

Professor Bruno Simma To Be Judge at the International Court of Justice in The Hague

By Andreas Paulus

To introduce Bruno Simma to the readers of German Law Journal is both an easy and a difficult task. An easy one because it will hardly be necessary to introduce his writings to those who have done only the slightest research in public international law— from his textbook "Universelles Völkerrecht" of 1976,¹ co-authored with his teacher and mentor Alfred Verdross and still widely cited in German literature and jurisprudence, to the Commentary of the Charter of the United Nations which he first edited (in German) in 1991², the second English edition of which was published last year by Oxford University Press.³ On the other hand, writing on Bruno Simma is a difficult task because many of you will already have got a personal impression already – meeting him in Munich, where he has been teaching international and European law for no less than thirty years, in Ann Arbor/Michigan, where he is member of the affiliate overseas faculty of the University of Michigan Law School (since 1997) after teaching there for more than ten years, or at the Academies in The Hague or Florence, where he has taught much-acclaimed and -cited lectures on the move of international law "from bilateralism to community interest"⁴ and the relationship between human rights law and general international law⁵. An even broader audience has come to know him for his public appearances in the press, the radio or television, in particular for his characterization of the dilemma of the Kosovo intervention as a "thin red line" between legality and morality. His article on "NATO, the UN and the Use of Force"⁶ appeared on the Webpages of the European Journal of International Law – the leading European international law journal he co-founded in 1990 and still co-edits – even before the first shots were fired.⁷

¹ A. Verdross/B. Simma, *Universelles Völkerrecht* (3rd ed., Berlin: Duncker & Humblot, 1984).

² B. Simma (ed.), *Charta der Vereinten Nationen – Kommentar* (Beck: München 1991).

³ *Id.* (ed.), *Charter of the United Nations. A Commentary* (2nd ed., Oxford: Oxford University Press 2002).

⁴ *Id.*, 'From Bilateralism to Community Interest in International Law', 250 *Recueil des Cours* (1994-VI) 217.

⁵ *Id.*, 'International Human Rights and General International Law: A Comparative Analysis', IV-2 *Collected Courses of the Academy of European Law* (1993) 153.

⁶ *Id.*, 'NATO, the UN and the Use of Force: Legal Aspects', 10 *EJIL* (1999) 1.

⁷ See the EJIL's homepage at: <http://www.ejil.org>

Only a little less known are his considerable contributions to the work of the Committee on Economic, Social and Cultural Rights, entrusted with the monitoring of State reports under the International Covenant on Social, Economic, and Cultural Rights, of which he was a member between 1987 – 1996, and to the work of the International Law Commission, to which he was first elected in 1995 and which he now has to quit – having been re-elected by the General Assembly with the best result of all members – to take up an even more prestigious position as judge in The Hague.

With regard to human rights, Bruno Simma has emphasized that, for him, their true value lies not so much in their customary nature – which is difficult to sustain because of the often dismal record of compliance – but in their role as general principles of international law.⁸ In the law of State responsibility, he has stressed the inherent difference in kind between the tit-for-tat of traditional international rights and obligations regarding individual interests and those looking to "community interests" – such as human rights and the prohibition on the use of force. In "Universelles Völkerrecht", Verdross and he were among the first advocates of the Charter as a quasi-constitution of the international community. A certain disenchantment with this view, however, is visible in his recent exclaim concerning NATO (and U.S.) assertions of a right to the unilateral use of force that this "is not a decent way to treat a constitution!"⁹

Judge-elect Simma's exposure to the International Court of Justice is more recent, yet impressive. He was never on the side of a losing party. From 1994-2002, he was counsel for Cameroon in the *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, the first-ever boundary dispute decided under the optional clause. In the *LaGrand (Germany v. United States)* case, he served as co-agent and counsel of Germany. In spite of the unhappy circumstances – the two brothers LaGrand were already executed when the proceedings on the substance of the German claims began – this case will go down in the history of the Court for both its pronouncements on the bindingness of Court orders on provisional measures and on the individual character of the right to consular information and notification, which demands from State parties an effective implementation in their domestic laws.¹⁰ In both the *Land and Maritime Boundary* and *LaGrand* cases, it remains to be seen whether the judgments will be

⁸ B. Simma/P. Alston, 'The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles', 12 *Australian Yearbook of International Law* (1992) 82.

⁹ B. Simma, 'Comments on Global Governance, the United Nations and the Place of Law', 9 *Finnish Yearbook of International Law* (1998) 61, at 65.

¹⁰ *LaGrand (Germany v. United States of America)*, 40 *ILM* (2001) 1069; see The LaGrand Brothers Case: Germany vs. the United States in the International Court of Justice, in: 1 *German Law Journal* No. 4 (1 December 2000), available at: http://www.germanlawjournal.com/past_issues.php?id=25; and: International Court of Justice Rules in Favor of Germany and Against the United States in the LaGrand Case, in: 2 *German Law Journal* No. 12 (16 July 2001), available at: http://www.germanlawjournal.com/past_issues.php?id=41.

implemented.¹¹ Thus, Bruno Simma will be aware of the specific problems of a Court which has only insufficient means of execution at its disposal.

Particularly in light of the stunning recent *dictum* of the Court implying that the House of Lords was wrong when it decided¹² that General Pinochet could not avail himself of immunity for alleged torture committed when he was Chilean Head of State,¹³ it is fortunate that, when Bruno Simma will take up his duties on February 6, 2003, there will be a further judge on the bench with considerable knowledge, experience, and zeal for *both* general international law *and* human rights.

With his perfect blend of German rigour and Austrian diplomacy, Bruno Simma is well equipped for a remarkable career within the Court. Meanwhile, the academic world is confident that he will remain one of its most active, humorous, and profoundly likable members with an open mind for fresh ideas and a profound interest in the human persons behind them.

¹¹ On the implementation of *LaGrand*, cf. now the *Avena and other Mexican Nationals (Mexico v. United States of America)* case.

¹² House of Lords, *R. v. Bow Street Magistrates, ex parte Pinochet (No. 3)*, [1999] 2 WLR 827.

¹³ See *Arrest Warrant of 11 September 2000 (Democratic Republic of Congo v. Belgium)*, 41 *ILM* (2002) 536, paras. 59-61; but see Joint Sep. Op. Higgins et al., *ibid.*, p. 575, para. 85; A. Cassese, 'When may Senior State Officials be Tried for International Crimes? Some Comments on the Congo v. Belgium Case', 13 *EJIL* (2002) 853.