

### **A Glimpse at the *Association's* History and Some of the Contributions of its Members**

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The documents and articles contained in this book are part of the *grande histoire*, though not entirely, as there is much more to say about it. But the more interesting and significant part is the *petite histoire*, of how individuals influenced the course of events in their countries and internationally. No one can adequately describe this process, for how could we trace the efforts of so many, for so long a period of time, across the world? We can only anecdotally report some examples and some instances and leave the rest to the imagination or impressions of the reader, who, depending on his/her knowledge and experience, may relate to some event or to some person whose historical contribution may be in part known to that reader.

Since 1889 members of the *Union Internationale de Droit Pénal* and *Association Internationale de Droit Pénal* have played important roles in the affairs of their respective countries and internationally. They evidence the proposition that committed persons do make a difference in the world. The *Union* and then the *Association* brought together many such persons. In the beginning they were the few among the élite. This was a reflection of the times. Then many others joined them.

In 1924, shortly after World War I, a number of like-minded members worked to establish the *Association* as the *Union's* successor, but with a distinctive mission in international criminal law. Among them were Henri Donnedieu de Vabres, Quintiliano Saldaña, Carton de Wiart, Vespasian Pella, Jules Basdevant, Ernest Delaquais and also Gérard Van Hamel, one of the *Union's* founders in 1889.

At first the *Union* and then *Association* members were mostly from those who had devoted their lives to academic pursuits. But then came practitioners of the criminal justice system and government officials. Like their academic counterparts, the latter reached the highest levels of government, the judiciary, and other public functions.

The *Union* and the *Association* brought these persons together, and in so doing merged the theoretical and the practical. But the experiment went further as their combined experiences transcended national boundaries and political ideologies, and impacted on national and international realities. More importantly, the AIDP,

as of the sixties, ceased to be an almost exclusively European club. Its expansion into Latin America, Africa and the Arab world are noteworthy. The AIDP was also one of the few contact points between East and West, notwithstanding the Cold War. That is why the *Association* had a significant impact on the development of national criminal justice policy and on international criminal law.

Where to start ? How can we measure impact ? What follows are some anecdotal stories that speak for themselves. The rest is up to future generations, in the hope that they may be inspired to emulate the best among their predecessors.

My recollection brings me to the first *Conseil de Direction* meeting I attended in Paris in June 1968. Thanks to my mentor, the late Gerhard O.W. Mueller, then President of the American Section of the AIDP (later Section became Group), I was allowed to enter into what to me was the Pantheon of the criminal sciences. The meeting was at the *Centre de Droit Comparé*, 28 Rue Saint Guillaume in Paris, and I represented the American Section. I was awed with the presence of the giants of that time, such as : Marc Ancel, Hans-Heinrich Jescheck and Jean Graven, to name only a few. But those were the ones whose books I learned from as a student, and here they were in person along with many others whose names were legend.

The following year, I was struck by the fact that the 1969 Congress held in Rome had been organized by no one less than Italy's President of the Republic, Giovanni Leone, who was President of the Italian National Group. That year Pope Paul VI received the *Conseil* and delivered a special message, which is in this book (see Document 9). Before him, Pope Pius XII in 1953 had done the same, as has Pope Francis in 2014. Their messages are also in this book (see Documents 8 and 18). Three Popes, Three Congresses. What other lay scientific academic organization has had such an honor ?

In the course of time the AIDP counted five Heads of State among its numbers. They are : Giovanni Leone (Italy), Arthur A.N. Robinson (Trinidad and Tobago), Antonio Monteiro (Cape Verde), Guido De Marco (Malta) and Ivo Josipovic (Croatia). And, over the last 50 years, *Conseil* members and members of National Groups included (by my count, which could be in error), 120 Ministers of Justice, other Ministers, Chief Justices of Supreme Courts and Prosecutor Generals, from over 40 states, including: Albania, Argentina, Austria (multiple), Belgium (multiple), Brazil (multiple), Bulgaria, Cape Verde, Chile, Croatia, Former Czechoslovakia (multiple), Egypt, Finland, France (multiple), Hungary (multiple), Italy (multiple), Ivory Coast, Luxembourg, Mexico, Monaco, Norway, Poland (multiple), Portugal, Romania, Senegal, Spain, Sweden (multiple), Switzerland, Syria, Trinidad and Tobago, Tunisia (multiple), Former U.S.S.R., Venezuela and Former Yugoslavia. Among these I am taking the liberty of mentioning a few, and hope to be excused for the many omissions that also deserve to be mentioned. They are those with whom I have had the privilege of working over the last half

century. They include : Giuliano Vassalli and Giovanni Conso, who uniquely held the positions of Minister of Justice and President of the Constitutional Court. Both were members of the AIDP *Conseil* and ISISC Board, while Vassalli was a Vice-President of the *Conseil* and Honorary Vice-President of ISISC; Inkeri Antilla, Minister of Justice of Finland, who was also President of the Fifth United Nations Congress on Crime Prevention and Criminal Justice (Geneva, 1975); Helge Romander, who was Minister of Justice as well as Attorney General of Sweden, and who was instrumental in having Sweden formally introduce to the U.N. the AIDP prepared draft of the U.N. Anti-Torture Convention (see Document 11 ), which in 1984 became a U.N. Convention. Alfonse Boni, who was President of the *Cour de Cassation* of the Ivory Coast, and Keba M'Bay, President of the *Cour de Cassation* of Senegal and President of the International Court of Justice, were the leaders in modernization of criminal justice systems in African Francophone countries, and they were both AIDP Vice-Presidents. Professor Vladimir Kudriavtsev was President of the U.S.S.R.'s National Group for many years as well as President of the U.S.S.R.'s Academy of Sciences with cabinet rank. Kudriavtsev was instrumental in having the U.S.S.R. and Eastern and Central European countries become part of the AIDP, with active National Groups. It was through these National Groups that those in academia as well as those who worked in criminal justice maintained contacts with the Western world during the Cold War period, between 1948 and 1989. In 1991 the AIDP and ISISC held a meeting in Siracusa of all of the ministers of justice, chief justices of supreme courts and attorneys general of all of the Central and Eastern European countries which had become free of the U.S.S.R.'s influence. On that occasion the participants discussed criminal justice reform in their respective countries. Almost half of them had been members of AIDP National Groups or had attended activities at ISISC. A special issue of the *Revue Internationale de Droit Pénal* (Vol. 63 no. 3-4, 1992) was published containing the proceedings of this historic conference. This was the launching of a new era in the criminal justice systems of these European countries, before they acceded to the European Convention on Human Rights and became members of the Council of Europe.

In 1976, I was the first AIDP Secretary-General to visit the U.S.S.R. On that occasion I met Prosecutor General Roman Rudenko, who was also a member of the *Politburo*, the most powerful political organ of the country, which included then what has since 1989 become fifteen new countries. Rudenko was the U.S.S.R.'s Chief Prosecutor at Nuremberg. I reminded him of the meeting that Professor Donnedieu de Vabres had organized that summer, and at which he participated (see Document 7). He remembered the event and it was on that basis that he agreed, for the first and only time in the history of the U.S.S.R., to have a Preparatory Colloquium in Moscow in 1978.

In the last fifty years or so, the *Association* has averaged yearly between 2,000 and 2,500 members in 40-45 National Groups. Over these years alone, cumulatively, the *Association* and its National Groups had at least 30,000 jurists, including criminologists and internationalists. If only by reason of their number and the influential positions they held, in their respective countries and internationally, their impact was significant. This, combined with the reach of the *Revue Internationale de Droit Pénal*, did have a worldwide impact, particularly in Francophone countries.

Historically, the *Union/Association* has championed prison and sentencing reform. They were for rehabilitation and against retribution. In the late 1800's and up to the mid-sixties this was a battle that was still being waged and which now appears to have moved into the background. This is due to a variety of factors, not the least of which is a significant change in social values worldwide that has eroded the values of humanism of the Age of Enlightenment. Economic and security factors have taken the lead in national politics and the once hard-fought battles over humanistic theories of rehabilitation have given way to a return to retributivism and incapacitation.

The AIDP has historically been abolitionist, and it continues to press for an end to the death penalty. In 1987, the "Four Major Associations" held a world conference at ISISC to push for the end to the death penalty worldwide. An issue of the *Revue* (Vol. 58 no. 3-4, 1987) contains the proceedings of the conference and was distributed worldwide, but it was the work of those in attendance and other AIDP members that brought about progress on the abolition of the death penalty. Among them is AIDP *Conseil* member and long-time member of the National Group of France, Professor Robert Badinter, who was France's Minister of Justice and was instrumental in getting France to abolish it in 1981. Another contemporary member and the present recipient of the Vespasian V. Pella Medal, Professor William Schabas, continues to be a vocal champion of abolitionism. (The first two recipients of the Pella Medal are Benjamin Ferencz, an AIDP member, who is the last surviving member of the Nuremburg era prosecutors, and myself. Each one of us kept the medal for ten years and selected our respective successors.) Professor Luis Arroyo Zapatero who is the present Secretary-General of the International Society of Social Defence, a member of the AIDP *Conseil* and ISISC Board Member, has also continued to actively work for world abolition. These and other efforts have resulted in the fact that over 100 countries of the world have formally abolished the death penalty, with over forty countries having *de facto* abolished it. The European countries' abolition of the death penalty, thanks to the efforts of the Council of Europe, is also due to the many members of the AIDP who work in various Ministries of Justice of European countries and who are active in the Council of Europe.

The AIDP founders were particularly dedicated to international criminal law. They were also disappointed with the WWI Allies' failure to make effective the Treaty of Versailles on international criminal justice. This is what led Pella, on behalf of the *Association*, to work with the International Law Association and the Inter-Parliamentary Union (see Documents 4 and 5) to launch the idea of a permanent International Criminal Court whose subsequent history is traced in this book (see Documents 6, 14, and 17). In 1936-37, the League of Nations undertook to elaborate a Convention Against Terrorism, and this in turn gave rise to the first international instrument on establishing an international criminal court. The League of Nations Committee that prepared this text was presided over by Carton de Wiart (President of the AIDP), its Vice-President was Jules Basdevant (member of the *Conseil*), and the Rapporteur was Vespasian Pella (member of the *Conseil* and later President) (see Document 6). The entire *Bureau* consisted of AIDP members.

After World War II, Henri Donnedieu de Vabres, one of the founders of the AIDP, became a Judge at the International Military Tribunal, Nuremberg, and in 1946 he convened at Nuremberg an extraordinary group of persons to pursue international criminal law in the future (see Document 7).

The AIDP has helped bring about a significant change in the international policy on crime prevention and criminal justice (see Document 22), which is only partially indicative of the AIDP's influence in this field, but better described in what follows.

During the days of the League of Nations, a Commission had been formed of the heads of penal and penitentiary institutions, mostly from the European countries. The members of the Commission sought not only to modernize and humanize penal and penitentiary institutions but also to consider the entire criminological approach to penalties as an instrument of crime prevention and criminal justice policy. After WWII and the establishment of the United Nations, in 1948, Member States were able to get the United Nations Economic and Social Council to adopt a resolution addressing the issue of penal reform as part of crime prevention and criminal justice, which in turn was deemed part of social and economic development. In 1950 the General Assembly undertook to have some of the most important functions of the League of Nations' Penal and Penitentiary Commission transferred to the United Nations, in particular the organization of the quinquennial Congresses on Crime Prevention and the Treatment of Offenders, which in the 1990s became the United Nations Congresses on Crime Prevention and Criminal Justice. The latest was the XIII<sup>th</sup>, which took place in Doha, Qatar, in April 2015 (see Document 22). Members of the AIDP were also closely involved with these quinquennial Congresses. In addition, as a result of the decision of the General Assembly in the 1950s, the International Penal and Penitentiary Foundation (IPPF) was created, with which the AIDP has continued to maintain close relations.

It should also be recalled that in 1948 a substantive unit was established within the U.N. Secretariat, which in the course of time became a Section, then a Branch, then a Division, and finally a Center which is now, jointly with the old drug control program, the U.N. Office on Drugs and Crime (UNODC). Most of the heads of these offices, until recently, were AIDP members. They include : Benedict Alper, Leon Radzinowicz, Paul Amor, Manuel Lopez-Rey and Gerhard Mueller. The AIDP's cooperation with the IPPF extended also to the International Society of Social Defence and the International Society for Criminology. They were referred to as "The Four Major Associations" and their impact on the U.N. quinquennial Congresses, until the 1990s, was noteworthy. "The Four Major Associations" not only made scientific contributions to the Congresses, but their members occupied many positions of prominence in them. Several Congresses were presided over by AIDP members, while several executive secretaries of the Congresses were also AIDP members. Over the years the delegations of 30 to 40 countries were either headed by AIDP members, or included several prominent AIDP members, or both. These members also played an important role in the preparatory meetings for the Congresses, thus shaping the scientific contents and discourse of the Congresses. Maybe the most notable of these accomplishments is the development of the United Nations Minimum Standards for the Treatment of Prisoners, which was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 in Geneva, Switzerland, and approved by the Economic and Social Council in 1957 (Resolution 663 C (XXIV) of 31 July 1957). Many of its authors were AIDP members.

After having established and worked closely with a number of regional and interregional specialized institutes, the United Nations Crime Prevention and Criminal Justice Branch, in 1985, developed a network among these institutes which has since then become an official program network within UNODC, among which is the International Institute of Higher Studies in Criminal Sciences (ISISC), which was founded by the AIDP in 1972.

Without going through the elaborate history of all of these entities and the historic evolution of the United Nations Crime Prevention and Criminal Justice program, including its quinquennial Congresses, it can be concluded that the AIDP and ISISC, along with their sister organizations and related institutes, have been a major contributing factor to the work of the United Nations in the field of crime prevention and criminal justice. But what is more significant is the fact that the U.N.'s work has contributed to the development of crime prevention and criminal justice in so many of the United Nations' member states (see Document 22).

There are so many whose contributions should be recorded for history's sake, but since I took the liberty of starting this excursus with my first contact with the AIDP's luminaries in Paris in 1968, I will follow up by mentioning a few whose

roles from within the U.N. have been very important. They include: Gerhard O.W. Mueller, who served within the U.N. system and outside of it; Adolfo Beria di Argentine, who served for many years as Secretary-General of the International Society of Social Defence and as the organizer of the quinquennial meetings of the "Four Major Associations" in preparation for the major U.N. Congresses, and was also a member of the board of ISISC; Giuseppe di Gennaro, who was Director-General of the Ministry of Justice of Italy and who served as General Consultant to the United Nations Social Defence Research Institute, which became the United Nations Interregional Crime and Justice Research Institute (UNICRI), and with whom Eduardo Vetere, who became a Divisional Head of UNODC, worked with in the early seventies. Eduardo Vetere was also the assistant to Mueller at the V<sup>th</sup> U.N. Congress in Geneva, and he has since then played an important role in all the U.N. Congresses until the XI<sup>th</sup>, after which he retired. Professor Pedro David, who served for many years as interregional advisor, and then as an ICTY Judge, and now as Presiding Judge of a chamber of Argentina's Supreme Court, played an important role in this field. And for more than thirty years Irene Melup, who represented the Branch and then UNODC in New York, played such an important role in bringing people together in the pursuit of a humane crime prevention and criminal justice policy for the United Nations.

Among the most active National Groups of the *Association* since its inception were the Austrian, German, Italian, French, Belgian and Swiss. The German National Group, after WWII, contributed significantly to the scientific work of the *Association* through the Max Planck Institute for Foreign and International Criminal Law, Freiburg, whose succeeding Presidents, starting with Professor Hans-Heinrich Jescheck, have all been members of the *Conseil*. Jescheck was AIDP President (1979-1989) and Ulrich Sieber is presently Vice-President of the *Conseil* and also a member of ISISC Board. The German National Group has for years organized Preparatory Colloquia and hosted the XII<sup>th</sup> Congress in Hamburg in 1979. The Austrian National Group, which has consistently had a high number of members and is presently the Group with the largest number of members, has also organized many Preparatory Colloquia for the AIDP Congresses. It also organized the XIV<sup>th</sup> Congress held in Vienna in 1989 to celebrate the combined 100<sup>th</sup> year of the *Union/Association*. That Congress and many others were organized by Judge Helmut Epp, who served for many years as the AIDP's Secretary-General and now serves as its Vice-President. The Italian National Group has also contributed significantly to the work of the *Union/Association* for over 100 years, and in addition to organizing the VI<sup>th</sup> Congress of 1953 and the X<sup>th</sup> Congress of 1969, has also contributed significantly to the work of ISISC, whose creation, at my suggestion, was due to Professor Giovanni Leone, who was the President of the Republic of Italy and the President of the Italian National Group. During the last forty years Professor Alfonso Stile,

who served for many years as President of the Italian National Group, was also Vice-President of the Conseil and Vice-President of ISISC. The contributions of the French, Belgian and Swiss National Groups, especially in the establishment of the *Association* in 1924 and in the years following it up to the mid-1970s, have been seminal. The number of members from those National Groups who occupied the position of President is indicative. Their early leadership of the *Association* should not be underestimated. The members of these Groups to date continue to have a significant international impact. Suffice it to mention ICC Judge Christine Van Den Wyngaert, who also served as a Judge of the ICTY and an *ad hoc* Judge of the ICJ. She was recently made a Baroness of the Realm by the King of Belgium. A number of Judges of the ICTY, ICTR and ICC have also been members of the Association.

The AIDP had another historic figure, from the 1930s to the 1970s, in Luis Jiménez de Asúa, who opposed the Franco military dictatorship. He became President of Spain's Government-in-Exile (1962-1970). While in exile in Argentina he contributed to the modernization of several Latin American countries' criminal justice codes.

Between the 1960s and the 1980s several AIDP members contributed to Latin American countries' transition to democracy. They helped draft new constitutions and criminal laws and procedure. Among them was Heleno Cláudio Fragoso of Brazil, who served as Deputy Secretary-General of the Association for several years. His successors were instrumental in having two Congresses held in Brazil in 1994 and 2014.

There is one more thing that needs to be recorded for posterity, and which is unique to the *Association*. It is the spirit of camaraderie and mutual respect which is so evident in the friendships that exist between so many, and in the courtesy that has always characterized the relationships of our members. Surprising as it may be, at least from my experience since 1968, there have not been power struggles or differences which have divided us. Our late President Pierre Bouzat used to say at every *Conseil* meeting that what characterizes us is *l'amabilité, l'amitié, et la courtoisie* – and so it is that the Association has continued to be in existence from 1924 to date, and hopefully will continue in the same spirit in the years to come.

I would be remiss if I did not mention Professor Reynald Ottenhof, who has devoted the better part of his life to the AIDP. He served as Deputy Secretary-General from 1974 to 1989, as Secretary-General from 1989 to 1994, and as Vice-President from 1994 to 2009. During this period of time working with me, he has not only taken care of the AIDP's organizational and scientific life, but he has been the pillar of the *Revue* from 1974 to 2014. Without him it is difficult to envision how the *Revue* would have been able to maintain its quality and



timeliness. Reynald also served as Professor Pierre Bouzat's assistant during his years as President of the Association.

As younger generations look at the accomplishments of the AIDP and its contributions to crime prevention and criminal justice and international criminal justice, they must be mindful of the fact that people make institutions work. It is the contributions of individuals, who individually and collectively bring about the outcomes of international and domestic institutions. It is important to remember those who have given so much of themselves for the sake of the collective good, lest we fail to understand how progress was achieved and how much we owe to so few, who for so long devoted their efforts to the *Association* and to the advancement of law and justice. We owe them our gratitude and they deserve to be remembered