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# ROMANIAN CONTRIBUTIONS TO THE CODIFICATION OF INTERNATIONAL LAW: VESPASIAN V. PELLA

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## Abstract

*Devoted to the idea of peace, V.V. Pella conveyed to the world the ideal of international law based on this supreme value, which he considered necessary for resettling the "edifice of the world on the foundation of justice and international order". The famous Romanian legal scholar's name is connected to the great development projects of this field, promoted with lucidity and courage, in the interwar period, within the League of Nations, the Inter-Parliamentary Union, the International Law Association, the International Association of Penal Law and, later, in Nuremberg and within the United Nations.*

## Keywords:

*International law codification, Vespasian V. Pella, Inter-Parliamentary Union, League of Nations progressive codification, International Association of Penal Law.*

## ROMANIAN CONTRIBUTIONS TO THE CODIFICATION OF INTERNATIONAL LAW: VESPASIAN V. PELLA

*Aurora Ciucă*

Devoted to the idea of peace, V.V. Pella conveyed to the world the ideal of international law based on this supreme value, which he considered necessary for resettling the "edifice of the world on the foundation of justice and international order". The famous Romanian legal scholar's name is connected to the great development projects of this field, promoted with lucidity and courage, in the interwar period, within the League of Nations, the Inter-Parliamentary Union, the International Law Association, the

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International Association of Penal Law and, later, in Nuremberg and within the United Nations.

### **1. The codification activity within the Inter-Parliamentary Union**

The Inter-Parliamentary Union, the first permanent political negotiation forum<sup>2</sup>, was an excellent framework for Pella to affirm his innovative ideas. At the end of World War I, in 1923, Romania participated for the first time in the debates at the 21st Conference of the Inter-Parliamentary Union, held in Copenhagen. As a member of the Romanian delegation, Pella firmly supported the importance of the Union's role in "harmonizing relations between nations and shaping international political trends" [1: 307].

At that time, the young Romanian jurist had already been recognized in the scientific environment. By proposing to go beyond "diplomatic empiricism" which involved studying war exclusively in light of historical facts, as early as 1919 (in Paris, on the occasion of his doctoral thesis defense), Pella pleaded for a scientific approach to the criminality of states [2: 103] and for a common policy of states in this respect. He also stated that, given the particularities of their legal personality, states must be held criminally liable for the international acts they committed, in particular for the acts of aggression which were a manifestation of collective criminality. He would then present these ideas, which would be very well received, at the conferences of the Inter-Parliamentary Union.

In 1924, in his speech at the Bern Conference [3:103], Pella launched two major challenges: the need to criminalize war of aggression and the creation of a repressive law of nations [2: 107]. On that occasion, it was decided to set up a permanent committee tasked with studying the criminality of war.

The following year, in October, the Conference of the Inter-Parliamentary Union was held in Washington and Ottawa. In the Capitol Building, home of the US Congress, one could then hear being uttered, for the first time in the history of an international institution, the ideas of a "criminal state", the need for a systematic scientific research on the collective criminality of states and the measures necessary to prevent and repress it. Pella's report on criminal liability of individuals and states [4:40-46] was the starting point for these steps being taken as well as for the decision to set up a committee whose mission was to analyze the causes of

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<sup>2</sup> Created in 1889 at the initiative of the pacifist MPs William Randal Cremer and Frédéric Passy.

the war of aggression and to draw up a draft of an International Code. At the same time, the agenda of the conference included: the codification of international law, the need to establish the rights and obligations of states and the issue of arms reduction. In a memorable speech, Pella asserted that "war of aggression was a crime" and asked states, with clarity and sagacity, to manifest intolerance towards that bane. The examination of all legal consequences of that designation was the premise of the new international law, the law of peace [5: 11]. He also drew attention to the need for a coherent international criminal policy based on a Repressive Code<sup>3</sup> of the Nations which would allow "to suppress all individual or collective actions" that "would be in direct or indirect causal relation with the preparation or triggering of" a war of aggression. On October 30th, the Legal Committee of the conference adopted a resolution (also drafted by Pella, upon request), unanimously accepted by the representatives of the 41 states participating in the event [6: 24-29, 797-798].

Pella's proposal to set up an international criminal jurisdiction tasked with punishing crimes committed by states generated vivid debates. As he himself said "an area too little explored laid before us. Too few people were willing to conceive war according to the idea of "international crime" and to research the consequences of such a notion" [7:129]. "Dominated by the prejudices of the past, some might resist by objecting I had gone too far. Others, on the contrary, animated by ideal aspirations for a better future, could complain that, unfortunately, I did not go far enough" [7:131]. Under these circumstances, he was primarily concerned with determining the facts which were the subject of international criminalization.

In his ample work "The Collective Criminality of States and the Criminal Law of the Future" - published the same year, upon the strong recommendation of the conference participants animated by his ideas, under the title "Crimes Committed by States" [7: 309-321].-, Pella proposed punishing: aggression (in all its forms, including the threat of triggering such a war), refusal to comply with the decisions taken by the competent international authority, military, naval, aerial, industrial and economic mobilization in the event of a conflict, interference of a state in the exercise of the sovereign powers of another state, counterfeiting currency, bank

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<sup>3</sup> The draft of the Repressive Code, later adopted by the International Association of Penal Law, would be the result of the cooperation with the Legal Committee of the Inter-Parliamentary Union and would be inserted in the strategy for the codification of international law presented, in 1932, at the 28<sup>th</sup> Inter-Parliamentary Conference held in Geneva.

notes (committed or tolerated by a state to the detriment of another state) and violation of diplomatic immunity of foreign representatives. The act of "triggering a war of aggression" was, at the same time, included in the category of crimes that could be committed by individuals[7: 322-328] alongside offenses against the state's external security or acts threatening world peace (spreading false rumors in support of triggering armed conflicts, forging diplomatic documents or international terrorism).

It is already internationally known that the elements listed by Pella in 1925 to define the aggressor state (and aggression) were taken over by the 1933 London Conventions. Also, the five instances of aggression provided by these conventions are part of those previously (more than seven years before) proposed by Pella: maneuvers or mobilizations with demonstrative character or for the preparation of a war of aggression, "mere" threats of aggression, interference of a state in the internal political struggles of another state, tolerance or preparation by a state, within its territory, of acts against another state or favoring establishment of armed gangs for attacking a neighboring state[3: 110].

An important moment in the evolution of the codification activity supported by the Inter-Parliamentary Union was the Paris Conference of 1927[8: 53] (held in the Luxembourg Palace), where the methods of achieving that goal were discussed. In that context, it was stressed the necessity of drafting an international law code, having as a "sole basis" ensuring equality of rights for all nations [9:168]. Received with enthusiasm, Pella's speech at the conference emphasized the need to develop a "Magna Carta of the Nations" containing the fundamental rights and obligations of states [9:470] and strengthening the inter-state criminal law as a new branch of international law.

The agenda of the event included four major themes: the fight against drugs, the European alliances, the problem of disarmament and the codification of international law. Pella's speech was scheduled for the opening of the conference works, honor owed, on the one hand, to his success in Washington and, on the other hand, to the fact that, the same year, he was also invited to the League of Nations, which had included the issue of codification on its own agenda [8: 56] . In addition to war related issues, in his speech, Pella proposed two amendments to the resolution draft on codification. The first one concerned the Committee of Experts of the League of Nations, which, in his opinion, had to focus on the unification of the principles of criminal law contained in the existing

codes<sup>4</sup>[12:305] and the second concerned the designation of war as international crime. His ideas on the unification of "the principles that the contemporary science of criminal law had unanimously consecrated" were accepted by a majority and were included in the text of the motion adopted [10: 97] on that occasion.

The idea was resumed in 1928, at the Berlin Conference, where Pella expressed his conviction that "voting the declaration on the rights and obligations of states would be an extremely useful achievement and the foundation for the only law that could be conceived in contemporary international life - the law of peace, would thus be laid!" [11: 449]. Stating that "l'oeuvre de codification du droit international est une oeuvre de courage"[9:474] (the work of codification of international law is a courageous work), the Romanian jurist reiterated the proposal that he had advanced in 1926, at the first Congress of Criminal Law in Brussels, namely that of unifying the principles in the internal legislations of states, and insisted on the decisive role of the Inter-Parliamentary Union in that far-reaching project. In fact, in 1939, as ambassador to The Hague and member of the Inter-Parliamentary Council, in retrospect, Pella emphasized the importance of the Inter-Parliamentary Union efforts and its essential contribution to the progressive development of international criminal law and, implicitly, the pacifist function of this field [2: 102].

## 2. The progressive codification of international law within the League of Nations

Although the Covenant of the League of Nations did not contain provisions on the codification of international law, the "development" idea of international law was expressed in 1920 in The Hague, when it was decided to create a consultative committee of jurists. The adopted resolution recommended the continuation of the work begun in The Hague in 1899 and 1907 "to ensure the development of international law and to ensure the security of nations"[13:60]. Although the Council's approval was sent to the Plenary Assembly of the League of Nations (on the 18<sup>th</sup> of December 1920), the project was considered "very dangerous at this stage in

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<sup>4</sup> In 1932, upon the request of the Committee for moral disarmament of the Conference on Disarmament, Pella drew up the *Memorandum on the adaptation of national legislations to the current development state of international life*, which would be published in 1933 under the title "Protection of Peace through Internal Law" and, at the Conference in Madrid in 1933, he would present a report titled *The progress achieved in the harmonization of internal law with the new Law of peace*.

the history of mankind" (Lord Robert Cecil) and the recommendation was not approved [13: 65]. The discussion would be resumed at the Fourth Plenary Assembly of the League of Nations (September 1924, in Sweden) which accepted the appointment of a committee of experts<sup>5</sup> for the progressive codification of international law. Some of the tasks of this body were: the development of a list of desirable (and achievable) themes for codification, its communication for analysis to the member and non-member states of the League of Nations, the evaluation of the responses received from them and the submission to the Council of a report on the preparation procedure of conferences [13: 67] .

Without going into the organizational details of the Committee, we would like to mention that from the generous, initial list of codification themes (conflict of laws, nationality, territorial waters, diplomatic privileges and immunities, state liability, ship status, extradition, piracy repression, states criminal jurisdiction on offenses committed outside their territory), the ones selected for a second stage were: nationality, territorial waters, diplomatic privileges and immunities, state liability, the procedure for the adoption of treaties within international conferences and piracy. According to the responses submitted by the states, their greatest interest (33 states)[13: 67] appeared to be the issue of nationality.

With regard to the procedural aspect, two methods of convening conferences were proposed: either the Assembly was to ask the Council of the League of Nations to organize the conferences under the League's auspices, or the Assembly was to invite governments to convene conferences (and the League was to handle the preparatory activity) [13: 75]. The second option was preferred. However, in 1927, the Assembly of the League of Nations called for the First Codification Conference to take place 1929, retaining only three of the proposed themes: nationality, territorial waters and state liability, and appointing a Preparatory Committee<sup>6</sup>(appointed by the Council of the League).

The First Codification Conference, held in The Hague in 1930, brought together representatives from 47 states and "was neither a success, nor a failure" [13: 86] . The issue of nationality was successfully settled (The Convention on conflicts of nationality, The Protocol on military obligations in cases of double nationality, The Protocol on certain

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<sup>5</sup> The Committee consisted of 17 experts representing "the main legal systems of the world".

<sup>6</sup> The First Committee consisted of: Basdevant (France), Carlos Castro Ruiz (Chile), Massimo Piloti (Italy), Professor François (Netherlands), Cecil Hurst (The United Kingdom).

statelessness cases were adopted), but, due to lack of time, the other issues were not debated.

Returning to Pella's contribution, we would like to mention that, with reference to "new areas of activity of the League of Nations" [14: 420], he emphasized the importance of creating the Rome Institute for the unification of private law and supported the idea of unifying criminal law according to that model. Criminality, as a common enemy of civilized states, he said, created a sense of international solidarity that must be used "to unify the fundamental principles governing the practice of repression" [14: 420]. In that context, he mentioned his efforts to establish an "international institution which would give an actual shape to the sense of solidarity that had always united civilized nations in the fight against criminality" [14: 421].

In 1928, in his speech delivered in the Plenary Meeting of the 8<sup>th</sup> Assembly of the League of Nations, in support of the progressive codification of international law [15: 5], Pella identified two methods of accomplishing this large-scale work: on the one hand, by determining the matters susceptible to be subject to codification (according to the criterion of their "degree of maturity") [15:5] and, on the other hand, by establishing a "general and synthetic plan containing the name and methodical classification of the codifiable matters" [15:5]. He stated that only a codification plan was likely to ensure the establishment of a law of peace, to provide a fair view of the matters subject to codification and to provide a common basis for future conventions.

He also believed that the League of Nations should be supported in that undertaking by the initiative of unofficial international organizations within which the scientific purposes should be pursued and within which jurists should cooperate on adopting a declaration on the rights and obligations of states.

At that time, in his opinion, the matters "mature" enough for codification were: state liability, diplomatic privileges and immunities and piracy [15: 11]. Less prepared for this process were the areas of extradition and the jurisdiction of states in punishing offenses committed outside their territory.

Always concerned with coordinating the fight against criminality, Pella pointed out that, in the field of international criminal law, emphasis must be laid on the solidarity of states and on the acceptance of fundamental principles for the practice of repression. To this end, he again stated that it was necessary to create an international institute for the unification of criminal law which would find solutions for overcoming the



"opposition between the system of territoriality and that of nationality", for "negative conflicts of jurisdiction leading to impunity", for the issues of "recidivism and international complicity" and for those related to "the international enforcement of security measures" [15: 13]. Basically, this idea, presented as a priority mission for the establishment of an "arbitral justice", is the contribution of the Romanian delegation to the works of the Assembly of the League of Nations. The pacifying role of international criminal law was, at that time, admirably synthesized by Pella, in the end of his speech, through the phrase "towards peace through arbitration". Such arbitration could only be achieved through the codification of international law [15: 15].

Between 1929 and 1938, Pella was a member of the Council of the League of Nations alongside renowned European legal scholars: Caloyanni, Ferri, Roux, Sasserath. They are, moreover, co-founders of the International Association of Penal Law, which constituted the starting point in the daring quest for the creation of international criminal law.

Subsequently, E.S. Rappaport would assert that the existence of the institute - which became the International Bureau for the Unification of Criminal Law - was owed "above all, to the talent and energy of that eminent European criminologist and politician, V.V. Pella, perhaps one of the most eminent legal scholars of the young generation"[16:10]. In 1933, the League of Nations recognized the International Bureau for the Unification of Criminal Law as an auxiliary "technical" organization for drafting conventions in the criminal field<sup>7</sup>[16:5].

### **3. The International Association of Penal Law – an institutional nexus**

Established in Paris, in March 1924, IAPL played an important role in the progressive development of international law, being endorsed by the League of Nations as an advisory body. The Association (V.V. Pella is one of its founding members) pursued three main lines of activity: criminal policy and codification, comparative criminal law and criminal international law[17: 278]. With regard to codification, the Association has the merit of having established the principles and theories of liability and of having defined the offenses and punishments [17: 279].

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<sup>7</sup> In the same paper, the author stated that "The Bureau had grown to the size of an auxiliary League of Nations, having a legislative-criminological character".

The Association's activity constantly intersected with that of international institutions and it represented a real dissemination platform for the innovative ideas and always stimulated the organization of scientific debates on themes that were astounding for that time. An example in that respect was the report on the criminality of states whose drafting was requested to Pella by the Permanent Legal Committee of the Washington/Ottawa Conference in 1925. After it was presented to the IAPL members in 1926, the Council of the Association considered it necessary to draft a statute of an international criminal court (which Pella would finish in 1927). The draft would reach the League of Nations and, in 1937, the Council would appoint a committee of experts (from Belgium, The United Kingdom, Chile, France, Italy, Poland, Romania, Spain, Switzerland) to prepare a draft for the establishment of a court on criminal matters and on suppression of terrorism. As a result, two conventions were adopted [18]. Although they never came into force, they were inscribed on the UNESCO Memory of the World register in 2010. The Convention on Terrorism was the first global convention to define acts of terrorism as "criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public" (Art. 1).

The international activity dedicated to the creation of an international criminal court continued vigorously after the end of the war. As the personality who had initiated the development of a world criminal code (within the Inter-Parliamentary Union and the International Association of Penal Law), Pella was invited by the UN Secretary-General to draft a memorandum on the Code of crimes against peace and mankind security and on a permanent international criminal court [19: 129-130]. By 1952, together with his friend, the French professor Donnedieu de Vabres, V.V. Pella supported that idea before the professional organizations of jurists, within the International Association of Penal Law and within a newly founded organization - the United Nations<sup>8</sup>.

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<sup>8</sup> At the level of the UN, the primary role in the progressive development and codification of international law was undoubtedly played by the International Law Commission created as a subsidiary body of the General Assembly. Between 1947-1954, several resolutions were passed to decide on the drafting of a code on crimes against peace and mankind security and on the establishment of a judicial body to try individuals guilty of genocide or other crimes and the subsequent establishment of a Criminal Chamber within the ICJ. The International Law Commission sent the draft Code to the UN General Assembly in 1954. In the absence of a definition of aggression, the General Assembly decided to postpone the discussion until it would receive the report of the Special Committee established for that purpose (which would only occur in 1981).

As an expert by that young organization, Pella enjoyed the same international appreciation: "If someone could be named as a better known specialist in international criminal law than the Frenchman Donnedieu de Vabres, that could be the Romanian Vespasian V. Pella [...] The destinies of the war caused them to separate - Pella as a minister in Switzerland and Vabres as a citizen of occupied France -, but the end of the war allowed them to resume their joint campaign for the codification of international criminal law and for the establishment of an international criminal court" [20:204] .

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