembre 1937[37].

2.2 Les actions entreprises jusqu'à la création de la Cour pénale internationale

Dès 1947, l'AIDP tint son congrès international à Vienne, et depuis 1964 ce genre de manifestations se déroule tous les cinq ans, donnant lieu à l'adoption de résolutions thématiques concernant souvent des évolutions sociales nécessitant l'adaptation du droit positif, telles que la compétence universelle, qui a fait l'objet d'une résolution adoptée lors du congrès d'Istanbul en septembre 2009, ou l'intelligence artificielle à laquelle le congrès de Paris de 2024 était consacré. Accréditée en 1950 comme ONG avec statut consultatif

[34] Vespasien V Pella, *La coopération des Etats dans la lutte contre le faux-monnayage* (Pedone 1927).

[35] V. not. Union Interparlementaire, Compte Rendu de la XXVIIIe Conférence Tenue A Genève du 20 au 26 Jullet 1932 (Libraire Payot & C 1933) 599.

[36] V. not. la note écrite transmise par V.V. Pella et lue par le juge Fitzgerald au congrès de l'International Law Association, à l'occasion de l'étude du Rapport du Comité sur la Cour permanente internationale criminelle, International Law Commission, *Report of the Thirty-Fourth Conference, Vienna, 5-11 Août 1926* (1927) 146 et s.

[37] Convention pour la Prévention et la Répression du Terrorisme; Convention pour la Création d'une Court Pénale Internationale.

auprès des Nations Unies, l'AIDP coopère avec d'autres institutions accréditées telles la Société internationale de criminologie ou la Fondation internationale pénale et pénitentiaire, et entretient des relations privilégiées de travail avec les organes onusiens en participant aux réunions et conférences, et en transmettant des projets d'instruments internationaux[38]. Les propositions formulées par l'Association aboutissent parfois à l'adoption de conventions internationales par l'Assemblée générale des Nations Unies. C'est notamment le cas du projet de convention sur l'imprescriptibilité des crimes de guerre et des crimes contre l'humanité, pensé dès 1966[39], ayant donné lieu à la convention du 26 novembre 1968, ou du projet de convention sur la torture, élaboré par un comité d'experts formé par l'Association et réuni à l'Institut supérieur international des sciences criminelles de Syracuse, qui fut soumis en 1978 à la sous-commission onusienne sur la prévention de la discrimination et la protection des minorités, et qui conduisit à l'adoption de la convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, du 10 décembre 1984[40].

La force de proposition de l'Association continua par ailleurs de s'incarner spécifiquement dans certains de ses membres, confirmant la prégnance du facteur personnel pour que des propositions *de lege ferenda*, en phase avec l'état des sources matérielles du droit, soient reçues par les sources formelles et s'inscrivent dans le droit positif. Dans l'immédiat après-guerre, Pella œuvra ainsi pour que le précédent du Tribunal de Nuremberg inspire le développement du droit international pénal et la création d'une cour pénale internationale permanente. Il prépara, par exemple, à la demande du Secrétaire Général des Nations Unies, un Memorandum concernant le Projet de Code des crimes contre la paix et la sécurité de l'humanité, dont la codification fut finalement attribuée à la Commission du droit international par l'Assemblée générale[41] et n'aboutit en définitive qu'en 1996[42]. Le Professeur Bassiouni se vit, quant à lui, chargé en mai 1976, par le Conseil de direction de l'Association, d'élaborer un projet de code pénal international ; il l'acheva en 1979 et le texte fut soumis immédiatement aux Nations Unies. Ainsi que l'auteur le souligne dans sa préface, ce vaste projet « reprend le fil des efforts de nombreux hommes de science qui, pendant des décennies, ont apporté leur contribution au développement des

[38] Cherif M Bassiouni, 'L'Association Internationale de Droit Pénal (A.I.D.P): Plus d'un Siècle de Dévouement à la Justice Pénale et aux Droits de l'homme' (1999) 18 Nouvelles études pénales 13.

[39] 'Le Projet de Convention Internationale sur l'imprescriptibilité des Crimes de Guerre et des Crimes contre l'humanité' (1966) 37 Revue Internationale de Droit Pénal.

[40] Cherif M Bassiouni and Daniel Derby, 'An Appraisal of Torture in International Law and Practice: The Need for an International Convention to Prevent and Suppress Torture' (1977) 48 Revue Internationale de Droit Pénal 198.

[41] United Nations, '*Yearbook of the International Law Commission 1950 - Documents of the Second Session Including the Report of the Commission to the General Assembly*' 379 et s. – 387.

[42] Commission de Droit Internationale, 'Projet de Code des Crimes contre la Paix et la Securite de l'Humanite' 15 et s.

concepts, théories et valeurs de cette discipline juridique »[43]. Bassiouni fut également désigné comme expert auprès de la commission *ad hoc* sur l'Afrique du Sud, pour laquelle il élabora un projet de convention sur la mise en œuvre de la Convention sur l'apartheid, qui prévoyait en l'occurrence la création d'une cour pénale internationale. Ce texte fut transmis à la Commission du droit international, dans le cadre de la préparation de ses rapports de 1993 et 1994 portant sur la création d'une telle juridiction[44]. Enfin, Bassiouni joua un rôle clé fameux dans l'élaboration des travaux préparatoires de la conférence diplomatique de Rome, en tant que vice-président du comité préparatoire sur l'établissement de la Cour pénale internationale, puis dans la rédaction du Statut de Rome, comme président du comité de rédaction de la conférence diplomatique. Il put ainsi contribuer activement, avec d'autres personnalités favorables aux idées du groupe des États pilote dirigé initialement par le Canada et l'Australie - telles que Philippe Kirsch et Adrian Bos, à donner une impulsion aux discussions en évitant qu'elles ne s'enlisent. La dimension institutionnelle des échanges diplomatiques ayant présidé à l'élaboration puis l'adoption du Statut a favorisé une discipline des négociations ainsi que la défense des intérêts universels, liés à l'objet même du traité, qui ne pouvaient pas être sacrifiés dans la recherche du consentement le plus large.

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« *What's past is prologue* »[45] ! Le rôle majeur de l'AIDP dans la promotion de la justice pénale internationale résulte de la pérennité de son cadre institutionnel, qui a favorisé non seulement l'émergence de propositions audacieuses mais encore leur consolidation voire sédimentation au fur et à mesure que les générations successives de juristes les reprenaient à leur compte et les développaient. Cette continuité des travaux a permis l'élaboration dans le temps d'une pensée complexe, adaptée aux enjeux de taille que soulevait la reconfiguration du *ius puniendi* des États souverains. Par-delà le talent et la reconnaissance individuelle de certains de ses membres, moteurs dans la force de proposition, l'AIDP incarne une réflexion collective transnationale qui s'avère précieuse pour le développement des droits international pénal et pénal international.

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[43] Chérif M Bassiouni, 'Projet de Code Pénal International' (1981) 52 Revue Internationale de Droit Pénal 313, 34; Cherif M Bassiouni, 'Projet de Statut du Tribunal Pénal International' (1993) 10 Nouvelles études pénale 369.

[44] United Nations, 'Annuaire de la Commission du Droit International 1993 Volume II Deuxième Partie - Rapport de la Commission à l'Assemblée Générale sur les Travaux de sa Quarante-Cinquième Session'; Nations Unies, 'Annuaire de la Commission du droit International 1994 Volume II Deuxième partie - Rapport de la Commission à l'Assemblée générale sur les travaux de sa quarante-sixième session'; Nations Unies, 'Annuaire de la Commission du droit International 1990 Volume II Deuxième partie - Rapport de la Commission à l'Assemblée générale sur les travaux de sa quarante-deuxième session' paras 95–99.

[45] William Shakespeare, 'Tempest - Act 2 - Scene 1'.

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SCIENTIFIC OUTPUTS AND IMPACT

GENERAL CRIMINAL LAW

THE AIDP'S RESOLUTIONS ON THE GENERAL PART OF CRIMINAL LAW FROM 1926 TO 2024

Raimo Lahti[*]

1 Introduction: relevant conceptual distinctions

When looking at the resolutions on the general part of criminal law, adopted by the AIDP in 1926-2024 (by 21 congresses), it is worth noticing that the division between the four sub-areas, namely general part and special part of criminal law, criminal procedure and international criminal law, has been developed during the history of the AIDP congresses.[1] This division between Sections I-IV is perceivable since 1953, although the distinction between the above-mentioned sub-areas has not always been plain. During the last decades the AIDP has also increasingly arranged congresses in which there has been a comprehensive theme without a clear distinction between those sub-areas of criminal justice, namely on organized crime (Budapest 1999), on information society (Rio de Janeiro 2014), on corporate business (Rome 2019) and on artificial intelligence (Paris 2024).

As for the term 'general part of criminal law', it is not fully clear for making division between the four above-mentioned sub-areas. According to M. Cherif Bassiouni, the AIDP has since 1924 achieved special status among other organizations in following areas: 1) criminal justice policy and codification of criminal law; 2) comparative criminal justice: 3) international criminal law; and 4) human rights in the administration of criminal justice.[2] The subjects 1)–2) obviously belong to the sub-area of general part of criminal law, although the term 'criminal justice' includes normally also criminal procedure – an aspect of integration of substantive and procedural criminal law which is typical to common law legal systems.[3]

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[1] See the compilation prepared by José Luis de la Cuesta, Isidoro Blanco and Miren Odriozola (eds), *Resolutions of the Congresses of the International Association of Penal Law (1926-2019)* (Maklu 2020). See also infra, appendix to this writing.

[2] Cherif M Bassiouni, 'AIDP: Over a Century of Dedication to Criminal Justice and Human Rights' (2015) 86 RIDP 1095, 1098; in a similar way, see John Vervaele on the basis of the new by-laws of the AIDP: John Vervaele, 'The UIDP/AIDP: 125 Years Serving Criminal Justice, Human Rights and Humanity' (2015) 86 RIDP 759, 779.

[3] See, eg, George P Fletcher, *Basic Concepts of Criminal Law* (OUP 1998) ch 1, 10. He writes, ia, that the difference between substantive and procedural rules is, in many borderline cases, hardly obvious.

The substantive rules on sentencing and on the meting out punishment or other criminal sanction also normally belong to the general part of criminal law; however, the enforcement of criminal sanctions is more a question of procedural law.[4] Nevertheless, in some of the earlier congresses one section has dealt with the criminal policy or liability issue of the general part of criminal law and another section an issue of sanctioning in the criminal justice system (eg, Congresses in Rome 1953, Athens 1957, Lisbon 1961 and Cairo 1984).

Setting of boundaries between general and special part of criminal law is not always an easy task either, and these parts are interrelated.[5] To certain extent there is a tendency towards more fragmentation of criminal law and its doctrines, for example in the fields of economic and business criminal law as well as of international criminal law. This development is discernible, for instance, in the resolutions of the Cairo Congress in 1984 (Concepts and principles of economic and business criminal law), Rio de Janeiro Congress in 1994 (Crimes against environment – Application of the general part) and Rome Congress in 2019 (Corporate business).

2 On the different ways of influence of the resolutions

The effects of the congress resolutions of the AIDP are diversified. Firstly, such resolutions represent soft-law norms or standards of international non-governmental organizations. The role of soft-law instruments adopted by international governmental organizations is more important. When speaking about the norms and standards, formulated within the United Nations (UN) Crime Prevention and Criminal Justice Program Roger S. Clark emphasizes that some parts of some instruments 'must represent international law – either as an authoritative interpretation of the human rights provisions of the Charter, as customary law, or as evidence of "general principles of law recognized by civilized nations"'.[6] This statement is more relevant in relation to the subjects 3)–4) (international criminal law and human rights in the administration of criminal justice) mentioned above and valid then when those standards and norms have been got through and adopted by the UN Crime Prevention and Criminal Justice Program or other significant UN organ.

Secondly, the resolutions of the AIDP can be utilized when formulating criminal justice policy and codifying criminal law at national level and reforming criminal policy and

[4] See, eg, Kai Ambos and others (eds), *Core Concepts in Criminal Law and Criminal Justice*, vol I (CUP 2020); Kai Ambos and others (eds), *Core Concepts in Criminal Law and Criminal Justice*, vol II (CUP 2022).

[5] See, generally, Klaus Tiedemann, 'Zum Verhältnis von Allgemeinem und Besonderem Teil des Strafrechts' in Raimo Lahti and Kimmo Nuotio (eds), *Criminal Law Theory in Transition. Finnish and Comparative Perspectives: Strafrechtstheorie im Umbruch. Finnische und vergleichende Perspektiven* (Finnish Lawyer's Publishing Company 1992) 280; As Kai Ambos writes, the general part of (European) criminal law cannot be understood without recourse to the special part. See his article Kai Ambos, 'Is the Development of a Common Substantive Criminal Law for Europe Possible?' (2005) 12 Maastricht Journal of European and Comparative Law 173, 175.

[6] Roger S Clark, *The United Nations Crime Prevention and Criminal Justice Program: Formulation of Standards and Efforts at Their Implementation* (University of Pennsylvania Press 1994) 142.

criminal codes at regional and/or global levels. As an example, I personally belonged to the Task Force for recodifying Finnish Criminal Code in 1980-1999 and could have an effect on that reform work[7]. At the regional and global levels, we can since the 1990s see a strong development of international criminal law and an increase of the importance of the UN's activities in global criminal policy taking place.[8] At the same time, we notice similar regional tendencies, in particular on the European level. In our region, the most powerful organizations are the Council of Europe and the European Union (EU). Their legal instruments have reflected and generated common principles based on the values of democracy, human rights and the rule of law.

The intensified internationalization and regionalization of criminal law have changed the role of comparative law and criminal sciences in general. There is much more need for the comparison of legal orders due to the emergence of European criminal law and international criminal law and due to the interaction between European and global legal regulations and the national legal orders.[9] This kind of interaction between international law and domestic law has been strongly emphasized by Mireille Delmas-Marty, who repudiates 'any binary vision that opposes the national to the supranational and the relative to the universal'.[10]

Ulrich Sieber has analyzed the trend to harmonize criminal law as one result of worldwide globalization and he explains it by four significant forces: the increasing development and international recognition of common legal positions for the protection of human rights and for the political and economic aims; the growth in international security interests; the growing influence of actors other than nation states; and the increasing international cooperation based on new institutions with new instruments of legal approximation.[11]

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[7] As for the total reform of Finnish criminal law, see Raimo Lahti, *Towards an Efficient, Just and Humane Criminal Justice: Nordic Essays on Law, Criminology and Criminal Policy 1972–2020* (Finnish Lawyers' Association (Suomalainen Lakimiesyhdistys) 2021), passim <https://edition.fi/lakimiesyhdistys/catalog/book/121> accessed 30 September 2024.

[8] As for the UN's activities in global criminal policy, see esp Sławomir Marek Redo, *Blue Criminology: The Power of United Nations Ideas to Counter Crime Globally. A Monographic Study* (European Institute for Crime Prevention and Control (HEUNI) 2012).

[9] See, eg, the example of Finnish-Hungarian scientific co-operation in 1979-2009 and the change of its priorities: Raimo Lahti, 'From Comparative Criminal Law to the Europeanization and Internationalization of Criminal Law' in Katalin Ligeti (ed), *Homage to Imre A. Wiener* (AIDP 2010) 21 <www.penal.org/sites/default/files/files/NEP%2022.pdf> accessed 30 September 2024.

[10] Mireille Delmas-Marty, 'Comparative Criminal Law as a Necessary Tool for the Application of International Criminal Law' in Antonio Cassese (ed), *The Oxford Companion to International Criminal Justice* (OUP 2009) 97, 103.

[11] Ulrich Sieber, 'The Forces Behind the Harmonization of Criminal Law', in Mireille Delmas-Marty, Mark Pieth and Ulrich Sieber (eds), *Les Chemins de l'Harmonisation Pénale: Harmonising Criminal Law* (Société de législation comparée 2008) 385, 387; On the comparative law, see extensively Albin Eser, *Comparative Criminal Law: Developments, Aims, Methods* (C. H. Beck/Hart/Nomos 2017).

There is also increasingly debate on the trends towards transnational criminal law[12] and towards law and globalization[13] and about the contents of these increasingly used concepts. Transnational criminal law in the large sense covers international criminal law in stricto sensu, and so the crimes under international law (core crimes) are topical after the establishment of the International Criminal Court (ICC) and the aggressive war of Russia against Ukraine. The Finnish scholar Jaakko Husa writes that '[b]ecause of globalisation, the need for a non-nation-state-bound understanding of overlapping legal sources is constantly growing and the necessity for knowledge of how to deal with polycentrism and pluralism of laws has grown intensely'.[14] A move from transnational criminal law to global criminal law may be seen as desirable, because such a trend could lead to a broader setting of law and development studies and of sustainable development.[15]

Thirdly, the national sections of the AIDP may have influence in their countries. As for the Nordic countries (including Finland), there is a special feature that each Nordic country has traditionally a national society which was grounded to follow the model of the *Union Internationale de Droit Pénal* (Internationale Kriminalistische Vereinigung; later Union): in Norway since 1892, Denmark since 1899, Sweden since 1911 and Finland since 1934. These national societies are still much more active than the national sections of the AIDP, and they ia publish a common journal *Nordic Journal of Criminal Science* (*Nordisk Tidsskrift for Kriminalvidenskab*), nowadays together with the Nordic Council for Criminology and with the support of the Ministries of Justice. As the title 'Criminal science' indicates, these Nordic societies would like to cover all fields of criminal sciences (in a similar way as the original Union) and invite to their activities all those who have a professional or other interest in any branch of these sciences.

3 Resolutions of the AIDP on criminal policy and sentencing issues

Former President of the AIDP, Professor Hans-Heinrich Jescheck and current President of the AIDP, John Vervaele have characterized Association's criminal policy with the values of humanity and solidarity.[16] Especially in the time of the Union and the first decades of the AIDP, the criminal policy issues, in particular punishment and other criminal sanctions (such as security measures or general questions of sentencing), were often dealt with in the congresses. Former President M. Cherif Bassiouni has expressed that the humanistic and universalist philosophies of the penal reformers during the beginning of the Union were what is now embodied in the modern approach to human rights, which

[12] See, eg, Neil Bolster, Sabine Gless and Florian Jeßberger (eds), *Histories of Transnational Criminal Law* (OUP 2021).
[13] See, eg, Jaakko Husa, *Advanced Introduction to Law and Globalisation* (Edward Elgar Publishing 2018).
[14] ibid 8.
[15] Kimmo Nuotio, 'From Transnational Law to Global Criminal Law' in Florian Jeßberger, Moritz Vormbaum and Boris Burghardt (eds), *Strafrecht und Systemunrecht: Festschrift für Gerhard Werl* (Mohr Siebeck 2023) 469, 474.
[16] Hans-Heinrich Jescheck, 'Der Einfluss der IKV und der AIDP auf die internationale Entwicklung der modernen Kriminalpolitik in AIDP' (2015) 86 RIDP 1195, 1206; Vervaele (n 2) 776.

the AIDP continues to strengthen.[17] Later a cooperation with the other four Big Associations has been important in order to cover properly all fields of criminal sciences.[18]

In his keynote address to AIDP's XIVth International Congress on Penal Law (Vienna in 1989), Manfred Burgstaller highlighted the developments of criminal justice and sanction policy of the Union and AIDP. He saw both constant and changing features in the development. There is constantly a demand for a reduction of repressiveness and a heightening of the preventive effect of penal law on particular offenders, although the contents of general prevention have in many countries been changed to a positive or an integrative one (demanding first and foremost for the legitimacy of criminal justice system). An interest of the victims of crime has received more attention than earlier. New types of criminal sanctions have been adopted, for instance a day-fine system (which was introduced in Finland already in 1921) and latest waiving of formal sanctions (so-called diversion), community service and electronic monitoring. Some issues have prevailed as disputed, as Manfred Burgstaller points, like the policy attitudes towards reformatory (educational) and protective (security) measures in addition or instead of punishment and a controversy over so-called 'short-term' imprisonments.[19]

Criminal policy as extensively deliberated during the Budapest congress in 1974. This term was also analytically examined with the following recommendation:

> The new criminal policy should be developed and rationalized by precisely defining its methods and means. This criminal policy has to satisfy three essential requirements first and foremost: 1) to achieve its aims by a minimum of repression and the maximum of efficiency and re-educational activity; 2) to be humanistic and maintain human dignity, and to ensure the fundamental rights of the individual; 3) to strengthen legality with all its consequences in procedures and jurisdiction.

Among the criminal policy values, criminal law as a last resort measure (ultima ratio) has been permanently in the history of the Union and AIDP. Clear examples of this type of thinking are The Hague congress in 1964, when it was recommended that the so-called 'pure' moral offences against the family and sexual morality should be decriminalized and Rio de Janeiro in 2014, when it was suggested that legislators should not criminalize such ICT-related conduct that only violates religious or moral norms. Budapest congress in 1974, when the adopted resolution plead for the possibility of decriminalizing or depenalizing certain forms of conduct with regard to drugs, and Vienna congress 1989,

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[17] Bassiouni (n 2) 1096.

[18] The Big Associations are, except AIDP, Société Internationale de Criminologie, Société Internationale de la Défense Sociale, International Penal and Penitentiary Foundation and, as a newest one, World Society of Victimology. These associations have also had an International Coordination Committee. See Bassiouni (n 2) 1098.

[19] Manfred Burgstaller, 'Crime Control Policy after a Century of the IKV/AIDP: A Tentative Assessment' (2015) 86 RIDP 1143, esp 1145, 1150, 1156 and 1157. The last congress dealing with educational measures of minors was in Beijing 2004.

when the adopted resolution on criminal law and modern bio-medical techniques advocates of parsimony of criminalization in the following way:

> Criminalization of medical activity as well as threatening penalties has to remain a means of 'last resort'(*ultima ratio*): the first pre-condition has to be the worthiness of the endangering good and the blameworthiness of the endangering action (*Strafwürdigkeit*). Furthermore, on the basis of cost efficiency comparison of different means, the employment of criminal punishment must prove both as necessary (*Strafbedürfigkeit*) and suitable (*Straftauglichkeit*).

Lastly, similar recommendations were adopted in Rio de Janeiro 2014, when ICT-related offences were dealt with and in Bucharest 2023 (and later in Paris 2024), when the subject 'criminal justice and artificial intelligence' was under discussion. Accordingly, the increased regulation of the rapid technological progress must not lead to a passing of the principle of ultima ratio of criminalization.

It should also be noted that the principles regarding criminalization do not restrict into the principle of ultima ratio, but the observance of fundamental (human and constitutional) rights may lead in deliberation to the avoidance of criminalization. For instance, the Rio de Janeiro resolution from 2014 stated ia that excessive regulation and overcriminalization of cyberspace should be avoided because it jeopardizes the very freedom of communication that is the hallmark of cyberspace.

4 Resolutions of the AIDP on traditional criminal liability issues

The AIDP has dealt with the traditional criminal liability issues especially in Athens 1957 (complicity), in Rome 1969 (endangering offences), in Hamburg 1979 (crimes of carelessness), in Cairo 1984 (crimes of omission), and in Istanbul 2009 (the expanding forms of preparation and participation). In addition to these issues, such fundamental principles as legality (*nullum crimen sine lege*) and guilt or culpability have been discussed as such or in connection with the above-mentioned liability questions. In any case, these kinds of resolutions serve as models or inspirations to national legislators and to those who are responsible for the preparation of drafts of regional regulation regarding penal provisions (like those prepared or under development within EU) or global regulation regarding trans- and international crimes (like corresponding conventions and agreements).

Various legal traditions have an impact on the elaboration of these traditional criminal liability issues and have resulted in differing solutions.[20] In other words, it is on those

[20] See, eg, Rosaria Sicurella, 'Fostering a European Criminal Law Culture: in Trust We Trust' in Rosaria Sicurella, Valsamis Mitsilegas, Raphaële Parizot and Annalisa Lucifora (eds), *General Principles for a Common Criminal Law Framework in the EU. A Guide for Legal Practitioners* (Giuffré Editore 2017) XV-XXXVI, XXXV: especially the criminal law general theory in the EU member states, a quite articulated divide is to be taken account of. According to Sicurella, there are at least three main legal traditions: German legal doctrine, common law legal tradition and the criminal law of France and Belgium. As for the doctrines in

issues much more difficult to find common solutions than when examining general criminal policy values or fundamental principles (in particular, the values or principles of legality and human dignity).

The complicity resolution (Athens 1957) was still very cautious in its formulation. It was acknowledged that concepts referring to the participation vary according to the doctrinal inclination in connection with the fundamentals of criminal law. Although the complicity doctrine was inherent to each judicial system, the regulation should take into account the differences deriving, on one hand, from the act of participation of each individual in a common action, while, on the other hand, from the personal culpability and the personality as such.

Endangering offences were dealt with during the Rome congress in 1969. The number and importance of endangering offences was increasing in all penal legislations; typically, so also in the Finnish total reform of criminal law in 1990-2001. In the resolution concerned, it was stated that this development is not against the general principles of penal law, if this policy respects the principle of legality, ie avoiding the qualifications formulated in too generalized or too inexact terms. A special warning provision was given as for the system of 'presumed danger'. On the other hand, 'per se bans' (*abstrakte Gefährdungsdelike*) were regarded by the Cairo resolution from 1984 as a valid means of combating economic and business offences so long as the prohibited conduct is clearly defined by the legislation and the prohibition relates directly to clearly identified protected interests.

The Istanbul 2009 resolution on the expanding forms on preparation and participation was purposeful, and it concentrated on serious organized or transnational crimes in cases of clear and present danger to national security or world community. However, the rule of law and the guarantee of fundamental freedoms and human rights should be taken into account in the legal regulation. Therefore, special preconditions (which were listed in the resolution) should be fulfilled in order to justify expanding of preparation or participation. Criminal or administrative liability of legal entities and organizations was also recommended.

In the Hamburg resolution 1979 on crimes of carelessness, it was emphasized that the role of this kind of criminalization is expanding in certain areas (like transportation, particularly road traffic; such sectors of social life in which acts of carelessness will pose an increased danger to essential social and individual values, in particular occupational safety; the utilization of new types of energy and materials, and environmental protection). The role of criminal law was regarded as limited: in particular, action against criminogenic factors which contribute to the commission of careless crimes, as well as public education to encourage a sense of duty and adherence and appreciation of the standards

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the Nordic countries which follow the civil law tradition but are partly sui generis, see latest Jørn Jacobsen, *Power, Principle, and Progress. Kant and the Republican Philosophy of Nordic Criminal Law* (Fagbokforlaget 2024).

of care, may be regarded as the primary strategy in the prevention of careless crime. An important limitation of liability would be the demand for the observance of the principle of culpability; a strict liability is not acknowledged in contrast to the common law tradition.

Crimes of omission were dealt with in the Cairo congress 1984. This topic was challenging, because in many countries the preconditions of crimes of commission by omission are not defined in law, at least not in detail (for instance, in Finland there exists a provision on this kind of omission in the general part of the criminal law since 2001) and there is traditionally common law reluctance to impose liability for omissions except in clear and serious cases.[21] The resolution lists the preconditions which should be fulfilled in order to observe the requirements of certainty and legality.

5 Resolutions of the AIDP on innovative criminal or quasi-criminal liability issues

I would characterize as innovative criminal or quasi-criminal liability issues those resolutions which handle the difference between criminal and administrative penal law (Vienna 1989), the general part of crimes against environment (Rio de Janeiro 1994), the challenge of organized crime (Budapest 1999), the information society and penal law (Rio de Janeiro 2014), the criminal justice and corporate business (Rome 2019) and the artificial intelligence and criminal law (Paris 2024). I use the term 'innovative' therefore that these topics have been poorly studied, the phenomena regarding them are quite new and the legal doctrines have therefore been undeveloped. Those phenomena and topics have also generated very much interest and attention at the time when the congress and its preparatory colloquia were organized – and they are of current interest even now at national, regional and international levels. Therefore, the comparative general reports and national reports include important legal materials for further studies in these issues. Traditional doctrines on criminal liability are not easily changed to cover more innovative issues, and as a result the criminal law doctrines may differentiate and become more fragmentary. International non-governmental organizations, like AIDP, can further and accelerate the reform work in these new areas.

Common to all these innovative issues is that not only criminal liability in the strict sense is under discussion but also quasi-criminal liability (typically, punitive administrative sanctions).[22] The subjects of liability do not consist only of individual persons but also of legal entities or organizations. The phenomena to be regulated are often transnational, and the legal problems regarding them are on the tables of international governmental organizations and national legislators over the continents. The possible regulations are not necessarily criminal or quasi-criminal but the governance of the phenomena may

[21] See, in more detail, Kai Ambos, 'Omissions' in Kai Ambos and others (eds), *Core Concepts in Criminal Law and Criminal Justice*, vol I (CUP 2020) 17, 41.

[22] See, generally, Vanessa Franssen and Christopher Harding (eds), *Criminal and Quasi-criminal Enforcement Mechanisms in Europe: Origins, Concepts, Future* (Hart Publishing 2022).

need alternate enforcement regimes (see, typically, the resolution of the Rome congress 2019).

We can also see a development regarding certain topics and phenomena of criminal liability in the history of the AIDP. The issue on the notions of committing a crime and participation (Athens 1957) has been enlarged so that, for instance, the Budapest resolution on organized crime (1999) speaks about the principle of organizational responsibility as a new form of complicity, the Istanbul congress of 2009 dealt generally with the expanding forms of preparation and participation and the Rome congress 2019 plead for many-sided forms of participation of corporate executives, corporate officials and, where applicable, corporate owners as forms of individual liability for business involvement in international crimes.

Another example concerns the criminal liability of legal entities. Already the Rome congress 1953 recommended, not only a certain extension of the notion of perpetrator and of accomplices but also the power to apply criminal sanctions against legal entities. In the Cairo congress resolution from 1984 it was stated that the countries should consider a possibility of imposing appropriate measures on legal entities for controlling economic and business offences. A similar emphasis was expressed in the resolution of the Rio de Janeiro congress 1994 as for crimes against the environment and in the resolution of his congress (Siracusa 2022 and Paris 2024) as for crimes against AI systems. Punitive administrative sanctions as alternatives to criminal liability of corporations are advocated in the Vienna resolution from 1889 and the Rome resolution from 2019.

Crimes against information technology were discussed in Rio de Janeiro congress 1994, and the deliberations continued in the same city 20 years later under the comprehensive title 'Information Society and Penal Law'. It was emphasized that ICT networks and cyberspace have created specific interests that need to be respected and protected, for example, privacy of individuals, confidentiality, integrity and availability of ICT networks, and integrity of personal identities in cyberspace. The limitations in the use of criminal law were also properly mentioned. In Siracusa resolution (2022) and in this Paris congress (2024) it is emphasized that it is necessary to define specific models for attributing to the persons (both natural and legal persons) who are 'behind' the AI systems, starting with the owners and those who decide on their concrete use and who must therefore be held legally liable also from a punitive perspective.

The rapid technological development (like AI systems) may require a new liability thinking and a new renaissance of the liability based on negligence and omission.[23] There is already a tradition in the Finnish legal practice regarding the punitive liability of the

[23] See, in more detail, eg, Shuhong Zhao, *Principle of Criminal Imputation for Negligence Crime Involving Artificial Intelligence* (Springer Nature 2024).

heads of business, and this liability form could be developed in line with the recommendations of the comparative study in question.[24] It is also worth noticing that the Finnish criminal law recognizes the corporate criminal liability and one of the alternative prerequisites is that the care and diligence necessary for the prevention of the offence have not been observed in the operation of the corporation.[25]

6 Conclusion

As for the criminal liability issues dealt with the resolutions of the AIDP, there is a shift of criminal justice from an exclusively crime control perspective towards a standpoint that balances crime control and due process (fair trial), the sword and shield functions of criminal justice.[26] It should also be noted that the principles regarding criminalization or, more generally, punitive liability do not restrict into the principle of ultima ratio, but the observance of fundamental (human and constitutional) rights may lead in deliberation to the avoidance of that liability. AIDP should also in the future be ready for innovative openings, as it has been during its history, in cooperation with other international organizations.

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[24] See Raimo Lahti, 'Finland National Report' in Katalin Ligeti and Angelo Marletta (eds), *Punitive Liability of Heads of Business in the EU: A Comparative Study* (Wolters Kluwer CEDAM 2019) <https://hdl.handle.net/10993/38710> accessed 30 September 2024.

[25] See, in more detail, Raimo Lahti, 'Finnish Report on Individual Liability for Business Involvement in International Crimes' (2017) 88 RIDP 257, 260. Chapter 9 of the Finnish Penal Code (743/1995); an unofficial translation of the Criminal Code of Finland <https://www.finlex.fi/fi/laki/alkup/1889/18890039001>, with the amendments up to 433/2021, is available from the website of the Ministry of Justice <https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039_20210433.pdf> accessed 30 September 2024.

[26] See, generally, Vervaele (n 2) 766.

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Appendix: Overview of general criminal law topics in AIDP Congresses

I 1926 (Brussels): *Security measures*

II 1929 (Bucharest): *Responsibility of societies*

III 1933 (Palermo): *Is it desirable to have, beside the penal code and the code of penal procedure, a code of the execution?*

IV 1937 (Paris): *Is it desirable that the judges should be able to retain and punish a deed which is not expressly within the scope of existing legal provisions? "Nullum delictum sine lege"; What should be the part of the justice in the execution of penalties and measures of security?*

VI 1953 (Rome): *Problem of unification of criminal punishment and criminal measures*

VII 1957 (Athens): *The modern orientation of the notions of committing a crime and participation (complicity); The legal, administrative and social consequences of condemning*

VIII 1961 (Lisbon): *The problems posed by modern penal law via the development of non-intentional offences; Methods and technical problems employed in penal sentencing*

IX 1964 (The Hague): *Aggravating circumstances, other than concurrent offences and recidivism*

X 1969 (Rome): *Endangering offence*

XI 1974 (Budapest): *Evolution of methods and means employed in penal law*

XII 1979 (Hamburg): *Crimes of carelessness. Prevention and treatment of offenders*

XIII 1984 (Cairo): *Crimes of omission*

XIV 1989 (Vienna): *The legal and practical problems posed by the difference between criminal law and administrative penal law*

XV 1994 (Rio de Janeiro): *Crimes against environment. Application of the general part*

XVI 1999 (Budapest): *The criminal justice system facing the challenge of organized crime*

XVII 2004 (Beijing): *Criminal responsibility of minors in national and international legal order*

XVIII 2009 (Istanbul): *The expanding forms of preparation and participation*

XIX 2014 (Rio de Janeiro): *Information society and penal law: general part*

XX 2019 (Rome): *Criminal justice and corporate business: Individual liability for business involvement in international crimes*

XXI 2024 (Paris): *Artificial intelligence and criminal justice*

SPECIAL CRIMINAL LAW

MAIN GUIDELINES OF THE AIDP RESOLUTIONS ON THE SPECIAL PART OF CRIMINAL LAW

José Luis de la Cuesta[*]

1 A 'late' incorporation in the Agenda of the Congresses

Although the distinction between the General Part and the Special Part of criminal law is challenging – due to their overlapping conceptual boundaries and the constant interplay between the two perspectives in both analysis and practice — the detailed study of specific incriminations that address the evolution of criminality is a hallmark of activities within the scientific cycle of the AIDP.

A particularly prominent reflection of this is the structure of our five-yearly Congresses. Since the 1960s,[1] this relays on the work of four international preparatory colloquia, focusing respectively on: 1) substantive criminal law, 2) special criminal law, 3) criminal procedure, and 4) international criminal law. In line with the 'Recommendation concerning the preparation of AIDP Congresses' – approved in 1974 in Budapest (Eleventh International Congress of Penal Law) – each Colloquium departs from a model questionnaire in order to gather the best 'comparative information for maximum effective problem solving', and concentrates on the debate and drafting of a resolution's recommendation on the topic submitted to consideration[2].

Contrary to the practices of the International Union of Penal Law[3], and despite the significant contributions of eminent AIDP members to the Society of Nations' Conventions[4], the inclusion of Special part issues on the congress agendas constituted a relatively late development.

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[1] M Cherif Bassiouni, 'AIDP: Over a century of dedication to criminal justice and human rights' (2015) 86 RIDP 3-4, 1108.

[2] José Luis De la Cuesta, Isidoro Blanco and Miren Odriozola (eds), *Resolutions of the Congresses of the Association Internationale de Droit Pénal (1926 – 2019)* (RIDP libri, Maklu Publishers 2020) 83.

[3] Which focused 'on classic crimes committed within national territories', such as 'theft and passion crimes', leaving aside economic crime and, since 1905, also on international and transnational crimes, particularly 'in relation to trafficking in human beings and the need to elaborate specific mutual legal assistance regimes'. John Vervaele, 'The UIDP/AIDP: 125 years serving Criminal Justice, Human Rights and Humanity' (2015) 86 RIDP 3-4, 762.

[4] Terrorism (1937), slavery (1919 and 1926), trafficking in women and children (1921 and 1933), narcotics and other illicit substances (1921, 1931 and 1933), counterfeit money (1929). Vervaele ibid 770-71.

Even if the second question of the Third Congress (Palermo, 1933)[5] referred to the jury of honour in connection with the crime of slander, it should not be strictly classified under the special part of criminal law but rather under criminal procedural law. In fact, it was only after successive crises—economic, financial, political, and warlike—[6] that the Sixth International Congress of Penal Law in 1953 (Rome) included two sections related to specific crimes in its program. Section I focused on the 'Criminal law protection of international humanitarian conventions', between international criminal law and domestic criminal law[7], while Section III addressed socio-economic criminal law. Eleven years later, at the Ninth Congress in The Hague (1964), the 'Offences against the family and sexual morality' were studied by Section II; and 'Drug abuse and trafficking: prevention and repression' was analysed at the Eleventh International Congress of Penal Law (Budapest, 1974). From the Budapest Congress onwards, the second section of each congress has been devoted to issues of the Special part.

2 Main areas of interest

2.1 Socio-economic penal law

Strictly speaking, the first issue of the Special part included in the Agenda of an AIDP international Congress of Penal Law was Socio-economic law, the topic of Section 3 in 1953 (in Rome). Section II of the Thirteenth International Congress of Penal Law (Cairo, 1984) also focused in the 'Concept and principles of economic and business criminal law, including consumer protection'; and in 2019 the Twentieth International Congress, again in Rome, concentrated on Criminal Justice and Corporate Business, devoting Section II to the issue 'Food Regulation and Criminal Law' (see infra 2.2.4).

According to the Resolution approved in 1953[8], in the context of socio-economic law[9], the sanctioning norms form the 'social economic criminal law.' These norms are included, as

[5] See the Resolution in De la Cuesta, Blanco and Odriozola (n 2) 26. See also Agustín Martínez, 'Le jury d'honneur en matière des délits de diffamation' (1933) 10 RIDP 1-2, 3-7.

[6] That hindered the *Association*'s development and activity forcing the postponement of several very relevant conference and activities and even the Congress, which could not take place because of the Second World War. Vervaele (n 3) 771.

[7] The approved Resolution noted the insufficiency of the penal provisions adopted by the States in the performance of their duty of promulgating 'appropriate measures in order to provide for the punishment of serious violations of the' Geneva Conventions (1), and recommended the proposal of 'a draft law' incorporating 'common principles' and 'envisaging possibly uniform sanctions' (2). According to point 3 of the Resolution, this 'draft law' – applicable 'to all offenders regardless of their nationality'- should seek above all 'to establish definitions of serious violations of the said Conventions' indicating, if possible 'the degree of seriousness of the violation'. De la Cuesta, Blanco and Odriozola (n 2) 35. For the General Report, Claude Pilloud, 'La protection pénale des conventions internationales humanitaires' (1953) 25 RIDP 3-4, 661-95.

[8] For the Resolution approved by Section III, De la Cuesta, Blanco and Odriozola (n 2) 38-40. For the General report, Vriij, 'Droit penal social économique' (1953) 25 RIDP 3-4, 725-55.

[9] Where the need for careful prevention and education of the members of the concerned groups is relevant, as it is ensuring compliance with regulations (and codes of conduct), whose retroactive application should not be accepted (Rome 2 & 3a).

a whole, in the 'special part of criminal law, respecting its particular features' and resolving unforeseen questions by applying 'general principles of criminal law (and criminal procedural law)' (Rome 1a).

The Cairo Resolution[10] departed from the 'subsidiary role' generally attributed to penal law in this field, where 'administrative and civil law remedies' – with full guaranties of 'due process' and 'judicial review', as well as excluding imprisonment sentences (Cairo 15) - should have priority 'before criminalizing certain acts or omissions harmful to economic and business life' (Cairo 14). After some terminological clarifications[11], the Section examined the collective interests to be protected in this area, 'particularly complex and diffuse'. Instead of regulating them in the frame of special penal legislation, the Congress considered the protection, if needed, by the Penal Code itself to be preferable (Cairo 5).

Concerning 'criminal law techniques', points 6-10 of the 1984 Resolution insisted on the full respect of the principle of legality as strictly as possible, and thus censored both the imprecise description of the behaviours and the use of general clauses (to be 'interpreted narrowly', if unavoidable) (Cairo 7), as well as the technique of incrimination 'by reference' due to 'the danger of imprecision and lack of clarity' (and even the too extensive delegation 'of legislative power to the administration') (Cairo 8). Nevertheless, the use of abstract endangerment offenses and obstacle delicts was accepted as long as the legislation precisely defined the prohibited conduct, directly referring to clearly identified protected interests, but not 'for the sole reason of facilitating evidence' (Cairo 9).

The Congress demanded reform efforts to remove 'strict liability offenses as quickly as possible', manifesting that, 'where strict liability offenses exist, they should at least be subject to the defence of impossibility' (Res 11). Furthermore, the Cairo Resolution endorsed the penal responsibility 'of directors and supervisors for offenses committed by employees', in case of 'breach of the specific duty of supervision' and 'at least negligence' (Cairo 12). The Resolution also recognized the increasing acceptance in the comparative field of the 'criminal liability of corporations and other legal entities', already supported in 1953 by the Rome Congress (3b)[12], encouraging countries still hesitant to admit it to impose 'other appropriate measures' (Cairo 13).

With regard to the 'protection of victims' – and following the trend opened in Rome that considered appropriate (also to prevent recidivism) to provide for 'securing measures in

[10] See the text of the Resolution approved by Section II in De la Cuesta, Blanco and Odriozola (n 2) 102-04. For the materials of the Preparatory Colloquium (Freiburg i Br), (1983) 54 RIDP 1-2: in particular, Mireille Delmas-Marty, 'Rapport Général' (ibid 41-63); a Comment on the theme of the Colloquium by Klaus Tiedemann (ibid 33-40) and Imre Wiener, 'Outline to the General Report for the Socialists Countries' (ibid 65-74).

[11] Particularly, with regard to the use of 'economic penal law', encompassing 'offenses against the economic order' and 'business penal law', referred to 'offenses involving private or public enterprises' (Cairo 4).

[12] As the application of other sanctions: in particular, professional disqualifications, the publication of the sentence and 'special confiscation', ie 'extended to all goods to which the offence aimed at regardless whether they belong to the perpetrator but with due respect to the rights of third parties' (Rome 4a).

order to retain illegally gained profit', respecting always the victim's compensation requirements (Res. 4b) – the Cairo Resolution n 16 insisted that '[t]he system of sanctions for economic and business offenses should include the possibility of restitution' and it underlined as well the need to open the access (and participation) of individual victims, associations or groups of victims of economic and business offenses to judicial proceedings and administrative remedies.

Further 'International law and procedure' considerations closed the texts approved, requiring additional efforts of harmonization in this field (Cairo 15-18)[13] and the re-examination of 'the traditional exclusion of fiscal and similar offenses from extradition and mutual assistance treaties (…) in the light of harmonious international relations and with due respect for human rights' (Cairo 19).

2.2 A Global Risk Society

The topics chosen for the Congresses in recent decades reflect the AIDP's interest in the transformations of punitive criminal law in a global risk society, where the new 'paradigm shift' questions the traditional criminal legal functioning and its limits[14].

2.2.1 Environmental penal protection

Environmental criminal law was one of the first areas (along with economic criminal law) where the need to ensure more effective prevention pushed traditional criminal law standards and techniques to their limits, advancing the barriers of protection through the recognition of new collective legal interests and the expansion of endangerment offenses[15].

After the UN Stockholm Conference (1972), the preparatory Colloquium in Jablonna (1978), organised by the Polish National Group of the AIDP, dealt with the criminal protection of the environment. The conclusions of this Colloquium were sent to Section II of the Twelfth International Congress of Criminal Law (Hamburg, 1979), resulting in a series of recommendations at national and international level[16], with the vocation of guiding the legislator in the necessary task of searching for and, if necessary, adopting new responses to the most serious acts against the environment.

Again, at the Ottawa Preparatory Colloquium (1992), the issue was addressed; this time from the perspective of the General Part, preparing the work of Section I of the Fifteenth

[13] See equally points 5-8 of the Rome Resolution.

[14] Ulrich Sieber, 'Paradigmenwechsel vom Strafrecht zum Sicherheitsrecht: Zur neuen Sicherheitsarchitektur der globalen Risikogesellschaft' in Klaus Tiedemann and others (eds), *Die Verfassung moderner Strafrechtspflege. Erinnerung an Joachim Vogel* (Nomos, 2016) 351-72.

[15] Jose Luis De la Cuesta, 'On Ecocrimes and Ecocide in the Global Risk Society', in Marc Engelhart, Hans Kudlich and Benjamin Vogel (eds), *Digitalisierung, Globalisierung und Risikoprävention. Festschrift für Ulrich Sieber zum 70. Geburtstag* Bd.1 (Duncker & Humblot GmbH, 2021), 207-17.

[16] See the text of the Resolution approved by Section II in De la Cuesta, Blanco and Odriozola (n 2) 89-91.

International Congress of Penal Law (Rio de Janeiro, 1994). The Congress' resolutions[17] paid special attention to the recommendations of the United Nations and the Council of Europe[18].

In 2010, the AIDP and the Siracusa Institute elaborated a declaration on 'Protecting the environment through criminal law' for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice (Salvador de Bahia, Brazil). Point 14 of the 'Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and their Development in a Changing World'[19] underlined the increasing and serious threat inherent to environmental crime and urged Member States to reinforce their legislation, policies and practices on criminal justice and crime prevention. It further encouraged increased international cooperation, technical assistance and exchange of best practices in this area and it proposed the UN Commission on Crime Prevention and Criminal Justice to study the nature of the problem and to develop effective solutions in coordination with other relevant instances.

In 2016, the Romanian National Group hosted in Bucharest the AIDP World Conference on Environmental Protection through Criminal Law[20]. The Conference reviewed the more recent developments in the fight against this form of criminality, closely related to economic and corporate crime, especially at the international level[21].

The AIDP Young Penalists have also delved into the penal protection of the environment, which was, among others, the central theme of their seventh Symposium in Rome (2019)[22] and their 12th Symposium in Rio de Janeiro (2024). The AIDP guidelines on the criminal protection of the environment[23] have always affirmed the necessity, justification and capacity of criminal law to contribute to the criminal protection of the environment. The AIDP strongly maintains that 'short-term economic interests' should not prevail over 'long-term ecological interests' (Hamburg, 19) and it has continuously underlined the urgency of addressing environmental degradation caused in particular by those crimes against the environment committed in violation of domestic and supranational norms (Rio de Janeiro, Preamble). While recognizing that non-criminal disciplines play an essential role in this field (Hamburg, 3), the AIDP defends the crucial role of criminal law

[17] For the text of Section II's Resolution, ibid 138-46.

[18] This one had already published in 1978 a volume that became a reference in this field. Conseil de l'Europe, *La contribution du Droit Pénal à la protection de l'environnement* (Strasbourg 1978).

[19] UN General Assembly, A/RES/65/230.

[20] Jose Luis De la Cuesta and others (eds), Protection of the Environment through Criminal Law (AIDP World Conference, Bucharest, Romania, 18th-20th May 2016) (2016) 87 RIDP 1. For the 'Final recommendations', José Luis De la Cuesta, 'Protection of the Environment through Criminal Law. Final Recommendations' ibid, 343-348.

[21] Adán Nieto-Martín, 'Bases para un futuro derecho penal internacional del medio ambiente' (2011) 82 RIDP 3-4, 477-505.

[22] Manuel Espinosa de los Monteros de la Parra, Antonio Gullo and Francesco Mazzacuva (eds), The Criminal Law Protection of our Common Home (7th AIDP Symposium for Young Penalists, Rome, Italy, 11-12 November 2019) (2020) 91 RIDP 1.

[23] De la Cuesta (n 15).

in establishing appropriate means of reaction and sanction, provided that coordination and cooperation are assured both at the domestic level and internationally (Hamburg, 2).

The *Association*'s main options in this field – where criminal instruments are expected not only to address harm, but also to contribute to a better risk prevention[24] - may be summarized as follows.

1. Adequately defining the protected legal interest constitutes always the first requirement in order to advance in its penal protection. With regard to the still discussed concept of environment, the Resolutions of the AIDP Congresses maintain a moderately restrictive perspective, identifying the environment to 'all components of the planet, both biotic and abiotic': *ie*, 'air and all layers of the atmosphere, water, land, including soil and mineral resources, flora and fauna, and all ecological interrelations among these components' (Rio, 1). This concept is presented as closely connected with the postulate of 'sustainable development' and the 'precautionary principle', whose respect 'by all natural and private and public entities involved in activities that have the potential to harm the environment' constitutes a responsibility that states and society must ensure 'as far as possible' (Rio, 4).

2. Moreover, and assuming the fact that other disciplines occupy a preferential position in this field, the proposal of 'a multi-tiered enforcement approach' (administrative, civil and criminal) emerges, based on the results of empirical research and focusing criminal intervention on the 'most serious violations' (Bucharest 1). Initially, the AIDP resolutions emphasized, in this sense, the supportive role of criminal law in enhancing the effectiveness of administrative or civil law (Hamburg, 3). However, over time, the AIDP's perspective evolved and the Congress in Rio ultimately concluded that simply disobeying administrative rules should not be enough to justify custodial sentences or the punitive closure of a company (7).

Furthermore, according to the World Conference, the main priority in the penal protection of the environment should be criminalizing 'the production of harmful results'. It also established 'a potential or at least hypothetical risk' as the minimum threshold for incriminating the 'endangerment of ecological values in violation of administrative obligations' (2a).

For the AIDP, the greater and more tangible the danger and harm to the environment and/or human health from an environmental crime, the less influence administrative law should have on the conditions for criminal liability (Bucharest, 7). In this sense, the production of environmental damage deserves to be criminalized as such, 'irrespective of the violation of administrative obligations' (Bucharest 2b). Consequently, as stated in Rio, legislators must regulate the impact of administrative licenses and authorizations

[24] José Luis De la Cuesta, 'Ecología y Derecho Penal', in Antonio Beristain and José Luis De la Cuesta (eds), *Las drogas en la sociedad actual y Nuevos horizontes en Criminología* (San Sebastián 1985) 277 ff

on criminal liability. They should also avoid or at least adjust the mitigating or exonerating effects of complying with 'the terms of a license or permit, or with standards and prescriptions laid down in regulations' in force[25].

Additionally, given that many legislations do not adequately distinguish between the acts that give rise to criminal intervention and those that only result in civil or administrative enforcement, the AIDP calls for further efforts to ensure 'greater clarity about which violations are criminal'. Furthermore, in those systems that allow the 'opportunity principle' in prosecution, the *Association* recommends the inclusion of additional requirements in order 'to warrant criminal enforcement', among others: the presence of 'significant' harm or danger to the environment or public health, the concurrence of a 'deceptive or misleading conduct', acting 'in a clandestine way', and/or 'repetitive or continuous violations' (Bucharest, 6).

3. As for the model of protection – and adhering always to the 'general principles of criminal law,' particularly the principle of legality and the principle of typicality (*lex certa*) (Bucharest, 5)[26] – the preference declared in Rio (21) for criminal codes as the natural place of the criminal provisions protecting the environment was reassured in 2016, at least for 'core crimes against the environment', that can be criminalized without depending on other laws. The AIDP position in Bucharest was indeed to claim a 'prominent place in the legislative framework' for these offenses, on the understanding, however, that this can also be achieved through their inclusion in a 'specific environmental law' (Bucharest, 4).

4. In the field of punishment, AIDP widely accepts that the response to environmental violations needs to be channelled through a variety of sanctions of diverse nature. In any case, according to the postulate of minimum intervention ('principle of restraint'), criminal sanctions should be reserved to those cases when 'civil and administrative sanctions and remedies are inappropriate or ineffective' (Rio, 11).

In the necessary 'toolbox of effective penalties' (Bucharest, 8), together with imprisonment for the most serious cases and/or fines, the AIDP has always defended the use of other penalties such as temporary prohibition of activity, the closure of the establishment and/or company, professional disqualifications, the publication of the judgment… (Hamburg, 8): these penalties are, in fact, also capable of providing a sufficiently 'dissuasive and proportionate' response (Bucharest, 9), adapted to the different levels of participation and gravity, as well as to the concurrence of 'knowledge, intent, recklessness' or, in the event that 'serious consequences are in issue, culpable negligence' (Rio, 9). Complementary penalties can be equally useful for reinforcing compensation and prevention of future damage (Bucharest, 8).

[25] Something particularly important when it is shown that 'the accused acted or omitted to act, knowing that serious harm to the environment would likely result, and such harm does in fact result' (Rio, 10).
[26] According to which the determination of the 'essential elements' of the offense must be clear and precise, and not dependent on other instances of a subordinate or delegated nature (Rio, 22).

In addition, the AIDP resolutions also manifest a great concern about the lack of prosecution of environmental crimes (well evidenced in criminological research), and, among additional proposals to improve the effectiveness of prosecutions, include strengthening public awareness of the importance of these crimes, which is essential to prevention (Hamburg, 9). Furthermore, it is recommended to open up spaces for citizen participation (Rio, 24), allowing both citizens and 'NGOs working in the field of environmental protection' to file complaints (Bucharest, 14-15), as well as the criminal liability of companies and even the proposal for the prosecution of ecocide before an International Criminal Court.

2.2.2 From computer crimes to information society

1. The Fifteenth International Congress, held in Rio de Janeiro (Brazil) in 1994, addressed for the first time the issue of computer crimes. Section II[27] debated the results of the Preparatory Colloquium celebrated in Würzburg (Germany), in 1992.[28]

After reviewing a long list of non-criminal measures that were essential for adequate prevention of this criminal phenomenon (I.2), the resolutions dealt with the material contents of the penal protection (II), with particular attention paid to the protection of privacy (III).

Following the content of Recommendation No. R (89) 9 of the Council of Europe, the Congress agreed on two lists of acts to be criminalised (II.8). A first (and mandatory) list included computer fraud, computer forgery, damage to data or computer software, computer sabotage and unauthorised access, interception, or reproduction (of protected software, topography). The second list contained the following acts whose criminalisation was declared optional: alteration of data or software, computer espionage, unauthorised use of a computer, and unauthorised use of protected software.

Particular efforts were deployed with the purpose of clarification and refinement of definitions given by the Council of Europe to the already mentioned acts and, at the same time, to include other definitions of 'abuses (…) not included expressly in the lists': trafficking in illegally obtained passwords and other information facilitating 'unauthorised access to computer systems and the distribution of viruses or similar programs' (II.10). The Congress equally encouraged further discussion and scientific research on the subject, on the understanding that particular attention should be paid to penal norms incriminating 'recklessness or the creation of dangerous risks, and to practical problems of enforcement' (II.10).

The role of criminal law in relation to the possible collision of the private sphere with the new changes generated by computer technology was also a relevant centre of attention.

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[27] See the text of the Resolution approved by Section II in De la Cuesta, Blanco and Odriozola (n 2) 133-38.

[28] See the materials of the Preparatory Colloquium in (1993) 64 RIDP 1-2. For the 'General Report', prepared by Cole Durham, ibid 9-11; see also a 'Co-Report' by Hans G Nilsson, ibid 119-25.

The Congress affirmed the subsidiary nature of criminal law and the priority of non-criminal preventive measures, understanding that the basic principles of criminal law intervention, in accordance with Council of Europe Recommendation (89) 9, should be the following ones (III.14):

- emphasis on 'serious cases', in particular 'those involving highly sensitive data or confidential information traditionally protected by law';
- respect for the principle of taxativity and avoidance of 'the use of vague or general clauses';
- distinguishing between different levels of seriousness of offenses and respecting 'the requirements of culpability';
- taking into consideration 'the wishes of the victim regarding prosecution'.

References to other procedural (IV) and international-cooperation (V) aspects of the issue added to the approved text. Finally, Chapter VI insisted in the need of 'further research concerning information technology crime' (VI.25) with the aim of favouring 'the ongoing adoption of appropriate means of crime prevention in order to address the new challenges of information technology' (VI.24).

2. The strong incidence of the developments of information and communication technologies in everyday individual and social life led the AIDP to dedicate the whole Twentieth International Congress (Rio de Janeiro, 2014) to the issue of 'Information Society and Penal Law'[29]. The Preparatory Colloquium held in Moscow (Russia, 2013[30], produced the proposal of resolution discussed by Section II of the Congress in continuity with what was approved twenty years earlier in Rio de Janeiro. The main concerns and decisions of the participants in Section II of the 2014 Congress can be summarized as follows:

- Reluctance to the excessive recourse to penal protection in this field and the preference in favour of strong efforts of prevention and the alternative sanctions (1).
- Establishment of a long list of 'legal interests to be protected' – 'confidentiality', 'integrity and availability of data and ICT systems', 'authenticity of information', 'life and limb', 'integrity of children', 'privacy', 'protection from harm and loss of property (including virtual property)', 'copyright and reputation', 'freedom of expression, and other fundamental human rights' (2) – and a list of 'paramount values in guiding the formulation of laws and regulations' in this field: 'consumer

[29] See the text of the Resolution approved by Section II in De la Cuesta, Blanco and Odriozola (n 2) 209-12.

[30] For the General Report, Emilio Viano, 'Section II – Criminal Law. Special Part. Information Society and Penal Law. General Report' (2013) 84 RIDP 3-4, 335-55.

protection', 'informed consent', 'purpose limitation', 'right to erasure, correction and notification' (3).

- Acceptance as legitimate of the use of civil or criminal penalties to react against the infringement of duties (by 'commercial personal data processors', 'Internet and telecommunications providers', 'social media platforms' and 'application developers') regarding the adoption of 'privacy by design and by default policies'.

- Concentration of criminal sanctions on the prevention and combat of conducts of 'illegal access to ICT systems', 'illegal interception of non-public transmissions of electronic data', unauthorised interference with data and systems, 'misuse of devices, software, passwords and codes', 'computer-related forgery and fraud', as well as 'unauthorised access by government agencies' (5), establishing 'a minimum standard of criminal law protection against intentional and harmful acts violating the confidentiality, integrity and accessibility of data and of ICT systems' (5), and the provision for 'aggravating circumstances or specific offences with more serve penalties' in cases of interference 'with the functioning of critical information and communications infrastructures' (6).

Other criminal behaviours that, according to the Resolution, should deserve special mention include:

- Pornography involving children (and 'any complicity and participation' in this) whose firm and consistent prevention and criminalization 'with appropriate sanctions' was considered justified especially in cases of involvement of 'real children, unless for their own private use' once having 'reached the age of sexual majority' (7)

- 'Identity theft, including phishing (…), if not otherwise provided for by other criminal law provisions'. However, incrimination of 'the mere possession of identity-related information or impersonating non-existing persons (…) should be limited to acts committed with criminal intent to cause damage' and 'neither restrict nor criminalize freedom of thought and expression, in particular, literary and artistic activities' (8).

- Concerning 'cyber stalking, cyber bullying and cyber grooming', rather than focusing only on the criminal law intervention, the participants emphasized the need of paying special attention to 'positive approaches, prevention, public education and awareness, and alternative sanctions' (9). With regard to 'the protection of intellectual property rights', the need of focusing on 'intentional' infringements for 'a significant commercial purpose' or causing serious harm was underlined (10).

- Finally, according to Resolution 11, 'non-criminal or criminal penalties' should be provided for 'reckless or grossly negligent management of critical ICT infrastructures and of large amounts of sensitive data'. Similarly, ISPs' failure to implement reasonable security measures or to promptly disclose required information about security breaches might face 'civil or criminal action'.

2.2.3 Criminalization of AI related offenses

The challenges posed by AI to the penal system have been the subject of the last scientific cycle of the AIDP and culminated in the Twentieth International Congress of Penal Law (Paris, 2024). Following the traditional methodology of the *Association*[31], four International Colloquia focused on the different aspects of the issue; the one held in 2023 in Bucharest dealt with the Special part of criminal law[32].

From a criminal law perspective, AI systems and applications appear, primarily, as new technical tools[33] for committing crimes. Undoubtedly, in addition to the most well-known cases in the fields of road traffic, logistics and armaments, AI can be of great relevance in the 'generation of untruthful content', discriminatory conduct, certain attacks on privacy and even market manipulation[34]... In any case, and for the time being, its lack of specific mention in the applicable regulations only generates a risk of a liability gap in those crimes that require legally determined means.

AI systems can equally be potential targets for criminal attacks. Given the nature of the elements to be protected and the fact that AI systems are broadly considered as 'computer systems'[35], legislation on information and communication technologies and cybercrime, based on the Budapest Convention and its implementing regulations, usually constitutes the first line of defence in most countries (Bucharest 8-9).

However, AI systems transcend the mere execution of programs[36]. Therefore, the above possibilities in no way eliminate the need to introduce new criminal offenses to better guarantee algorithmic security and integrity, as well as in other areas of AI that require

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[31] José Luis De la Cuesta and John Vervaele, 'Foreword' in De la Cuesta, Blanco and Odriozola (n 2) 14.

[32] See the resolutions in Fernando Miró-Llinares and others (eds), Criminalisation of AI related offences (International Colloquium, Bucharest, Romania, 14-16 June 2023), (2024) 95 RIDP 1, 11-17; for the General Report, Fernando Miró Llinares, 'General Report', ibid 19-87.

[33] Lorenzo Picotti, 'Traditional Criminal Law Categories and AI: Crisis or Palingenesis? General Report', in Lorenzo Picotti & Beatrice Panattoni (eds), Traditional Criminal Law Categories and AI: Crisis or Palingenesis? (International Colloquium Section I, Siracusa, 15-16 September 2022) (2023) 94 RIDP 1, 19.

[34] Bernardo Del Rosal, '¿El modelo de la responsabilidad penal de las personas jurídicas para los daños punibles derivados del uso de la inteligencia artificial?' (2023) 2 Revista Electrónica de Responsabilidad Penal de Personas Jurídicas y Compliance, 5-8.

[35] Picotti, 'Traditional Criminal Law Categories and AI' (n 33) 15; see also, Fernando Miró Llinares, 'General Report' (n 32) 43.

[36] Lorenzo Picotti, 'Cybercrimes and Criminal Relevance of Artificial Intelligence' in Francisco J Castro Toledo (coord), *La transformación algorítmica del sistema de justicia penal* (Thomson Reuters, 2022) 70.

special protection. Furthermore, given that 'automation implies a change in the "moment" at which human action becomes crucial'[37] – and in order to 'anticipate the threshold of criminal protection'[38], justified for some by the seriousness and scope of the repercussions of its illicit use – calls from many quarters and sectors manifest in favour of a direct criminalization (or as an aggravated offense) of the misuse and abuse of AI technologies. It is also proposed that other conducts are criminalized, such as the breach of professional duties of care in the production of AI systems[39] (or, in general, the lack of care required of users), illicit trafficking of robots, serious violations of the provisions regulating their use, resulting in deprivation of life, attacks on health and integrity or serious harm, artificial manipulation of images, documents or voices via video (deep fakes), or violation of express interdictions, such as those widely proposed with regard to fully autonomous lethal weapon systems[40].

The increasing presence of AI in our individual and social life has not been accompanied by the introduction of a general regulation, which emerging sectoral regulations, such as those related to autonomous driving, drones, facial recognition, deep fakes, medical diagnostics and healthcare, among others, fail to ensure[41]. However, the need for this general regulation is essential in order to define and delimit the concept of AI, and to establish specific obligations and duties of the various persons and instances involved in the production, distribution and sale of equipment, and for the users of AI systems. These developments, together with the delimitation of the permitted risk, are, in fact, crucial for the criminal liability derived from the incidence of the use of AI in certain criminal outcomes, both intentional and reckless.

Thus, in the absence of a general regulation of international and domestic criminal law[42], thoroughgoing penal reform is often considered premature. This was the view of the International Colloquia of the first two sections of the Congress of the International Association of Penal Law: the one of Bucharest (2023) and the International Colloquium of Siracusa (2022), devoted to the general part[43]. Their conclusions underline the difficulties that, in the absence of extrapenal 'legal definitions' backed by sufficient consensus, attempts to criminally define AI currently face (Siracusa, 2). It is understood that criminal law must necessarily await the international, regional and national development of the '[t]echnical standards, structural features and operating conditions of AI systems and

[37] Miró Llinares, 'General Report' (n 32) 47.
[38] Picotti, 'Traditional Criminal Law Categories and AI' (n 33) 21.
[39] Where 'positive obligations' may already derive from the legislation in force (eg in product liability). Picotti ibid 28, 34.
[40] Picotti ibid 23 ff.
[41] Picotti ibid 26.
[42] On August 1, 2024, Regulation (EU) 2024/1689 of the Parliament and of the Council of 13 June 2024 with harmonized rules on artificial intelligence (OJEU No. 1689 of 12 July 2024) has entered into force.
[43] See the Resolutions in Lorenzo Picotti, 'Resolution on traditional Criminal Law Categories and AI', in Lorenzo Picotti & Beatrice Panattoni (eds), Traditional Criminal Law Categories and AI: Crisis or Palingenesis? (International Colloquium Section I, Siracusa, 15-16 September 2022) (2023) 94 RIDP 1, 53-59. For the General Report, Lorenzo Picotti, 'Traditional Criminal Law Categories and AI' (n 33) 11-51.

their components' (Siracusa, 6), which constitute the 'precondition for addressing AI-related harm through punitive law'. These should also incorporate applicable responses in case of alarms or alerts, in line with what is already the case in other 'complex risk areas', such as health, occupational safety and environmental protection (Siracusa, 7-8).

Furthermore, in an appropriate legislative technique, criminal reform should only be undertaken if the protection objectives pursued – being unattainable by other means than criminal law – could not be achieved through the interpretation of the criminal offenses already in force (Bucharest, 6-7). This makes it necessary to focus any legislative reform on those cases in which, through AI, the risk increases or new objects of attack[44] or means of commission emerge, as well as, with regard to protected legal interests, when the 'dimension and relevance' of existing ones is decisively affected or if other 'worthy' ones are generated (Bucharest, 6).

Based on the above, the Bucharest Colloquium Resolutions did not support the reform of those crimes that 'do not usually provide for specific means of commission', such as crimes against life and health (Bucharest, 20). Nor did they accept the necessity of a reform except to punish the most serious attacks, considering that other conduct should be dealt with by other means of control or branches of law, such as offenses against the formation of the will[45] or algorithmic discriminatory conduct (Bucharest, 26-27).

In the opinion of the participants in the Bucharest International Colloquium, it also seemed premature to review 'the regulation of cyber fraud and other cybercrimes against property', which for the time being are sufficiently covered by the criminal law provisions of Articles 2 to 5 of the Budapest Convention. These prohibit the 'production', 'sale', 'procurement for use', 'import', 'distribution or otherwise making available of devices designed or adapted primarily for the purpose of committing offences' (Bucharest, 28-29).

In contrast, a normative updating was looked as necessary in areas characterized by an expected intense regulatory change, like 'autonomous driving', and in relation to the 'creation, development and use of AI tools with a high destructive capacity, such as some autonomous weapons, drones or robots' (Bucharest, 20 & 22).

On the other hand, and recognizing that the extension of AI tools is not limited to a few sectors of individual or social life, but that it is by nature cross-cutting, complementing existing criminal legislation was proposed:

[44] Such as 'the data from which the algorithms are fed, the AI systems themselves, certain conditions of their application or, even, interests associated with the robots, or the possibility to discern what is real in a context of deep fakes'. Miró Llinares, 'General Report' (n 32) 42.

[45] Without forgetting, in any case, that 'deception, threat and coercion' are greatly facilitated by 'generative AIs, such as large language models and similar tools' (Bucharest, 26).

- in the area of 'privacy and other personal interests', whose collectivization is key in 'the era of data processing'[46] (Bucharest, 23);

- to broaden the scope of criminal offenses with regard to the 'unlawful gathering of personal data' by introducing new offenses which, in the absence of other 'less coercive' alternatives, punish 'the unlawful massive collection of data' and other preparatory forms generating 'concrete risk' (Bucharest, 24);

- in the field of 'reputation and honour or sexual freedom', due to the easy access to images and data in cyberspace, as well as the risks inherent in the ability to transform (through generative AI and deep fakes) images, videos and audios, 'including those with sexual content or of child pornography' (Bucharest, 25);

- in the socio-economic and financial field, to prevent the risk of serious market manipulation arising from 'malicious or negligent use of AI systems' (Bucharest, 30), and

- concerning the phenomenon of 'disinformation', the criminalization of which should only be justified in order to protect 'the fundamental interests of democratic societies and if this criminalization does not jeopardize freedom of expression' (Bucharest, 31).

The analysis of cases involving AI systems repeatedly reveals problems in terms of causation and objective imputation, which stem from the distance between human intervention and those consequences[47] identified as typical outcomes in many criminal offenses. To address these difficulties – as well as in order to solve the problems of 'traceability'[48] arising from the increasing development of AI – bringing criminal intervention forward to the design and implementation phases is frequently presented as the inevitable solution. Proposals often include the introduction of new criminal offenses, preferably configured as 'endangerment'[49] ones, focusing on the infringement of extra-penal duties or established by specific regulations, including those 'related to the lack of appropriate monitoring and oversight of AI systems' (Bucharest, 18). This applies to the illegal design, programming, production, distribution, sale and purchase 'of "malicious" algorithms, software and AI systems', which Section I proposed to set up as an autonomous preparatory offense in case of 'clear, actual, present danger' to 'significant legal goods' (Siracusa, 12 a.2); without prejudice to the incrimination of the generation of 'new risks' through the 'abuse and transformation of lawful AI systems' (Bucharest, 16).

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[46] Javier Valls Prieto, *Problemas jurídico penales asociados a las nuevas técnicas de prevención y persecución del crimen mediante inteligencia artificial* (Dykinson, 2017) 17, 27-32.

[47] Beatrice Panattoni, 'AI and Criminal Law: The Myth of 'Control' in a Data-Driven Society' (2021) 92 RIDP 1, 126.

[48] Alicia Gil Gil, 'Sistemas de armas autónomos letales. Comentario a la posición española, con especial atención a algunos problemas jurídico-penales' (2022) 38 Revista General de Derecho Penal 15.

[49] Particularly, omissions. Picotti, 'Traditional Criminal Law Categories and AI' (n 33) 38.

With regard to the regulation of negligence, in *numerus clausus* systems, it is proposed to widen its scope of application to address the difficulties in proving the cognitive element of intent and the wide scope for error. In Bucharest, it was also suggested to introduce '[n]egligence offences based on the infringement of standards of due diligence (…) if the protection of the affected interests makes it necessary' (17). This should be complemented by the identification of 'specific models for attributing liability to the persons (both natural and legal persons) who are "behind" the AI systems', to 'the owners and those who decide on their concrete use', as well as to all those who, participating in 'the causal chain of the damage', can be decisive: 'from the designer, programmer, producer, seller, distributor to the end users of the systems themselves' (Siracusa, 10-11). This particularly complex issue, which belongs more to the General part than to the Special one, as well as the liability of legal persons, was further elaborated by the International Colloquium of Section I (Siracusa, 13-19)[50].

Finally, and regarding the aggravating circumstances, the Bucharest Colloquium, notwithstanding the respect of the principle of proportionality, rejected that the use of AI should directly become an aggravating factor. It was considered only justified in the absence of other circumstances capable of 'encompass[ing] the severity of the damages caused by the use of AI', taking also into account 'the relevance of the affected interest' (Bucharest, 19).

2.2.4 Food regulation and criminal law

In the framework of the Twentieth International Congress (Rome 2019), which focused on 'Criminal Justice and Corporate Business', the topic 'Food Regulation and Criminal Law' was analysed by the International Colloquium of Section II of the Congress (Beijing, 2016)[51] as part of the universal system of human rights, justifying 'recourse to criminal law where this is necessary in order to protect food security effectively' (Preamble).

The approved resolutions recognized the great impact that companies, especially multinationals, have on the right to adequate food. These companies should assess, publish and maintain, periodically updated, risks their activities pose to food security (as well as the risk reduction mechanisms), and be punished (civil, administrative and criminally) in case of non-compliance with their obligations in the area of food safety (I 1-2). States should create appropriate mechanisms for this purpose and ensure that sanctions take into account the victims (where appropriate, by means 'of restorative justice') (I 4). They should equally encourage the implementation of clear compliance programmes (II 7) and

[50] Resolutions 13-19

[51] Adan Nieto Martín, Ligeia Quackelbeen and Michele Simonato (eds), Food Regulation and Criminal Justice (International colloquium Section II of the AIDP XXth World Congress, Beijing, China, 23rd-26th September 2016) (2016) 87 RIDP 2. See the text of the Resolution approved by Section II in De la Cuesta, Blanco and Odriozola (n 2) 227-30. For the General Report, Adán Nieto Martín, 'General Report on Food Regulation and Criminal Law' (2016) 87 RIDP 2, 17-64.

'establish legal regimes' to ensure the independence and accountability of private certification bodies, sanctioning the 'acts of fraud, corruption and the issuance of false certifications' (II 8).

Similarly, in assessing criminal liability for offenses against food health (II), the significance of administrative regulations and industry self-regulation was deemed vital. Liability should encompass the strict enforcement of these regulations, ensuring adherence to the principles of legality, proportionality, and transparency. And, in this respect, Section II called for the punishment of 'the intentional creation of serious food safety risks' by businesses and individuals in case both of a violation of a specific rule, 'even without the proof of concrete harm' (II 4), or of serious food health risks, 'even in the absence of the violation of specific provision of food safety regulations' (II 3). Sanctions should cover all operators in the food supply chain (*ie*, 'producers, manufacturers, distributors and other operators involved') in line with their legal responsibilities and the degree 'of effective control' they exert 'over food safety standards' (II 6).

With regard to food fraud and consumer protection (III), according to the Resolution, States should prevent the production and marketing of food whose representation does not correspond to its content, quality, quantity, method of manufacture or marketing. They should also punish them if committed for 'economic or professional gain, regardless of their impact on food health'.

Finally, in addition to recalling the state's duty to 'share information, cooperate and coordinate' with the aim of preventing, investigating and prosecuting crimes against food safety and fraud (IV), the International Colloquium urged the states to declare themselves competent to prosecute serious crimes committed abroad by companies with headquarters or main activity on their territory, if the state where the acts occurred is unable or unwilling to hold them accountable; and it recalled that this should also, particularly, apply 'to punish the theft, misappropriation, subsidy fraud or other property crimes related to the provision of humanitarian aid', since, in emergency situations, 'humanitarian aid is a part of the right to adequate food' (I 6).

2.3 Other typical crimes in a globalized society

In an increasingly globalized world, the five-yearly Congresses of the AIDP have also addressed terrorism, organized crime (and its trafficking), corruption…; other serious forms of victimization – not pertaining to the core international crimes in a strict sense – characterized by an intensive transnational nature[52].

[52] José Luis De la Cuesta, 'Principios y directrices político-criminales de la Asociación Internacional de Derecho Penal en un mundo globalizado' (2008) ReAIDP / e-RIAPL C-01.

2.3.1 Terrorism

In the context of the congresses, the 'Financing of Terrorism' integrated the agenda of Section II of the Eighteenth International Congress of Criminal Law (Istanbul, 2009), whose work was prepared by the Cleveland Colloquium (2008)[53].

The Resolution approved by the Congress[54], after '[r]ecognizing terrorism and financing of terrorism as potentially transnational and/or extra-territorial crimes (…) committed against mankind' that 'threaten[ing] international peace and security as well as stability of nations", and reaffirming the general view that measures against terrorist financing must be based 'on reliable evidence and analysis':

- Advocated for the revision and evaluation of the current measures (2-4) to ensure 'a fair and effective system of' targeting terrorist financing. This system should be 'regionally and globally harmonized and established in an interdisciplinary manner' (1). It should be based on 'evidence and risk management' approaches (10), which require a clear identification of '[t]he similarities and differences between financing of terrorism and money laundering activities', two issues that often need to be addressed by different types of counter-measures (12).

- Recommended 'a comparative study' of the definitions of terrorism and terrorist financing as well as other national regulations as a means 'to identify problems and gaps' that influence a deficient implementation of international obligations (6).

- Encouraged the States to establish the financing of terrorism as an autonomous offense 'respecting fundamental principles of criminal law' (7): criminalising it in an appropriate manner, 'irrespective of the commission of an actual terrorist act' and not being 'dependent solely on participation in or assistance to a terrorist group' (8); and assuring the liability of legal entities when terrorist financing takes place 'within the scope of its activities' and committed 'by its agents and on its behalf' (9).

Section II of the Congress also examined the processes and lists for designating suspected individuals and organizations, as well as asset-related measures, such as freezing, seizure and data collection. It highlighted the need for 'a thorough and comprehensive revision' (14 a) to rationalize the multiplicity of the lists – 'national'/'international', 'mandatory and private'— (16), and to ensure the respect for human rights (18) and 'the procedural rights of targeted individuals and organisations' (14b), as well as fundamental principles of criminal procedure (15). Strengthening States' judicial and administrative cooperation with the purpose of establishing 'a culture of mutual interaction and the

[53] General Report: Nikos Passas, 'Section II – Criminal Law. Special Part. Terrorism Financing. General Report' (2008) 79 RIDP 3-4, 325-43.
[54] See the resolutions in De la Cuesta, Blanco and Odriozola (n 2) 191-95.

resolution of current legal and political differences in the treatment of common cases' was also emphasized (17).

Furthermore, in 2017 the AIDP organized a World Conference in Bucharest on the possibility of creating an international court to punish acts of terrorism: a proposal launched in 2015 by Romania and Spain. The approved declaration, considering that 'terrorism can only be defeated through a sustained and comprehensive approach involving all States, relevant international and regional organisations and civil society' and 'comply[ing] with international human rights law and international humanitarian law', took 'note of the initiative of Romania and Spain' in order to create 'an international criminal court' with jurisdiction over terrorism. In addition, encouraged the consideration of this initiative 'as part of the long-standing debate on the prosecution of terrorism in an international forum'.

2.3.2 Organised crime

The Sixteenth International Congress of Criminal Law, held in Budapest in 1999, dealt monographically with organized crime[55]. The resolutions[56] proposed by the Preparatory Colloquium of Alexandria (1997)[57] and adopted by the Second Section of the Congress sought to define the guidelines for criminal policy in the face of this 'dark side'[58] of globalisation, both from the perspective of the instruments of the general and special parts of criminal law and from the points of view of procedural law and international criminal law.

The Congress noted that whereas, in the general part of criminal law, the inadequacy of classic theories led to the theory of organizational responsibility, in the Special part of criminal law, legislation opted to strengthen new concepts – such as the autonomous offense of membership in a criminal association – to introduce aggravating circumstances specific to criminal association for certain offenses, as well as to the extension of money laundering incrimination.

On the basis of the legitimacy of national systems in using instruments to deal appropriately with organized crime – which undoubtedly include the criminalization of membership of a criminal organization (1) – Section II of the AIDP Budapest Congress recommended that, in such cases, membership should be defined 'in functional terms' and without requiring 'actual participation in specific offences' but only requiring 'being

[55] The Criminal Justice Systems facing the Challenge of Organised Crime. Sixteenth International Congress of Penal Law. Budapest (Hungary) September 5-11 (1999) 70 RIDP 3-4.
[56] See the resolutions in De la Cuesta, Blanco and Odriozola (n 2) 158-60.
[57] The Criminal Justice System facing the Challenge of Organized Crime Topic II Special Part. Preparatory Colloquium Alexandrie November 8-12, 1997 (1998) 69 RIDP 1-2. General Report: Christopher Blakesley, 'General Report. The Criminal Justice System facing the Challenge of Organized Crime', ibid 69-100.
[58] Georges Picca, 'Transnational organised crime' (2001) 39 Annales Internationales de Criminologie 1-2, 20.

part[59] of the stable structure of the association' (4 I). This should make it possible to distinguish members from participants from outside the association, who should not be punished if they merely maintain legal relations with the association, typical of ordinary life, even though being aware of its unlawful nature (4 V).

In all cases, whether one follows the path of the autonomous offense or the specific aggravation of certain acts, the AIDP considered it important to prevent problems that may arise from the perspective of criminal law, constitutional law and human rights. Therefore, special attention should be given to complying with 'minimum standards compatible with the international protection of human rights and constitutional principles', in particular (6): the principle of legality (precise wording), the principle of harm or necessary social danger (to be demonstrated by the prosecution), the principle of culpability (voluntary and not forced membership in the association to support its criminal activities) and the principle of proportionality. Furthermore, and according to point 7, claims of 'justification or legitimacy' of '*ad hoc* or specific legislation', based upon the need to address 'emergency situations', should 'be rigorously limited in nature, scope and in time'.

As for the criminalization of money laundering – a mechanism closely linked to organized crime and through which the integration into the legal economic system of profits obtained from crime is sought – the Congress considered that its usefulness as a weapon of 'extremely' relevance in the fight against organized crime and 'to enforce the mechanisms of confiscation of illicit profits' is obvious: commonly, its incrimination is 'the only means of thwarting organised crime' (9).

2.3.3 Corruption

Corruption was the focus at Section II of the Seventeenth International Congress of Criminal Law, held in Beijing (China) in 2004. This adopted a set of criminal and legal guidelines[60] on the draft elaborated by the Preparatory Colloquium celebrated in 2002 in Tokyo (Japan)[61].

After having underlined both the significance of corruption and associated crimes (I) and the importance of a multilateral strategy (II), as well as the need of effective measures for preventing corruption and related crimes (III)[62], chapter IV delved into the 'Criminal Law' issue, distinguishing among 'Corruption and Bribery of Public Officials' (IV.1),

[59] 'Corroborated by a material fact', such as written communication, the acquisition of a certain goods… (4 II).

[60] See Resolutions in De la Cuesta, Blanco and Odriozola (n 2), 172-77.

[61] (2003) 74 RIDP 1-2. General Report: Dieter Dölling, 'General Report', ibid. 37-51.

[62] Including, in addition to the promotion and assurance of a 'culture of good governance' – through 'careful selection' and 'adequate remuneration' of staff, 'codes of conduct', 'strict internal and external controls', 'corruption hotlines' and 'warning signals', specific 'corruption ombudsmen' and/or anticorruption commissions with guaranteed independence'... – as well as 'transparency, legality, integrity and honesty, 'public support (…) for the prevention and control of corruption and related offences' and crimes, and the prohibition under domestic tax law of any 'tax deductibility of bribes'.

'Corruption and Bribery in the Private Sector' (IV.2), 'Trading in Influence' (IV.3) and the 'Related Offences' (IV 5). According to the Seventeenth Congress, criminal measures against corruption and bribery at the public level should start with a clear definition of the concept of public officials. This should include any person integrated or serving 'the State or the public administration at any level of hierarchy and (…) function, encompassing employees of national and local governments, members of national and local legislative bodies, judges, prosecutors, and employees of government-controlled entities and corporations' (IV.1.1), as well as 'public officials of foreign States and officials of public international organizations' (IV.6).

The object of Corruption and Bribery of public officials was identified with any 'undue advantage, regardless of its nature', and 'in connection with the actual or potential performance or not performance of the public official's functions' (IV.1.2). Acting in connection either with a breach 'of his or her official duties' or 'with organized crime' should be considered aggravating circumstances (IV.1.3 & 5), while the withdrawal 'from the agreement' and restitution of 'any undue advantage received', done by 'the public official (…) before performing the act or omission' (IV.1.4), or 'that the offender had a right to the public official's performance or non-performance of the act in question' (IV.1.5) could constitute mitigating circumstances.

Unlike in the past, when it was considered that corruption should only be prosecuted in the public sphere, the Seventeenth International Congress of Criminal Law, in line with the prevailing international thinking, came out clearly in favour of taking action against corruption and bribery in the private sector, understanding that these acts 'violate fair competition and may also be harmful to the enterprise' whose executive or agents are corrupted or bribed (IV.2.1) 'in exchange for an improper act or omission relating to the affairs of the principal' (IV.2.2 & 3). Moreover, point IV.6.4 added: '[N]ational criminal law may be extended to bribery in the private sector committed abroad by a national of the State'.

The Congress was equally convinced that effectively combating corruption requires criminal action against other offenses, like 'trading in influence'. This is 'committed by any person who, asserting that he or she is able to exert influence on a public official, demands, agrees to accept, or accepts an undue advantage, regardless of its nature, for himself/herself or another person or institution in exchange for the promise or exercise of improper influence on any public official'. According to the Congress, States might also 'define trading in influence as a criminal offence' and punish 'the acts of offering or giving an undue advantage to a person trading in influence' (IV.3.1 & 2).

Offenses committed in connection with corruption and bribery[63] should be adequately sanctioned, and, among them, specifically 'the laundering of the proceeds of corruption',

[63] Like 'fraud, embezzlement, breach of trust, extortion, agreements to unfairly restrict or influence competition, or the disclosure of legally protected secret' (IV.5.1)

enacting and effectively reinforcing money laundering legislation 'providing for criminal penalties' (IV.5.2).

For the approved resolution, criminal acts of 'corruption, bribery and related offences' deserve 'appropriate sanctions proportionate to the seriousness and dangerousness of the offence' (IV.4.1) and these sanctions could be complemented by 'effective disciplinary measures' (IV.4.5). Penalties for corruption should always include disqualification from holding public office; and for the 'perpetrators of bribery, exclusion from public sector contracts may constitute an additional sanction' (IV.4.2). Notwithstanding 'third parties' interests', confiscation of the bribes, and deprivation of the 'privileges and proceeds derived from the offence' (IV.4.3) should be guaranteed. The availability of sanctions against legal persons for acts committed 'on behalf of a legal person' was also a relevant concern, provided that the offense was 'committed in the interest or to the advantage of the legal person, and (…) due to a lack of control by the legal person' (IV.4.4).

Chapters V and VI of the Resolution included, finally, further recommendations both on 'Investigation, Prosecution and Adjudication' and on the indispensable international co-operation in the fight against corruption.

3 Others

3.1 Offenses against the family and sexual morality

Preceded by a preparatory meeting in Bellaggio[64], Section II of the Ninth Congress (The Hague, 1964)[65] studied this complex issue, preparing 'moderate conclusions concerning certain problems', conscious that these should be 'only a first juridico-penal approach to a matter' in need of further 'criminological studies'.

The Congress resolutions initially focused on identifying several incriminations to be eliminated from the criminal law – such as 'fornication' or 'adultery' (1.1 & 2) or, at least, restricted to certain limits: 'incest', 'distribution of birth control information and means of preventing conception', 'abortion', and 'the practice of artificial insemination (2-5). Furthermore, Resolution 6 accepted the prohibition of homosexual behaviour by criminal law only in case of use of force or violence, abuse of superiority, to protection of minors and other specific circumstances.

Finally, the Congress manifested its concern on the 'serious social problem' concerning the 'non-support of wives and children', and recommended the establishment of an

[64] Gerhard O.W. Mueller, 'Les infractions contre la famille et la moralité sexuelle. Colloque préparatoire de l'Association Internationale de Droit Pénal sur la IIe question à l'ordre du jour du IXe Congrès International de Droit Pénal (La Haye, 23-30 août 1964) tenu à Bellagio (Italie), à la Villa Serbelloni, du 8 au 12 septembre 1963' (1964) 35 RIDP 3-4, 1065-90.

[65] See the Resolution in De la Cuesta, Blanco and Odriozola (n 2), 60-62. For the General Report, Morris Ploscowe, 'Les infractions contre la famille et la moralité sexuelle. Rapport Général et conclusions' (1964) 35 RIDP 3-4, 1035-64.

AIDP 'international committee' in order to prepare 'a socio-legal investigation of the problem' (7).

3.2 Criminal law and modern bio-medical techniques

In 1989, in Vienna, Section II of the Fourteenth International Congress dealt with the issue of 'Criminal law and modern bio-medical techniques'[66] based upon the work of the Preparatory Colloquium celebrated at the Max Planck Institute in Freiburg in 1987[67].

The extensive and detailed Resolution reaffirmed the fundamental principles that must be upheld in medical research and 'in the employment of criminal law as a control mechanism'. This can effectively serve to strengthen the rules and obligations not only for therapeutic activities but also for non-therapeutic research[68]; however, its use should always respect the postulate that 'criminalization of medical activity' and the threat of penalties must 'remain a means of "last resort"' (1.8). And, after verifying the insufficiencies of traditional criminal law in order to address the issues posed by the modern bio-medical techniques, it concentrated in the several topics demanding a specific regulation (*eg*, of 'organ transplants and artificial organs') and new interdictions with regard to gonad transplants (3.8), the unconsented or the unlawful removal and re-use of artificial organs (3.9), as well as 'commercialization' of organs and tissues of human origin[69] to be reinforced 'if necessary by penal sanctions' (3.10).

Concerning 'artificial human reproduction' (4.5), 'regulations and sanctions ranging up to penal provisions' were considered necessary in order to safeguard minimum standards for gamete donations, for the protection of the freedom of decision of all persons concerned – including gamete donors –, to protect the doctor's freedom of conscience, and to reinforce other prohibitions[70].

In the field of genome analysis and genetic therapy, where 'the inviolability of genetic inheritance against artificial intervention should be protected by law' (6.1), the Resolution declared the unacceptability of the transfer of genes into human gametes for non-therapeutic purposes, which needed to be prohibited, without exception. Interdiction of

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[66] See the Resolutions in De la Cuesta, Blanco and Odriozola (n 2) 117-126. For the General Report, Raimo Lahti, 'General Report. Criminal Law and Modern Biomedical Techniques' (1988) 59 RIDP 3-4, 603-30.

[67] Droit pénal et techniques biomédicales modernes. Actes du Colloque préparatoire tenu à l'Institut Max Planck de Droit pénal étranger et international, Fribourg en Brisgovie, République Fédérale d'Allemagne, 21-23 septembre 1987 (1988), 59 RIDP 3-4.

[68] Se equally points 2.4 & 2.5.

[69] Demanding, in addition, the adoption of 'national and international measures (…) to prevent the utilization of organs and tissues' that have been removed by exploiting the economic vulnerability of the donor or his/her relatives (3.10)

[70] On: storing gametes or embryos beyond a specified period; post-mortem insemination; extracorporeal culture of embryos beyond the stage of development marked by implantation; trade in gametes and embryos and the marketing of maternity as a service to third parties, including related advertising; fertilisation of embryos for purposes other than human procreation.

the transfer for therapeutic purposes was also considered justified as long as the reproducibility, validity and safety of gamete therapy had not been previously proven by processing isolated cells and using animal experiments (6.8). Any attempt to clone human beings (6.9), and to generate hybrids or chimeras by fusing human cells with those of animals (6.10) had to be criminalized.

Finally, the Resolution noted the differing positions on non-therapeutic research on embryos. While many argued that the deliberate creation of embryos for scientific purposes should be prohibited and even penalized, the majority justified interventions that deliberately (or inevitably) lead to the death of the embryo, under certain conditions: in particular, that the embryo cannot be immediately replaced, the research aim to acquire high-level knowledge that cannot be obtained by other means, and the embryo is not developed beyond the nidation phase (5.4). This led the Congress to demand that the conditions and procedures for the use of embryos be clarified through specific regulations, including criminal sanctions if ethical guidelines (*eg*, preventive monitoring by ethics committees) appear insufficient to ensure compliance (5.6).

3.3 Drug abuse and trafficking - prevention and repression

Section II of the Eleventh International Congress of Penal Law (Budapest, 1974) studied 'Drug abuse and trafficking – prevention and repression', adopting a set of 'recommendations'[71] on the basis of the General Report – prepared by Gerhard O W Mueller, with the collaboration of M Cherif Bassiouni and Freda Adler –[72] and the national reports[73] discussed in the AIDP Pre-Congress Colloquium organized in combination with the Criminal Law Education and Research Centre of New York University in 1973[74].

Presented as 'a first and necessarily incomplete contribution', the Recommendations emphasized the need to delve deeper into the 'nature and trends of drug abuse' (and its causes) and to establish 'a new conceptualization and classification system' (I.3). They noted the 'wide disparity' in penal legislation concerning drug offenses and proposed, as a primary 'distinction', differentiating the penal treatment of 'illicit producers, manufacturers, and traffickers' from the legal intervention on 'possessors-consumers'. This approach also suggested the potential decriminalization or depenalization of 'certain forms of conduct with regard to drugs', drawing parallels with the 'experience of dealing with alcohol' (II.1).

Regarding the treatment and rehabilitation of offenders, the Congress 'urged' governments to provide support for drug abusers who have committed offenses, 'either as an alternative to punishment or in connection to' it (IV.1). Section II recommended revising

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[71] See Resolutions in De la Cuesta, Blanco and Odriozola (n 2) 79-83.

[72] Gerhard O W Mueller (avec la coopération de M.Cherif Bassiouni et Freda Adler), 'L'abus des drogues et sa prévention. Rapport general' (1973) 44 RIDP 3-4, 90-120. See also Mueller, Bassiouni, Adler 'Reporter general's comment' ibid 1-55.

[73] (1973) 44 RIDP 3-4, 121-584.

[74] GOW Mueller, 'Foreword and Acknowledgment' (1973) 44 RIDP 3-4, IX-X.

'all treatment programs' (IV.2) and experimenting 'with the multi-modality treatment approach' (IV.3). Special emphasis was placed on young people (IV.5), promoting 'community involvement' (IV.6), and prioritizing public health and welfare services over justice departments (IV.4).

Law enforcement issues (III) and international drug control (V), requiring 'urgently increased co-operation between all States and relevant International organizations and agencies' (V.2), were also relevant topics explored by Section II.

4 Concluding remarks

Although the incorporation of issues related to the Special part of criminal law into the agenda of the AIDP Congresses took nearly three decades, a review of the topics and resolutions approved highlights the significant effort made by the *Association* to propose unified guidelines for addressing criminal phenomena and specific offenses. This effort is fundamental not only in general terms but also very specifically for promoting, deepening, and extending a culture of shared criminal justice, essential for international co-operation in the fight against the most serious forms of criminality.

In any case, the *Association*'s scientific interests with regard to particular crimes and offenses extend obviously beyond the selection of the Congress themes[75] and are also reflected in various activities (*eg*, in collaboration with the Syracuse Institute). The outcomes of these activities have been published in other issues of the Revue (and the electronic Revue), some of them monographic, in the collection 'RIDP *libri*' (and, before that, in the *Nouvelles Études Pénales*), and other publications.

Certainly, the focus of the Congress topics in the Special part is predominantly on criminalizing tendencies[76]: in the socio-economic field and other criminal forms connected to the risk society, such as environmental crimes, computer criminality, information society, AI-related crimes, and food security. Additionally, global issues like terrorism, organized crime, and corruption are also highlighted. In all these areas, and regarding other specific offenses (such as those against the family and sexual morality, modern biomedical techniques, and drug trafficking and dependence), the main concern of the Resolutions on the Special part of criminal law was to determine which conducts needed to be criminalized in order to provide adequate protection for the affected legal interests.

However, this should not be understood in the sense of the absence of references by the Congresses to the decriminalization of certain behaviours, particularly present in several resolutions, such as those concerning sexual morality, in relation to certain biomedical techniques and with regard to consumption of drugs, and even in the field of cybercrime and IA related offenses.

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[75] Made by the Board of Directors, after the renewal of the governing bodies and the presidency, at the beginning of the scientific cycle and on the proposal of the Scientific Committee.

[76] Manfred Burgstaller, 'Crime control policy after a century of IKV/AIDP: a tentative assessment' (2015) 86 RIDP 3-4, 1153.

Moreover, for the AIDP, the principle of subsidiarity (*ultima ratio*) should lead to the recognition of the preferential role of other branches of law (such as administrative and civil law) and, above all, to the preferred use of non-criminal preventive measures, according to the results of criminological research. However, the subsidiary position must not be equated with a secondary role. Even in areas subject to intensive administrative regulation, criminal law should not be reduced to merely reinforcing legal or regulatory mandates and interdictions. According to the Resolutions of the Congresses, criminal law's primary mission is to focus on serious offenses that result in harmful outcomes and warrant criminalization in their own right, regardless of administrative regulation violations. In addition, as defended in the Bucharest World Conference regarding environmental offenses, the greater and more evident the danger and harm, the less influence administrative law should have in determining criminal liability conditions. This does not imply abandoning penal intervention against other dangerous behaviours. Respecting the necessity of punishable conduct being inherently offensive, the Resolutions have generally shown resistance to using abstract endangerment figures, except in exceptional cases and not merely to facilitate evidence, in the understanding, that a potential (or at least hypothetical) endangerment of legally protected interests is the minimum threshold to justify criminal intervention.

Although the Resolutions differ in both content and structure, a horizontal reading allows us to highlight the most common and relevant patterns. In this sense, and notwithstanding the necessary definition and adequate conceptual delimitation of the (worthy, needed and susceptible of penal protection) legal interest, which is the first departure point for efficient incrimination, the general opinion in the AIDP is that the central position that criminal protection deserves in the legislative framework is better achieved through the Criminal Code itself. Thus, the use of special criminal legislation should be admitted only in very exceptional cases.

Assuring strict respect for the principle of legality – with its emphasis on precision and clarity in describing punishable conduct (and, where appropriate, aggravating circumstances) – emerges as another central concern of the Congress resolutions on the Special part, together with the definition of the scope and extent of legitimate incriminations. In this context, it is important to underline the rejection of the use of general clauses and reference techniques that rely on the contents of administrative norms or those originating from other authorities or instances.

Distinguishing between different levels of seriousness of offenses and respecting the requirements of culpability is equally important. This reflects the need not only to eliminate any form of strict liability offenses but also to set limits on the expansion of the framework of punishable negligence (*eg*, to avoid the difficulties in proving the cognitive element of intent).

The increasing involvement of structures, organizations, and legal entities in many criminal phenomena, as studied from the Special part perspective, led the Resolutions to em-

phasize the importance of establishing specific systems for attributing liability to directors, supervisors, and the legal entities themselves. This issue, first addressed by the Second Congress in 1929, was reiterated later in different resolutions favourable to the recognition of the penal responsibility of legal persons.

The sanctioning of incriminated behaviours has not generally received in-depth attention in the Resolutions concerning the Special part. However, the demand for appropriate, dissuasive, and proportionate punishment is present, alongside utilizing confiscation and complementary sanctions to ensure victim compensation. Among concrete sanctions, references to professional disqualifications (or disqualification from holding public office) are particularly noteworthy concerning criminal phenomena connected to public administration or the socio-economic order.

So far, these are the main parameters that the AIDP has been building in the Special part of criminal law through its five-yearly Congresses celebrated since 1924. Reflecting the commitment of our *Association* to the development of a criminal law that is always evolving and should be fully respectful of individuals and basic democratic rights and principles, these parameters undoubtedly constitute an acquis, that can be further developed and enhanced. Nonetheless, they remain invaluable in our collective journey towards a more humane and effective justice and peace.

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Appendix:
Overview of special criminal law topics in AIDP Congresses[77]

VI 1953 (Rome): *Social-economic penal law*

VII 1957 (Athens): *The control of judicial appreciation in the determination of punishments*

VIII 1961 (Lisbon): *Methods and technical processes employed in penal sentencing*

IX 1964 (The Hague): *Offences against the family and sexual morality*

XI 1974 (Budapest): *Drug abuse and its prevention*

XII 1979 (Hamburg): *The protection of the environment through penal law*[78]

XIII 1984 (Cairo): *Concept and principles of economic and business criminal law, including consumer protection*

XIV 1989 (Vienna): *Criminal law and modern bio-medical techniques*

XV 1994 (Rio de Janeiro): *Computer crimes and other crimes against information technology*

XVI 1999 (Budapest): *The criminal justice system facing the challenge of organized crime*

XVII 2004 (Beijing): *Corruption and related offences in international business relations*

[77] Among the Congresses that addressed concrete offences, but not from the perspective of the Special Part of Criminal Law: III 1933 (Palermo): The jury of honour and the crime of slander; VI 1953 (Rome): Criminal protection of international conventions on humanitarian law; VII 1957 (Athens): The offences committed on board of aeronautical vehicles and their consequences. XI 1974 (Budapest): The suppression of unlawful seizure of aircrafts.

[78] See also XV 1994 (Rio de Janeiro): Crimes against environment. Application of the general part; and the 2016 World Conference (Bucharest).

XVIII 2009 (Istanbul): *Financing of terrorism*[79]

XIX 2014 (Rio de Janeiro): *Information Society and Penal Law*

XX 2019 (Rome): *Criminal justice and corporate business: Food regulation and Criminal Law*

XXI 2024 (Paris): *Artificial intelligence and criminal justice*

[79] See also 2017 World Conference (Bucharest).

CRIMINAL PROCEDURE

THE AIDP'S RESOLUTIONS ON CRIMINAL PROCEDURE FROM 1926 to 2024: A SEISMOGRAPH FOR BALANCING HUMAN RIGHTS AND EFFECTIVE LAW ENFORCEMENT

By Ulrich Sieber[*]

1 Introduction

The following article will give an overview of the scientific work of the AIDP and, in particular, the resolutions it has adopted on *criminal procedure over the past 100 years*.[1] The resolutions, which have been approved by its members at its world congresses, are the main output of the AIDP. They allow reliable conclusions to be made about the content of its work and the "DNA" it has developed in the last hundred years.[2]

The *procedural* recommendations can usually be found in Section 3 of the resolutions of the AIDP congresses. However, the following analysis will also include important criminal procedural resolutions that were adopted in the other three sections – usually together with the resolutions on substantive or international law issues. This means that there were several – thematically different – criminal procedural resolutions in a number of congresses. Due to the multitude of issues addressed in the resolutions during the last 100 years, however, an analysis can only be done in illustrative form and on the basis of selected examples.

Criminal procedure is a particularly fascinating topic because the clash between the interests of the state and the civil liberties of citizens becomes particularly clear here. National criminal procedural law is therefore also referred to as the seismograph for citizens' civil liberties. The following analysis will also use it as a seismograph for the similar orientation of the AIDP over the past 100 years. In addition, an analysis of the many

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[1] On the resolutions of the congresses from 1926 to 2014, see the collection by José Luis de la Cuesta and Isidoro Blanco Cordero (eds), 'Resolutions of the Congresses of the International Association of Penal Law (1926-2014)', (2015) 86(1)(2) RIDP *<https://www.penal.org/en/resolutions-aidp-iapl-congresses>*; On the resolutions of the conference in Rome in 2019, see Twenteeth International Congress of Penal Law "Criminal Justice and Corporate Business" <https://www.penal.org/en/resolutions-last-congress.>; On the resolutions of Section 3 of the conference in Paris 2024, see Juliette Lelieur (ed), ´Artificial Intelligence and Administration of Criminal Justice´, (2023) 94(2) RIDP 383 – 392.

[2] The question of how the contents of the resolutions were transferred into criminal legal policy is already discussed by Raimo Lahti in a general way in Section 2 of this volume (see above p. 61-73) and will not be addressed here.

criminal procedural recommendations can also provide valuable historical insight into the problems that have affected criminal law and the AIDP during this period.

The following analysis will categorize the numerous criminal procedural resolutions of the AIDP into three groups as follows:

- The first group, which is by far the largest, deals with individual *legal issues relating to criminal procedure* that arose and required solutions at the time, particularly in terms of legal policy.

- By contrast, in the second and smaller group, dealing with more recent times, the starting point for the resolutions is no longer defined by *legal issues* but rather by *phenomena:* It concerns the treatment of specific – usually newly emerging – modern forms of crime or other forms of social change, for which the AIDP developed comprehensive solutions in terms of substantive law, criminal procedure, and international law.

- The third group of resolutions covered by the present analysis already appeared in a limited way during the early days of the AIDP. It has, however, only recently experienced a strong quantitative and qualitative upswing: It is characterized by resolutions that no longer relate solely to traditional criminal law and criminal procedure but are instead primarily concerned with alternative, *non-criminal legal regimes*.

On this basis, the content of the resolutions and the work of the AIDP will also be evaluated in the final part (Section 3) of this analysis.

2 Overview of the Resolutions

2.1 Specific issues of criminal procedure

The overview of the resolutions will start with the first group of resolutions that address specific legal issues of criminal procedure from the respective period. In order to capture not only the factual but also the historical changes, these resolutions will be illustrated in the sequence of their historical development.

Brussels 1926[3]

At the *first congress of the AIDP in Brussels in 1926* there was not yet a clear separation of topics according to the current resolution system of "general criminal law", "special criminal law", "criminal procedural law", and "international criminal law". The congress also did not adopt resolutions on national criminal procedure. However, Section 3 called for an "international criminal jurisdiction", which was conceived considerably

[3] On the resolutions adopted in Brussels in 1926, see de la Cuesta and Blanco Cordero, ibid [n 1] 251 – 254.

more broadly than that of today's international courts. In addition to unjustified aggression and other violations of international law, this jurisdiction was to include the settlement of disputes of cognizance between the States and the review of discrepant sentences pronounced on the same crime or offense by the courts of different states. Individual procedural principles and rules for this international court were only mentioned in a very rudimentary manner; this is one of the *international* procedural issues that belongs to the report by Cristine van den Wyngart.

Bucharest 1929[4]

The *2nd Congress in Bucharest in 1929* dealt – in Section 3 – with the question of whether "a single judge or a collegiate" should be responsible for decisions in criminal cases. The resolution called for a clear preference for decisions of a collegiate and endorsed the role of the single judge only in the area of "faulty or involuntary offenses and deliberate offenses of lesser importance" as well as in other areas of reduced importance.

In addition, with regard to – unspecified – "associations", Section 4 advocated for their "right to pursue and prosecute infringements" or for "the right to constitute themselves as civil parties".

Palermo 1933[5]

The *3rd Congress in Palermo in 1933* addressed a large number of different procedural problems: Section 2 raised the question of a "jury of honor" especially for the crime of slander. Section 4 assessed the jury system. For the continental legal systems, Section 5 rejected the premise that the defendant could testify as a witness under oath in his own case. Section 6 called for the greater specialization of judges.

Section 3 is particularly interesting: It demanded a code of execution, ie a code for the legal questions arising from the moment the judge's verdict is passed. This demand is remarkable because, in many states, the question of legalizing and codifying the law on the execution of sentences was only addressed much later, due to constitutional requirements.

Paris 1937[6]

The diversity of the current issues of the time continued at the *4th Congress in Paris in 1937:* Section 2 called for a mandatory international exchange of the criminal records of defendants and emphasized this demand as "an absolute and evident necessity". Section 3 reaffirmed the principle of legality and the principle of *nullum delictum sine lege*. In addition, Section 4 developed a brief catalog of the accused's rights of defense in pretrial proceedings and demanded, particularly for adversarial proceedings, the participation

[4] On the resolutions adopted in Bucharest in 1929, see de la Cuesta and Blanco Cordero, ibid [n 1] 255 – 264.
[5] On the resolutions adopted in Palermo in 1933, see de la Cuesta and Blanco Cordero, ibid [n 1] 261 – 264.
[6] On the resolutions adopted in Paris in 1937, see de la Cuesta and Blanco Cordero, ibid [n 1] 265 – 268.

rights of the defense counsel and the judicial option of reserving the right to order preventive detention. Section 5 demanded the principle of legality, greater judicial control, and further rights for the sentenced person, even after his/her conviction, regarding the execution of sentences and security measures.

Geneva 1947[7]

The procedural topic of the *5th Congress in Geneva in 1947* concerned the principles of opportunity and legality of penal proceedings. However, in the end, the congress did not reach a consensus and recommended further discussion of the issues at a later congress.

Rome 1953[8]

The *6th Congress in Rome in 1953* developed a detailed list of measures for police procedure, criminal proceedings, and pretrial detention in Section 2. In particular, it called for balancing the interests of criminal prosecution and adjudication with the right of personal freedom and human dignity of the offender.

Athens 1957[9]

Section 2 of the *7th Congress in Athens in 1957* dealt with the control of judicial appreciation in the determination of punishments. The respective resolutions demanded that judicial appreciation may not be considered an arbitrary power but that it must be exercised in a legal form, in conformity with precise legal directions and general principles of law. The resolutions stated that the judges' decisions must be based on a full contradictory debate, be precisely reasoned, and be announced publicly after the public debates.

Lisbon 1961[10]

The *8th Congress in Lisbon in 1961* analyzed problems caused by the publicity of criminal files and criminal procedures. The comprehensive and detailed resolutions aimed primarily at protecting the personal rights of the accused, the establishment of the truth, and the integrity of the judiciary.

[7] On the resolutions adopted in Geneva in 1947, see de la Cuesta and Blanco Cordero, ibid [n 1] 269 – 270.
[8] On the resolutions adopted in Rome in 1953, see de la Cuesta and Blanco Cordero, ibid [n 1] 271 – 277.
[9] On the resolutions adopted in Athens in 1957, see de la Cuesta and Blanco Cordero, ibid [n 1] 279 – 285.
[10] On the resolutions adopted in Lisbon in 1961, see de la Cuesta and Blanco Cordero, ibid [n 1] 287 – 294.

The Hague 1964[11]

The *9th Congress in The Hague in 1964* scrutinized the role of the prosecuting bodies in criminal proceedings. It favored wide independence of the prosecutor vis-à-vis the government as well as respect for considerations of human rights, fairness, and social inclusion.

Rome 1969[12]

The *10th Congress in Rome in 1969* recommended in Section 2 the division of criminal proceedings into two stages: (a) the examination of the facts of the offense(s) and (b) the examination of the personality of the offender and the appropriate sanction. In order to protect the personal rights of the accused, the second stage was only to be initiated after a decision on his or her culpability. In addition, Section 3 set out requirements for the role of the judge in the "determination and application of punishment".

Budapest 1974[13]

The *11th Congress in Budapest in 1974* advocated better compensation for victims of criminal offenses, both in criminal proceedings (by adhesion claims or civil actions) and by way of public compensation payments (decided in a majority vote).

Hamburg 1979[14]

While the resolutions mentioned so far called for human rights with regard to specific individual problems, Section 3 of the resolution at the *12th Congress in Hamburg in 1979* was much more ambitious: It contained a systematic catalog of the most important safeguards and human rights in criminal proceedings. The impressive summary specified, in particular, the presumption of innocence, the fair trial principle, the "equality of arms", the right to a trial without undue delay, evidentiary questions, the right to remain silent, the right to counsel, rules of arrest, and pretrial detention.

Vienna 1989[15]

The *14th Congress in Vienna in 1989* attempted to strike a balance in Section 3: It emphasized the need to maintain an equilibrium between protecting the fundamental rights of the parties and the efficiency of criminal justice. On this basis, proposals were made for protection mechanisms with regard to certain elements of the judicial process. This congress shows that the AIDP's demands for human rights had increasingly developed from

[11] On the resolutions adopted in The Hague in 1964, see de la Cuesta and Blanco Cordero, ibid [n 1] 295 – 303.
[12] On the resolutions adopted in Rome in 1969, see de la Cuesta and Blanco Cordero, ibid [n 1] 306 – 312.
[13] On the resolutions adopted in Budapest in 1974, see de la Cuesta and Blanco Cordero, ibid [n 1] 313 – 322.
[14] On the resolutions adopted in Hamburg in 1979, see de la Cuesta and Blanco Cordero, ibid [n 1] 324 – 333.
[15] On the resolutions adopted in Vienna in 1989, see de la Cuesta and Blanco Cordero, ibid [n 1] 351 – 368.

individual measures to comprehensive catalogs of measures. In addition, it illustrates that, besides the interest in protecting the right of defense, the interests in effective criminal prosecution were being taken more into account.

Rio de Janeiro 1994[16]

The *15th Congress in Rio de Janeiro in 1994* confirmed this development from addressing only single questions to developing more comprehensive catalogs for the protection of human rights: In Section 3, it dealt comprehensively with "reform movement in criminal procedure and the protection of human rights". The comprehensive catalog of human rights concerns dealt with the initial stages of criminal proceedings and the application of procedural guarantees, the presumption of innocence and its consequences, the intervention of the judge, questions of evidence, matters of defense, rights of the victim, and future reforms.
At the same time, Section 2 of the Congress in Rio de Janeiro on "computer crimes and other crims against information technology" accelerated an additional important change for the various types of AIDP resolutions, a change that had already begun five years previously: The AIDP was facing new, modern forms of crime and had the aim of developing comprehensive solutions to counter them. This leads us to the second group of AIDP resolutions mentioned above, whose starting points were no longer specific *legal questions* of criminal procedure but rather new *phenomena of complex crime* and of social change for which advanced solutions were necessary.

2.2 Comprehensive responses to new complex crimes and social change

The resolutions in the second group of resolutions dealing with comprehensive responses to new complex crimes and social change will – like the resolutions of the first group – be illustrated in order of their historical development. These problem-oriented, comprehensive resolutions for specific crimes and changes relating to the second group started – as regards procedural law – in 1989 at the 14th AIDP Congress in Vienna.

Vienna 1989[17]

The *14th Congress in Vienna in 1989* addressed – in Sections 1 and 2 – the new problems of *biomedicine***.** Both sections developed, above all, comprehensive solutions for substantive criminal law and administrative law. In the field of procedural law, the resolutions rejected intrusive investigative measures but did not deal in depth with criminal procedure. This fundamentally changed, however, as already indicated, at the next congress in Rio de Janeiro.

[16] On the resolutions adopted in Rio de Janeiro in 1994, see de la Cuesta and Blanco Cordero, ibid [n 1] 369 – 390.
[17] On the resolutions adopted in Vienna in 1989, see de la Cuesta and Blanco Cordero, ibid [n 1] 351 – 368.

Rio de Janeiro 1994[18]

Section 2 of the *15th Congress in Rio de Janeiro in 1994* dealt comprehensively with *computer crime and other crimes against information technology*. The respective resolutions presented comprehensive and precise catalogs of demands for new criminal provisions and for new computer-specific investigative measures in cyberspace. With respect to these new challenges, the resolutions advocated more strongly in favor of effective criminal prosecution than previous resolutions. However, all proposed measures were limited by strict demands for criminal procedural safeguards and human rights.

Rio de Janeiro 2014[19]

Due to the rapid fundamental changes in information technology, twenty years later, *the 19th Congress in Rio de Janeiro in 2014* once again addressed the same topic of *information society and penal law.* This time, however, cybercrime was not just a single topic in one section but the overall theme in all four sections. Section 3, on criminal procedure, adopted a new and impressive systematic compilation of the most important criminal investigation measures and procedural safeguards. It encompassed the use of information technology and the protection of human rights in general, IT intelligence and the development of information positions, IT in criminal investigations, and the use of IT at trials.

Budapest 1999[20]

The *16th Congress in Budapest in 1999* continued this new thematic approach towards the comprehensive treatment of new forms of crime: At this congress, *organized crime* was on the agenda in all four sections.

As a starting point, the resolutions on criminal procedural problems in Section 3 emphasized that "in most cases the basic rules of criminal procedure provide sufficient means to react firmly against organized crime; yet, in certain circumstances, it may be necessary to consider modification of the provisions of criminal law while retaining respect for the principle of fair trial, taking into account the proceedings as a whole". Based on this general principle, the resolutions addressed, for example, the prosecution's burden of proof; the presumption of innocence; as well as the principles of legality, subsidiarity, proportionality, and judicial review. They stated, for instance, that, anonymous witnesses fundamentally violate the rights of the defense and are only considered admissible under strict conditions.

[18] On the resolutions adopted in Rio de Janeiro in 1994, see de la Cuesta and Blanco Cordero, ibid [n 1] 369 – 390.

[19] On the resolutions adopted in Rio de Janeiro in 2014, see de la Cuesta and Blanco Cordero, ibid [n 1] 437 – 452.

[20] On the resolutions adopted in Budapest in 1999, see de la Cuesta and Blanco Cordero, ibid [n 1] 391 – 404.

Istanbul 2009[21]

Similarly, the *18th Congress in Istanbul in 2009* developed a detailed resolution on *organized crime and on terrorism*. The meaningful title of Section 3 on criminal procedure was "Special procedural measures and protection of human rights". The resolution critically addressed a number of current problems in the fight against terrorism, for example concerning secret detention camps and anonymous witnesses. The representation of different majority and minority opinions in the resolutions reflected the struggle to balance the interests of the prosecution and defense behind these resolutions.

Paris 2024[22]

This year's *21st Congress in Paris* on *Artificial Intelligence and Criminal Law* also falls in this second group – with a certain modification in comparison to the aforementioned congresses: The starting point of the centenary congress in Paris was not a new type of offense but instead a generally positive technical development that involves considerable risks, however. The congress dealt with artificial intelligence in all four sections.

The "procedural" resolutions of Section 3 analyze, at the outset, the risks of artificial intelligence for criminal procedure and especially for human rights and human dignity. They outline general conditions for AI systems dealing with the prevention, detection, investigation, and adjudication of criminal offences: The resolutions demand that these systems be authorized in advance by law or a similar standard and that they be fully accessible, verifiable, auditable, and of high quality.

For "predictive *policing"*, the resolutions demand *inter alia* that the respective AI systems must not lead to mass surveillance, eg by identifying individuals in public spaces by means of their biometric data. For "predictive *justice"*, the resolutions request that the use of AI in sentencing, rulings on guilt, and the determination of the probability that an individual will commit a crime be prohibited.

For AI-generated evidence, the resolutions emphasize that all probability-based judgments indicate the probability calculated by the AI system used as well as the error rate of that system. Anyone accused of an offense based on such a probability should have a right to obtain the AI system's source code and training data for analysis by an expert.

The resolutions also consider the application of these principles for alternative systems of crime control: This was confirmed for administrative offenses. For severe security measures such as detention, AI risk assessment should be prohibited. State authorities and the private sector should establish independent bodies certifying the quality of AI systems used in criminal procedure.

[21] On the resolutions adopted in Istanbul in 2009, see de la Cuesta and Blanco Cordero, ibid [n 1] 421 – 436.

[22] On the resolutions adopted in Paris in 2024, see Lelieur, ibid [n 1].

These considerations lead to the third, most topical – and possibly most controversial – group of AIDP resolutions focusing on *alternative measures and regimes of crime control*.

2.3 Alternative regimes for crime control

The third group of resolutions is no longer concerned with issues of – substantive or procedural – *criminal law* but rather with the question of supplementing or replacing criminal law with *other (non-criminal and, above all, preventive) legal regimes*. It is interesting and impressive that this most topical question for today's risk society had already been addressed by the AIDP at a very early stage, namely at its very first congress in 1926.

Brussels 1926[23]

The resolutions at the *first AIDP Congress in Brussels in 1926* already stated, as a matter of course, "that the Penal Code should also make the *necessary provisions for security measures* to be determined according to the personality of the offender". The inclusion of such security and correctional measures can also be found in subsequent resolutions. However, the extension of these measures to other alternative regimes beyond criminal law was initially slow in subsequent congresses.

Rome 1953[24]

The resolutions of Section 3 at the *6th Congress in Rome in 1953* on "Social economic penal law" included a number of measures for the purpose of prevention: administrative sanctions, confiscation of illegally obtained profits, withdrawals of certain permits, and self-regulation.

Budapest 1974[25]

In addition, the *11th Congress in Budapest in 1974* supported better compensation for the victims of criminal acts, both within criminal proceedings (by means of an adhesion claim or a civil action) and by way of public compensation payments (as was agreed upon in a majority vote).

Cairo 1984[26]

A different expansion of alternative measures of social control took place at the *13th Congress in Cairo in 1984*. The resolution in Section 3 contained a detailed description of

[23] On the resolutions adopted in Brussels in 1926, see de la Cuesta and Blanco Cordero, ibid [n 1] 251 – 254.
[24] On the resolutions adopted in Rome in 1953, see de la Cuesta and Blanco Cordero, ibid [n 1] 271 – 277.
[25] On the resolutions adopted in Budapest in 1974, see de la Cuesta and Blanco Cordero, ibid [n 1] 313 – 322.
[26] On the resolutions adopted in Cairo in 1984, see de la Cuesta and Blanco Cordero, ibid [n 1] 335 – 350.

measures for diversion and mediation. The aim of these measures was, above all, to restore legal peace by softer means than criminal law. The resolutions of Section 3 evaluated these measures very favorably as a means of social control.

In addition, the resolutions of Section 2 of the Cairo congress dealing with principles of economic and business criminal law demanded, among other things, that the introduction of administrative and civil remedies should be considered before criminalizing certain acts of omission harmful to economic and business life. In addition, the resolutions demanded that *administrative* proceedings should have guarantees of due process, including the right of judicial review. Administrative bodies should not be permitted to impose prison sentences in the field of economic and business offences.

Vienna 1989, Rio 1994, and Budapest 1999

In the context of the control of new crimes, the above-mentioned resolutions of *Vienna 1989, Rio 1994,* and *Budapest 1999* also emphasized specific alternative solutions of a non-criminal nature for the cases and topics they dealt with. They all endeavored to secure these alternative measures with appropriate procedural guarantees.

- The *14th Congress in Vienna in 1989*[27] dealt – in Section 1 – with the distinction between criminal law measures and administrative criminal law measures for the purpose of decriminalization, above all emphasizing the proportionality between offense and sanction.

- Section 2 of the *15th Congress in Rio de Janeiro in 1994*[28] on cybercrime contained an entire section on "non-penal preventive measures", eg security measures.

- The same applies to the *16th Congress in Budapest in 1999,*[29] which mentioned in Section 3 civil measures and administrative measures (in particular confiscation measures) together with the recovery of damages. The resolutions presented a detailed catalog of procedural guarantees and emphasized that these alternative measures must not lead to the circumvention of the safeguards of substantive and procedural criminal law.

Beijing 2004[30]

The *17th Congress in Beijing in 2004* dealt with a completely different alternative legal regime: It devoted its entire Section 3 to the "application of principles of procedure in disciplinary procedures". The detailed resolutions were based on the assumption that

[27] On the resolutions adopted in Vienna in 1989, see de la Cuesta and Blanco Cordero, ibid [n 1] 351 – 368.
[28] On the resolutions adopted in Rio de Janeiro in 1994, see de la Cuesta and Blanco Cordero, ibid [n 1] pp. 369 – 391.
[29] On the resolutions adopted in Budapest in 1999, see de la Cuesta and Blanco Cordero, ibid [n 1] 391 – 404.
[30] On the resolutions adopted in Beijing in 2004, see de la Cuesta and Blanco Cordero, ibid [n 1] 405 – 420.

differing safeguards between criminal and disciplinary powers can be justified *inter alia* by the specific nature of the offenses or for the purpose of simplification. They stated, however, that disciplinary proceedings may not be used as criminal justice "in disguise". Thus, safeguards largely similar to those in criminal law were demanded.

Rome 2019[31]

The most in-depth and fundamental discussion of alternative sanctions so far took place at the *20th Congress in Rome in 2019* in Section 3 dealing with economic crimes: The respective resolutions outlined the fundamental changes in our modern risk society, which not only justify more preventive criminal law (eg by means of preparatory offences or endangerment offenses) but also a stronger preventive protection through alternative legal regimes. The resolutions demanded that the potential of these alternative enforcement measures be assessed for the prevention, investigation, and sanctioning of economic crime; at the same time, however, the necessary legal safeguards for these systems were to be developed. The resolutions of the Rome Congress achieved this, especially with respect to preventive administrative measures, punitive administrative sanctions, targeted sanction law, confiscation law, anti-money laundering law, and compliance regimes.

Paris 2024[32]

Such *alternative legal regimes* – administrative law, security measures, cooperation duties of private parties, and self-regulation – were also mentioned at this year's *21st congress in Paris on AI.*[33]

Mention of the recent congress in Paris brings us to the end of our one hundred-year long journey through time – from Brussels in 1926 to Paris in 2024. If, at the end of this journey, we are now using criminal procedure as the seismograph of freedom rights, we can evaluate the work of the AIDP and decode its DNA on a solid basis. Evaluating this work is the aim of the last section of this analysis.

3 Evaluation

On the basis of the preceding analysis of the AIDP´s resolutions, the Association and its work can now be evaluated as follows:

- Since its foundation, the basis and the DNA of the AIDP have primarily been *human rights and, in particular, criminal law guarantees.* This can be seen at each of its

[31] On the resolutions adopted at the congress in Rome in 2019, see Twenteeth International Congress of Penal Law "Criminal Justice and Corporate Business" <https://www.penal.org/en/resolutions-last-congress.>.
[32] On the resolutions adopted in Paris in 2024, see Lelieur, ibid [n 1].
[33] See No. 2.2 above at the end.

congresses and in each of its resolutions. There are absolutely no exceptions or outliers in its hundred-year history.

- Yet, especially at many of the last congresses, the DNA of the AIDP also contains and takes into account – as a second element – the *interests of effective criminal investigation and prosecution.* The respective proposals are generally not only human rights-based but also balanced and practicable. This consideration of an effective criminal investigation and prosecution is, however, often stronger in the second and third groups of resolutions, dealing with new types of offenses and new preventive regimes, than in the first group. This does not, however, change the priorities in the work of the AIDP and its absolute attention to human rights and criminal law guarantees. The AIDP is still – and even primarily – a strong guarantor of human rights and the rule of law, also in the fields of complex crime and new forms of crime prevention. The critical approach with respect to the use of AI-based systems in criminal proceedings, as seen in the resolutions of the last congress in Paris, which do not emphasize the potential benefits of AI for crime control, illustrates this priorization clearly.

- As an additional and decisive characteristic of the AIDP it is remarkable how well it has achieved consensual and balanced results, especially in the most problematic areas of complex crime – for example when dealing with terrorism, organized crime, and cybercrime as well as new crime control regimes. With its practical statements on these types of crime and new regimes of crime control in the second and third groups of recommendations, the AIDP has become more audible, visible, and effective, all of which benefits the protection of human rights on the whole. This may result in the AIDP becoming even more influential in legal policy in the future than it is today.

- A further essential element in the DNA of the AIDP are its extremely strong roots in *comparative criminal law and the harmonization of criminal law*. These elements are deeply anchored in the working structure of its congresses and resolutions through the system of national reports, preliminary colloquia, and joint international discussions. This anchoring in comparative criminal law and criminal legal harmonization was already evident – right from the start – at its first conference in Brussels in 1926 in the resolution proposed by one of the most important founding fathers of the Association, Vespasian Pella, "considering it highly desirable to unify the fundamental principles of penal law".

- The last essential element in the DNA of the AIDP, as shown by the present analysis, is the *topicality of its agendas*. This can be seen, for example, in the recent congresses and sections on cybercrime, terrorism, organized crime, economic crime, and now especially on artificial intelligence. The reason for this topicality of the

AIDP is: its comparative legal orientation broadens the view of future developments.

Thus, the present analysis of the procedural resolutions shows that the AIDP is on a promising and sustainable path, especially with its recent focus on new forms of complex crime, alternative systems of crime control, and artificial intelligence. These are also fields in which the development of traditional and new legal safeguards – ie the main concern of the AIDP in the last 100 years – will be most important in the future: An effective prevention of crime in today's risk society not only needs a new architecture of special, new preventive laws but also a robust architecture of related civil liberties and procedural safeguards.[34]

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Appendix:
Overview of selected procedural criminal law topics in AIDP Congresses

I 1926 (Brussels): *International criminal jurisdiction for violations of international law, settlement of disputes of cognizance, discrepant international sentences*

II 1929 (Bucharest): *A single judge or a collegiate of the tribunal; Penal pursuit by the Associations*

III 1933 (Palermo): *Should there be admitted in criminal matters the jury system or that of sheriffdom?; Is it proper to consider the accused as a witness at his own trial?; In what way could a better specialization of the judge be secured?*

IV 1937 (Paris): *What guarantees should be given to the accused in the course of preliminary inquiries?*

[34] See for more details Ulrich Sieber, ´The New Architecture of Security Law – Crime Control in the Global Risk Society´ in Ulrich Sieber and others (eds), *Alternative Systems of Crime Control* (Duncker & Humblot Berlin 2018), 3 – 34.

V 1947 (Geneva): *Principle of opportunity and principle of legality in matter of penal proceedings*

VI 1953 (Rome): *Protection of personal freedoms during criminal proceedings*

VII 1957 (Athens): *The legal, administrative and social consequences of condemning*

VIII 1961 (Lisbon): *The problems posed by the publicity of criminal files and proceedings*

IX 1964 (The Hague): *The role of the prosecuting organs in criminal proceedings*

X 1969 (Rome): *The division of the penal process into two stages; The role of the judge in the determination and application of punishment*

XI 1974 (Budapest): *Compensation of the victims of criminal acts*

XII 1979 (Hamburg): *The protection of human rights in criminal proceedings*

XIII 1984 (Cairo): *Diversion and mediation*

XIV 1989 (Vienna): *The relations between the organization of the judiciary and criminal procedure*

XV 1994 (Rio de Janeiro): *Reform movements in criminal procedure and the protection of human rights*

XVI 1999 (Budapest): *The Criminal Justice System Facing the Challenge of Organized Crime*

XVII 2004 (Beijing): *The Application of Principles of Criminal Procedure in Disciplinary Proceedings*

XVIII 2009 (Istanbul): *Special procedural measures and protection of human rights*

XIX 2014 (Rio de Janeiro): *Information Society and Penal Law*

XX 2019 (Rome): *Prevention, investigation and sanctioning of economic crime by alternate enforcement regimes*

XXI 2024 (Paris): *Artificial intelligence and criminal justice*

INTERNATIONAL CRIMINAL LAW

Christine Van den Wyngaert[*]

The influence of the International Penal Law Association (AIDP) in its 100 years of existence is most strikingly visible in the field of international criminal justice. Throughout the 20th Century and the beginning of the 21st, the AIDP has been a catalyst for numerous advancements in this critical field. Countless academics and practitioners have played pivotal roles in its remarkable success over the years. It is impossible to mention them all. However, there are two pioneers who deserve to be especially remembered: Vespasian Pella and Cherif Bassiouni. Though the two never met, the parallels in their contributions are striking. With strong academic roots, organisational and political acumen, they steered the Association in its role of a trailblazer of international criminal justice.

The Charter of the International Association of Penal Law handwritten in Paris 100 years ago, puts international criminal law as a central focus. The initial two aims of the Association align closely with those of its predecessor, the IKV: intending to foster collaboration among academics and practitioners studying and practicing criminal law in their respective nations, alongside researching criminality and its underlying causes to propose reforms in the justice system. However, a pivotal third point was appended, emphasizing the Association's goal to 'promote the theoretical and practical progression of international criminal law, aiming to articulate a universal criminal code and harmonize regulations regarding procedures and criminal investigations.'

This directive must be viewed against the backdrop of post-World War I attempt to bring the German Emperor William II to justice, despite the Treaty of Versailles (1918) that provided the creation of an international criminal court for this purpose. Among those disheartened by this failure was a young Romanian scholar, Vespasian Pella, destined to leave an indelible mark on international criminal justice in the initial part of the 20th Century. Armed with a Ph.D. from the University of Paris (1920), Pella authored a seminal work titled 'The collective criminality of States and the criminal law of the future' (1925). In this treatise, he argued that acts of aggression represent a form of collective criminality by States, while insisting on individual criminal liability for instigating acts of aggression.

At the AIDP, Pella was not only a founding member but one of the driving forces behind the many initiatives related to international criminal justice. In 1924, he had given a flamboyant speech at the Interparliamentary Union at Bern and Geneva in which he had proposed the creation of an international criminal court that would have jurisdiction over the crime of aggression. One of the reasons for such a court, he argued, was to deal with the problem of immunities. It is fascinating to see how much this resonates today, at a

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time when, in view of the loopholes left by the Kampala amendments to the ICC Statute, some are advocating the creation of a special international tribunal for the crime of aggression.

At the AIDP, the topic was raised in 1926, at the first AIDP Congress in Brussels. One of the questions addressed by the congress was: 'Is there a need for instituting an international criminal jurisdiction? If the answer is affirmative, how should it be organized?' Pella, together with his friend Henri Donnedieu de Vabres, was one of the 12 national rapporteurs.

There are no minutes of the meeting, but one can imagine how persuasive both eminent jurists must have been. And indeed, in one of its first resolutions, the AIDP recommended the creation of a 'Permanent Court of Justice'. This court would have jurisdiction over the 'unjust aggression or any other violation of international law'. Individuals, but also States could be tried before this court. As to the 'other violations of international law', the resolution specified that 'all offences which may be committed by States or individuals must be specified or approved'. However, our AIDP ancestors were realistic: '(…) the Congress considers that the establishment of international penal justice can only be realized progressively, by means of bilateral agreements between States which may later join'.

In addition, the Congress, on the proposal of Pella, adopted an additional resolution that advocated the unification of the penal law.

> The Congress, (…) noting that many States are now preparing new draft laws, expresses the desire that the commissions entrusted by the various governments with the task of preparing drafts of Penal Codes should meet in an international conference. This conference should discuss and unify the principles at the base of the plans developed by the commissions and to adopt, as far as possible, a common basis for the exercise of repression.

In 1937, when the AIDP was holding its 4th Congress in Paris, geopolitical tensions were on the rise. The brutal killing of Louis Barthou, France's foreign minister and King Alexander in Marseille, must have been on the minds of many. The Conference addressed an urgent question: 'in what way can penal law of each country contribute to the protection of international peace?' Its answer:

> Considering that war is the scourge which puts in peril not only the belligerent countries but the material and moral interests of the whole world, considering that the development or the international conscience can contribute efficaciously to the realization of the work of the peace organization (…) it is desirable that, in addition to the attacks on the laws and interests of the state, the criminal law of each country should deem it an offence to attack the fundamental laws and interests of foreign states and those of the international community.

We know what happened next. The AIDP's and Pella's efforts were to no avail. The draft Statute for an International Criminal Court, prepared by Pella on behalf of the AIDP, eventually reached the League of Nations in 1937, together with the Draft Convention on the Suppression of Terrorism. With the foreshadow of the Second World War, neither entered into force.

After the war came the Nuremberg trials. The AIDP was proud to have one of its prominent members, Henri Donnedieu de Vabres, as one of the judges at the international military tribunal. Pella vigorously resumed his efforts for the creation of an international criminal court, in the Interparliamentary Union and in the AIDP. He and Donnedieu de Vabres together with Lemkin were the three experts charged with the drafting of the Convention on the Prevention and Punishment of Genocide. Pella had also been invited by the Secretary General of the UN to Draft a Memorandum on the Code of Crimes against the Peace and Security of Mankind and on a permanent international criminal court. He unfortunately died at an early age, in 1952. And we know the further fate of the draft code in the ILC and the UN. Between 1947 and 1954, several resolutions were passed concerning the drafting of a code on crimes against the peace and security of mankind. Eventually, the General Assembly decided to table the discussion.

Meanwhile, the AIDP's enthusiasm for an international criminal court seems to have somewhat waned, which is unsurprising given the deadlock at the UN. At the time, Pella had succeeded Carton de Wiart as the second president of the Association (a position which he would hold to his death in 1952). At its 5th Congress (Geneva, 1947), it addressed the question: 'how can a state, by its national law, contribute to the peace of another state?' The result is a one paragraph resolution, adopted by majority and with some delegations (including Belgium) abstaining. It is a wishy-washy text, apparently a compromise after a long discussion. It seems somewhat out of sync with previous resolutions on the subject. I can imagine that Pella must have been disappointed.

In the next two decades, the AIDP, for some time, shifted its focus away from the international criminal court. In the congresses that were held, the Association focused on 'new' international crimes, including war crimes: 'Criminal protection of international conventions on humanitarian law' (6th Congress, Rome 1953), 'The offences committed onboard of aeronautical vehicles and their consequences' (7th Congress, Athens 1957) and hijacking ('The suppression of unlawful seizure of aircraft' 11th Congress, Budapest 1974). And, it deserves to be mentioned, longtime before it became a topical issue, the AIDP was interested in environmental crime (12th Congress, Hamburg 1979 and again at the 15th Congress, Rio de Janeiro 1994). In 1999, at its 16th Congress in in Budapest, the AIDP, in its four sections, studied the phenomenon of organized crime. And, most recently, the AIDP made a tremendous contribution to the study of one of the major challenges of our time: Artificial intelligence and the criminal law (20th Congress, Paris 2024).

Several congresses of the AIDP in its 4th section focused on 'horizontal criminal law', such as 'The application of foreign penal law by the national judge' (8th Congress, Lisbon 1961), 'International effects of penal judgments' (9th Congress, The Hague 1964) and Extradition (10th Congress, Rome 1969). The topic of universal jurisdiction, which had already been discussed at the 3rd AIDP congress in Palermo in 1933, was taken up again at Istanbul, at the AIDP's 18th Congress in 2009. The AIDP has also been sensitive to one of the side-effects of universal jurisdiction, *ne bis in idem*, an item that was discussed in Beijing (17th Congress, 2004).

Over the years, the AIDP spearheaded several international conventions, for example the Convention on the Non-Applicability of Statutes of Limitation to War Crimes and Crimes against Humanity (1968) and the Convention on the Prevention and Suppression of Torture (1984). It has also campaigned vigorously for the abolition of the death penalty and has, through its members, contributed to its formal abolition in many States. For example, in the Council of Europe, the abolition of the death penalty was achieved through the efforts of various AIDP members who were civil servants in justice departments of the member States. Today, Professor William Schabas continues to be the porte-parole of the Association in relation to the death penalty.

Meanwhile, another giant had joined the AIDP: Cherif Bassiouni, an American law professor of Egyptian origin who became Secretary-General at the 10th Congress in Rome, 1969 and eventually its president (1990-1997). Like Pella, Bassiouni would make an enormous imprint on the development of international criminal justice. He too was a highly accomplished scholar with a massive resumé of books and articles in areas such as international criminal law, comparative criminal law, and human rights law, written in languages including Arabic, English, French, Italian, and Spanish.

The whole movement towards the creation of an international criminal court as from the 1990ies bears his imprint. He was a member, then the Chairman of the Security Council's Commission to Investigate Violations of International Humanitarian Law in the Former Yugoslavia (1993) and the Commission's Special Rapporteur on Gathering and Analysis of the Facts from 1992-93. His universally accepted expertise in international criminal law and his vision earned him the unanimous election to the chairmanship of the drafting committee of the 1998 Rome Conference on the establishment of the International Criminal Court. At the AIDP, we were very proud to see him excel in all these functions. At the same time, it is highly regrettable that, for base political reasons, Cherif Bassiouni, who deserved it most, was never given the high prosecutorial or judicial mandate he deserved in these institutions. The International Criminal Court would be very different today, if Cherif Bassiouni would have had the opportunity to contribute to the institutions from within.

Bassiouni, together with Pierre Bouzat, the then president of the AIDP, was instrumental to the creation and the success of the Siracusa International Institute for Criminal Justice, established in 1972 by the AIDP. This institute organized numerous conferences, training and educational seminars and meetings of experts attended by thousands of jurists and

experts of 173 different countries. It also collaborated with intergovernmental and non-governmental organisations as well as civil societies worldwide. The Institute made an enormous contribution to the development of international criminal law.

A special category of visitors at the Institute were the *jeunes penalistes*. As from its early years, Bassiouni regularly invited young academic scholars. During the 1970ies and 80ies, he organized brainstormings to legally conceptualize the idea of an international criminal court. This was a dream, a sheer fantasy in those years, at a time when students and academics interested in ICL were not taken seriously because they were practicing a discipline that did not exist. And I am proud to say that Jose Luiz De La Cuesta and I were among the very first *jeunes penalistes* of the Association.

When eventually the ad hoc tribunals and the ICC were created, times had radically changed. Many of the *jeunes pénalistes* who had been dreaming of an international criminal court made it to new international institutions in The Hague, as judges, prosecutors or defense lawyers. I myself am a living example of that fairy tale, together with Alfons Orie, Stephan Trechsel, Bert Swart, Sharon Williams, Wolfgang Schomburg, Albin Eser, Frank Höpfl and many others.

It is a pity that the two giants of the AIDP never met. Their academic and professional paths, including their disappointments, are comparable. Both were nominated for the Nobel Prize but did not receive it. But their careers and their influence on international criminal law was exemplar. Without them, international criminal justice would look different today. On a personal note, I should add that, in 1938, Pella received a medal with his effigy from the representatives of the International Bureau for the Unification of Criminal Law, for 'the brilliant work as the founder of the Bureau'. The laudation was done by a young Pierre Bouzat, who would later become the President of the AIDP. In 1958, Pella's widow gave this medal to Benjamin Ferencz, as a special award. Ferencz, also of Rumanian origin, had been one of the prosecutors at Nuremberg and a companion and friend of Pella in the fight against aggression. Ferencz passed the medal on to Cherif Bassiouni, who held it till 2010, and gave it to William Schabas. In 2019, at the Congress in Rome, I had the honour of receiving the medal in turn. As the current holder of the medal, it is now my responsibility to carry foreword the promise that is contained in the medal.

Unfortunately, there is not much to celebrate in the field of international criminal justice today. The ideal of unification of the penal law in general, as advocated by the IKV and repeated in the 1926 Charter of the AIDP, seems to have been abandoned, with the exception perhaps of certain efforts in the European Union in relation to specific crimes. But even there, unification of the law looks more elusive than ever. Even the EU has difficulties to reach an agreement on the definition of a crime as universal as the crime of rape.

We do have a permanent international criminal court today, but it has, so far, left many disappointed. The support of the great powers remains not only extremely limited, but

some even are also openly hostile to the Court. The war in Ukraine has profoundly shaken the post WWI legal order. Although much progress has been made, the prosecution of the crime of aggression seems to be as elusive as in 1918. De war in Sudan has again flared up, even though the situation in Darfur had been referred to the ICC, at the time when the Security Council was still able to agree. And of course, the war in Gaza is sad evidence of the limitations that international criminal justice faces today. Francis Fukuyama's end of history has proved to be only a pause, and we are again facing a world with increasing geopolitical tensions. These tensions are now also penetrating the legal profession: Critics argue that the dominance of Western legal frameworks has marginalized indigenous and non-Western legal traditions, undermining the efforts towards a truly inclusive and equitable system of justice. They believe that international criminal justice should be 'decolonized'.

This happens against the backdrop of a technological development that is profoundly transforming the world, and which was at the heart of this congress: Artificial Intelligence. The immense power of 'Big Tech' raises significant concerns. The 'Big Five' (Alphabet, Amazon, Apple, Meta, and Microsoft), all private companies with a revenue that dwarfs the GDP of some States, have an almost free hand in further developing and potentially escalating technologies the worries that were at the heart of the present conference. For example, it is highly worrisome that one individual like Elon Musk, can decide about the use of his SpaceX satellites Starlink in Ukraine, directly interfering in the ongoing war between Russia and Ukraine.

We will have to pursue our mission in unchartered territories, as the AIDP did in 1924 and has done again at the present conference. At the same time, we will also have to engage with the criticisms that continue to shape the field and hopefully restore the invisible college of international criminal lawyers that seems to be diluting itself. Neutrality of thought remains at the centre of our mission. There is, despite our differences, much that unites us, as Cherif Bassiouni used to illustrate so eloquently with quotes from the Bible, the Coran, and the Talmud.

The AIDP is ideologically neutral, its mission is founded on respect for humanitarian principles, and the aim of achieving a more humane and efficient administration of justice. The history of the Association, especially in the field of international criminal justice, underlines its dynamism and resilience. I am confident that we will continue to fulfil its mission. Moving forward, it will be imperative for us all to uphold principles of fairness and accountability, and work towards a more just and equitable world for all.

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Appendix:
Overview of international criminal law topics in AIDP Congresses

I 1926 (Brussels): *International criminal court. Is there need for instituting an international criminal jurisdiction?*

II 1929 (Bucharest): *The application by the judge of one state of foreign penal laws*

III 1933 (Palermo): *For what offences is it proper to admit universal competency?*

IV 1937 (Paris): *In what way can penal law of each country contribute to the protection of international peace?; International exchange of information concerning the criminal record of the accused*

V 1947 (Geneva): *How can a state, by its national law, contribute to the peace of another state?*

VI 1953 (Rome): *Criminal protection of international conventions on humanitarian law*

VII 1957 (Athens): *The offences committed onboard of aeronautical vehicles and their consequences*

VIII 1961 (Lisbon): *The application of foreign penal law by the national judge*

IX 1964 (The Hague): *International effects of penal judgments*

X 1969 (Rome): *Actual problems of extradition*

XI 1974 (Budapest): *The suppression of unlawful seizure of aircrafts*

XII 1979 (Hamburg): *Immunity, extraterritoriality and the right of asylum in international penal law*

XIII 1984 (Cairo): *Structures and methods of international and regional cooperation in penal matters*

XIV 1989 (Vienna): *International crimes and domestic criminal law*

XV 1994 (Rio de Janeiro): *The regionalization of international criminal law and the protection of human rights in international cooperative procedures in criminal matters*

XVI 1999 (Budapest): *The Criminal Justice System Facing the Challenge of Organized Crime*

XVII 2004 (Beijing): *Concurrent National and International Criminal Jurisdiction and the Principle 'Ne bis in idem'*

XVIII 2009 (Istanbul): *Universal Jurisdiction*

XIX 2014 (Rio de Janeiro): *Information Society and Penal Law*

XX 2019 (Rome): *Prosecuting corporations for violations of International Criminal Law: jurisdictional issues*

XXI 2024 (Paris): *Artificial intelligence and criminal justice*

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As a successor to the *Union Internationale de Droit Pénal* (UIDP, 1889-1914), the International Association of Penal Law (AIDP/IAPL) was established in 1924, in Paris, France. Symbolically, the Association celebrated its centenary during its XXIst International Congress, held in Paris on 25-28 June 2024, dedicated to artificial intelligence and criminal law.

This book comprises the main proceedings of the centenary celebration event of 27 June 2024. It provides insights into the history of the creation of the Association and its role in serving and promoting international criminal justice, human rights and humanity across countries. It also summarizes and assesses its scientific outputs and impact in the respective spheres of general criminal law, special criminal law, criminal procedure, and international criminal law.

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ISBN 978-90-466-1276-7