

# Recollections of Alfred Verdross

*Ignaz Seidl-Hohenveldern* \*

Verdross was a great storyteller. He liked to recall his youth in the Vienna of 1910, as described by Friedländer<sup>1</sup> and as painted by Klimt. He recounted how he was admitted to the *jours*, i.e. the open house days in Vienna's prominent bourgeois families. Alfred von Verdross-Drossberg entered these circles as a promising young man of a good family. His father was a retired general whose days of glory came, when in 1915, he was reactivated to repel with makeshift reserve forces the Italian attack on Tyrol. When the University of Innsbruck bestowed the degree of doctor *honoris causa* on Verdross he wryly remarked that the speaker devoted more time to praising his father than himself. He was not blind to some of the darker sides of the Habsburg Monarchy. In a style reminiscent of Karl Kraus, he told of a wartime journey from Innsbruck to Vienna where he and another young officer stood all night in the corridor in front of a compartment. A colonel slept there spread across all its seats but the lieutenants did not dare to wake him up. Shortly before Vienna, the colonel arose and excused himself for not having asked them to enter. He claimed that he had mistaken them for mere civilians.

The collapse of the Dual Monarchy greatly affected Verdross. He often tried to convey to his students the effects of this break-up on his contemporaries and on an economy used to considering an area from Lemberg (Lwow) to Cattaro (Kotor) and from Bregenz to Hermannstadt (Sibiu) as a single unit. In his mind he remained forever attached to the values of that time and to the peoples and mentalities of that area. He experienced great difficulty in admitting the existence of a right to self-determination, as such claims had been rejected in 1919 for strategic reasons when drawing the borders of Italy and Czechoslovakia. His sentimental links to the Habsburg Monarchy did not make him an active monarchist. He became a loyal servant of the Republic of Austria. He took great pride in an article which he published in a German law review<sup>2</sup> in 1919 when he was working in the Austrian

\* Professor emeritus of Public International Law, University of Vienna.

1 O. Friedländer, *Letzter Glanz der Märchenstadt* (1969). Verdross recommended me to read this book as the best description of this period.

2 Verdross, 'Reichsrecht und internationales Recht', *Deutsche Juristenzeitung* (1919) 291.

legation to Germany. In the debates on the Weimar Constitution, this article was decisive in securing the adoption of Article 4 of this Constitution ('The generally recognized rules of public international law form part of the law of the land') in preference to a version capable of being interpreted as ensuring the superiority of domestic German law over international law.

He was also proud of another, although this time unsuccessful attempt, to take an active part in political developments. In 1933-1934, the Austrian Government had to face National Socialist attempts to take over the country. The price to be paid to Mussolini for his active and, at that time, efficient support of Austrian independence was the suppression of Austria's democratic institutions. The parliament having been paralyzed by procedural tricks, the Government resorted to a curious subterfuge. Using their powers under the Economic War Powers Act 1917, they enacted a new Constitution, inspired by the corporatist ideals of the Papal encyclical *Quadragesimo Anno*, by decree. Verdross, as Dean of the Vienna Law Faculty, participated in the Law Faculties protest against these steps in a memorandum addressed to the Federal President, which, however, was kept secret by the Government.<sup>3</sup> In the much more modest range within which, at that time, a university professor remained free to act Verdross did act. Dr. Joseph T. Simon recalls vividly how Verdross protected Jewish and democratic participants in his seminar from the National Socialist student thugs who used to beat them up on the main staircase of the University. It was futile to hope for police protection, as the police were not allowed to interfere with such outrageous manifestations of 'academic freedom, enjoyed in the area of the University'. Verdross, however, had a key to a backdoor entrance reserved for professors, through which he led his students to safety. Verdross thanked me for my fine present, when, on the occasion of his 90th birthday, I drew his attention to Simon's memoirs,<sup>4</sup> which previously had not come to his notice.

When the *Anschluss* came, Verdross bitterly resented the inactivity, if not complacency of the West to this event. Although Verdross was not blind to the reasons adduced in justification of this attitude, he felt hurt. He liked to recall the following significant episode. Verdross, at that time, was a member of the Curatorium of the Hague Academy of International Law. A letter from the Curatorium asked Verdross to vacate his post as there was already a German member of the Curatorium; the Curatorium's statutes not admitting more than one member of a given nationality. Verdross, with grim irony, replied to the Curatorium that its request had reached him even earlier than a request to the same effect by the National Socialist authorities. The latter had initially suspended him from all teaching assignments. He was subsequently allowed to resume teaching public international law, but not legal philosophy, as this subject was deemed incompatible with National Socialist ideology. Such a halfway decision only appears to be

3 Verosta, 'Alfred Verdross – Leben und Werk', in F.A. Frh. v. d. Heydte et al. (eds), *Völkerrecht und rechtliches Weltbild. Festschrift für Alfred Verdross* (1960) 5.

4 *Augenzeuge* (1979) 82.

surprising. Let us not forget that Verdross, albeit for reasons of his own, was highly critical of the Peace Treaties of 1919. His views on these Treaties thus came very close to the views held in Germany, not merely by National Socialists, but also by them. Thus, they did not feel compelled to prevent him from teaching his views on public international law. His legal philosophy, however, was solidly anchored in his Catholic faith which even the loss of both his wives and one of his daughters could not shake. A legal philosophy based on natural law, and upholding values inspired by humanitarian Christian teaching (although shared by many non-Christians), was more than the National Socialists were willing to stomach.

The *Wehrmacht* appointed Verdross judge of the German Prize Court of Appeals. I recall a meeting with him in Jüterborg in 1943; he in German naval uniform and I as a corporal in the Signal Corps in charge of cleaning vermin-infected Barracks. It was a far cry from our first meeting, when I, as a student, had been invited to a dance in the house of Professor Verdross and his wife, a descendant of Alexander Maurocordatos, one of the heroes of the Greek struggle for independence. We both bemoaned the changes in the fate of our country and in our own lives.

My next meeting with Verdross took place under more favourable circumstances. I had joined the Austrian Federal Chancellery after terminating my law studies in May 1946. I published some articles in Austrian law reviews, which came to the notice of Verdross. It was typical of his eagerness to help others and to promote the teaching of international law that he proposed that I should strive to become *Privatdozent*. I had written the articles merely in support of views held by the Chancellery, without any intention of thereby paving my way to an academic career. After my *Habilitation*, Verdross again took the initiative by recommending me to the University of the Saar, which appointed me professor of public international law in 1954.

Verdross took a great interest in the future career of his pupils and tried to advance their interests even following their first appointment. He thus asked a number of his former pupils, myself included, to cooperate with him in rendering joint expert opinions. Furthermore, he magnanimously handed on posts hitherto held by him to younger colleagues. I thus succeeded him in the teaching of the summer courses on international law at the University of Vienna at Strobl on Lake St. Wolfgang. He also resigned in my favour from the *Commission médico-juridique de Monaco*. In pre-war times, as Verdross recalled, the members of this Commission were house-guests in the Prince's Palace. Verdross was a member of many learned Societies. The membership he treasured most was that of the *Institut de droit international*. I felt very proud, when I too, was elected to that august body, which, for Verdross, had become a group of personal friends. Touching evidence of these mutual feelings was the presence of so many members of the *Institut* on the sad occasion of the burial of his beloved wife Trude.

Verdross continued to live with his stepson Johannes Eder in his pleasant home in Döbling, which now bears a marble plaque to his memory, presented by the

Austrian Society of International Law. When Verdross transformed a large room in his home into a nursery for visiting grandchildren, he had to sell a part of his library to the great profit of the Universities of Cologne and Bochum; Professor Kimminich and myself having made this en bloc purchase a joint venture. Verdross, in his latter years, remained deeply attached to the study of legal philosophy. I was struck by the openness of his mind. He appraised the philosophies underlying the student revolt of 1968 with more understanding and fairness than many a younger colleague. He valued highly his combination of teaching legal philosophy as well as international law. He insisted that the successor to his chair should also be able to teach both subjects.

Verdross also remained very active as *emeritus*. During my visits to Vienna I often met him in the rather gloomy room which the University of Vienna had allotted to its *emeriti*. There, at two well-worn desks, as old as the venerable building itself, sat Verdross and his friend and colleague Hans Schima, a leading authority on Austrian civil procedure. Once a week the two would lunch together at the Hotel Regina, discussing faculty affairs and developments in the diocese of Vienna in which they continued to take a great interest.

Verdross, of course, continued to sit as a judge of the European Court of Human Rights, carrying out intensive research in support of views manifested sometimes in resounding dissenting opinions.<sup>5</sup> Work within the humanitarian framework of the Council of Europe appeared more congenial to him than participation in the efforts at European integration within the framework of the European Communities. In view of the policy of neutrality pursued by Austria, as formulated by Verdross,<sup>6</sup> such participation would, in any case, have had to be ideological rather than practical. Verdross, however, kept rather aloof from the tendency to transfer the most important sovereign rights to supranational communities. He was rather sceptical of these tendencies, which he considered to be an isolated West European phenomenon.<sup>7</sup> It is quite possible that his sentimental attachment to the Danubian area influenced his attitude. Verdross, most certainly, did not consider State sovereignty as the ultimate and unalterable basis for organizing human life on our planet. However, he felt that if sovereignty were to be abandoned this should be done at a world-wide level. In a book published in 1926<sup>8</sup> he had rejected the idea that the Covenant of the League of Nations formed a World Constitution. 50 years later, in the preface to the most-quoted German language treatise on international law<sup>9</sup> written in cooperation with Simma, the youngest of his pupils, Verdross reiterated this view with respect to the UN Charter. Yet, reviewing events at the age of 86, he felt optimistic enough to expose the rules of international law, as if they

5 E.g. in the case concerning sex-education in Denmark, ECHR, 7 December 1979, ILR 58, 146.

6 A. Verdross, *The Permanent Neutrality of Austria* (1978).

7 Verdross, 'Die völkerrechtliche und politische Souveränität der Staaten', in H. Kipp *et al.* (eds), *Um Recht und Freiheit. Festschrift für Friedrich August Freiherr von der Heydte* (1977) 7.

8 A. Verdross, *Die Verfassung der Völkerrechtsgemeinschaft* (1926) V.

9 Verdross, B. Simma, *Universelles Völkerrecht, Theorie und Praxis* (1976, 3rd ed., 1984). An English translation will soon be published.

formed part of a World Constitution, prefigured in the UN Charter. Verdross, of course, was well aware that this was not yet the case, but, nevertheless, he no longer believed that such transformation would be so utterly impossible as to exclude the use of such a fiction even as a mere teaching tool.

Verdross retained his full mental capacities right to the end and his physical capacities for almost as long. Participants of the Athens session of the *Institut de droit international* in 1979 will long remember the vigour and stamina of Verdross defending his theory of quasi-international contracts against all comers. Even more touching was a one-hour lecture he gave at his 90th birthday, standing before the auditorium in the university, expounding – without any notes – his views on the origin and basis of law. It was to be his swan song. He used to attribute all his physical ailments to spondylarthritis. We never were quite sure whether he himself believed in this diagnosis, or whether he used that term towards his friends for the same purpose that his doctors had used it towards him – to calm all too justified apprehensions.

While on a visit to his daughter Edith in Innsbruck he had to undergo a cancer operation. He recovered well enough from this operation to write a last letter – to the editor of the Vienna newspaper *Die Presse* – against its foreign affairs correspondent, whom he accused of having misinterpreted the doctrine of Austrian neutrality as propounded by Verdross. His heart failed the next day and somehow, this letter got lost in the turmoil.

Verdross is buried in the cemetery of Wilten Abbey, reserved for the town's most prominent dead. He rests there alongside his father. The main access road to the Munich-Innsbruck-Verona autoroutes passes so close to the cemetery that the rumble of the heavy trucks in the rain drowned the speeches made at the graveside. Verdross thus rests in a distinguished, albeit unquiet resting place – but is the noise of the traffic across a new Europe, as wide as Verdross may have visualized it only in his dreams, not a symbol of the fact that his ideas, too, continue to circulate?