
'The Secret of Tomorrow': International Organization through the Eyes of Michel Virally

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Abstract

The contribution of the late French Professor Michel Virally to international law is vast and touches on most areas of this discipline. Yet, Virally devoted particular attention to two main areas of inquiry, namely the philosophy of law and international organization. I have analysed Virally's contribution to the former elsewhere. This article focuses on his contribution to international organization widely understood as the study of international organizations and that of world organization. Virally considered international organization as a new political phenomenon, which would shape the dynamics of the two main driving forces of the second half of the 20th century, i.e., the East–West and the North–South divides. He developed a sophisticated theory of international organizations, with a strong functional focus. He used this theory to shed light on questions such as the management of international conflicts, the decolonization process, or the increasing influence of newly independent and developing states. His views on how these forces would shape the evolution of international law were far-sighted and allowed him to identify, with remarkable accuracy, the areas of international law where development considerations would require deep transformation, namely trade, investment, and the environment. In this regard, Michel Virally is also our contemporary and his contribution remains fully relevant for the analysis of international organization at large.

1 Introduction

The contribution of the late French professor Michel Virally to legal scholarship is vast and touches upon most areas of public international law.¹ In studying this daunting

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¹ See the Appendix for a chronological list of Virally's published work.

volume of writings, one is at first struck by the diversity of topics to which Virally devoted his attention over the years. Yet, on closer examination, the impression of diversity progressively dissipates and two main ‘submerged continents’ arise. The first is perhaps Michel Virally’s first and enduring love, namely the philosophy of law,² with a particular interest in questions concerning the international legal order,³ such as the purported ‘primitiveness’ of international law,⁴ the role of principles,⁵ the concept of *jus cogens*,⁶ or the relations between different legal systems.⁷ I have analysed Virally’s contribution to legal philosophy in a previous study,⁸ so I will refer to it only in passing here. The second ‘continent’ concerns what can be broadly defined as the study of ‘international organization’ as a new and critical phenomenon. Following his doctoral dissertation on the international administration of Germany after World War II (WWII),⁹ Virally remained deeply intrigued by what he would later characterize as ‘a major political fact of the international society’.¹⁰ International organization is therefore not only the study of certain international organization(s), in particular the United Nations, but a new form of political organization redefining the relations between states and, more broadly, the relationship between law and politics in international relations.

The purpose of this article is to assess Michel Virally’s contribution to the understanding of this new phenomenon as well as of some of its most important implications. Virally’s thought was deeply influenced by the East–West confrontation and the

² M. Virally, *La pensée juridique* (1960); Virally, ‘Le phénomène juridique’, 82 *Revue du droit public et de la science politique en France et à l’étranger* (1966) 5.

³ See, e.g., Virally, ‘Le droit international en question’, 8 *Archives de philosophie du droit* (1963) 145; Virally, ‘Droits de l’homme et théorie générale du droit international’, in *René Cassin amicorum discipulorumque liber* (1970), iv, at 323; Virally, ‘Notes sur la validité du droit et son fondement (norme fondamentale hypothétique et droit international)’, in *Mélanges offerts à Charles Eisenmann* (1975), at 453; Virally, ‘Une pierre d’angle qui résiste au temps: Avatars et pérennité de l’idée de souveraineté’, in *Relations internationales dans un monde en mutation: HEI 50, 1927–1977* (1977), at 179; Virally, ‘Sur la notion d’accord’, in F. Diez and J. Monnier (eds), *Festschrift für Rudolf Bindschedler* (1980), at 159; Virally, ‘À propos de la “lex ferenda”’, in *Mélanges offerts à Paul Reuter* (1981), at 519; Virally, ‘Un tiers droit? Réflexions théoriques’, in P. Bouchard, J.P. Kahn, and A. Lyon-Caen (eds), *Le droit des relations économiques internationales: Etudes offertes à Berthold Goldman* (1982), at 373.

⁴ Virally, ‘Sur la prétendue “primitivité” du droit international’, in *Recueil de travaux* (1969), at 201.

⁵ Virally, ‘Le principe de réciprocité dans le droit international contemporain’, 222 *RCADI* (1967–III) 5; Virally, ‘Le rôle des “principes” dans le développement du droit international’, in *Recueil d’études de droit international en hommage à Paul Guggenheim* (1968), at 531.

⁶ Virally, ‘Réflexions sur le “jus cogens”’, 12 *Annuaire français de droit international* (1966) 5.

⁷ Virally, ‘Sur un pont aux ânes: Les rapports entre droit international et droits internes’, in J. Salmon (ed.), *Mélanges offerts à Henri Rolin: Problèmes de droit des gens* (1964), at 488.

⁸ Viñuales, ‘Michel Virally ou penser le phénomène juridique’, 55 *Annuaire français de droit international* (2009) 1.

⁹ M. Virally, *L’Administration Internationale de l’Allemagne: Du 8 Mai 1945 au 24 Avril 1947* (1948), at 5.

¹⁰ Virally, ‘Panorama du droit international contemporain: Cours général de droit international public’, 183 *RCADI* (1983) 9, at 252 (our translation). A decade earlier, in the preface to his major study on the United Nations, Virally had noted that: ‘[t]rès peu sont prêts à admettre que l’on se trouve ici en présence d’une nouvelle forme d’organisation politique des sociétés humaines, dont la nouveauté et l’importance ne le cèdent en rien à celles qu’a présentées l’État moderne en son temps, cet État dont le triomphe se célèbre désormais sur toute la planète, même s’il donne des signes d’essoufflement sur les lieux où il est apparu en premier, il y a près de cinq siècles’: M. Virally, *L’Organisation mondiale* (1972), at 5.

decolonization process. From this perspective, his work can be seen as a continual effort to understand the structures and processes established after WWII to address these two major political facts (2). In doing so, he developed a sophisticated theory of international organization (3), which guided his analysis of how this new phenomenon could help to manage the mounting tensions between opposing blocks while at the same time integrating newly independent states into the emerging global architecture (4). Virally's work is, of course, not limited to these two main dimensions of international organization.¹¹ But one can safely consider that these are the two areas where his contribution to the advancement of international law is the most salient. Virally foresaw the role that international organization, as a new phenomenon, would play in accommodating the needs of newly independent and developing countries, not only in the political arena but also through a deep reform of international economic law, broadly encompassing trade, investment, and the environment. In this regard, he is our contemporary and his work sheds light on some of the most pressing legal issues that we face today.

2 Two Major Political Facts

Virally was not only an acute observer of the emergence and development of a new international organization or, more broadly, of a new world order; as a member of the legal services of the French occupation authorities in Germany,¹² he was also a first-hand witness to the considerable legal experimentation that followed WWII.

¹¹ Other noteworthy contributions include: M. Virally, *L'accès des particuliers à une instance internationale: La protection des droits de l'homme dans le cadre européen* (1964); Virally, 'Rapport général sur "Les choses dangereuses en droit international public"', 19 *Travaux de l'Association Henri Capitant (Journées néerlandaises)* (1967) 323; Virally, 'The Sources of International Law', in M. Sorensen (ed.), *Manual of Public International Law* (1968) 116; Virally, 'Sur la classification des traités: A propos du projet d'articles de la Commission du droit international', 13 *Comunicazioni e studi* (1969) 17; M. Virally and D. Bardonnet (eds), *Le nouveau droit de la mer* (1983); Virally, 'La distinction entre textes internationaux ayant une portée juridique dans les relations mutuelles entre leurs auteurs et textes qui en sont dépourvus. Rapport à l'Institut de droit international', in *Annuaire de l'Institut de droit international*, Cambridge session (1983), i, at 166–374; Virally, 'Good Faith in Public International Law', 77 *AJIL* (1983) 130; Virally, 'Les utilisations militaires des espaces et leur limitation par le droit international', 88 *RGDIP* (1984) 5; Virally, 'L'équité dans le droit: À propos des problèmes de délimitation maritime', in *Le droit international l'heure de sa codification: Études en l'honneur de Roberto Ago* (1987), ii, 523; Virally, 'Le rôle du droit dans un conflit de civilisations: Le cas Iran-U.S.A.', 1 *Revue des sciences morales et politiques* (1988) 37; Virally, 'Réflexions sur la politique juridique des États', in *Guy Ladreit de Lacharrière et la politique juridique extérieure de la France* (1989), at 394–402.

¹² Some biographical information on Michel Virally can be found in the two obituaries that appeared in the *RGDIP* and the *Annuaire français de droit international* after his death: C. Rousseau, 'Michel Virally [1922–1989]' and Comité de rédaction, 'Michel Virally, regards sur le droit', 93 *RGDIP* (1989), p. i; D. Bardonnet, 'In Memoriam – Le Professeur Michel Virally (1922–1989)', 34 *Annuaire français de droit international* (1988/89) 7. Other sources of information include the biographical notes appearing in his two courses at the Hague Academy (see *supra* notes 5 and 10) and in *Le droit international au service de la paix, de la justice et du développement. Mélanges Michel Virally* (1991), at xxi. More insightful are the comments on the life and work of Virally that one finds in some of the contributions to the *Mélanges Virally*. However, nothing can replace the insights on Virally's life and work that one gathers by talking to those who knew him well. I am particularly grateful to Professors Pierre-Marie Dupuy and Vera Gowlland, from the Graduate Institute, who at different occasions shared their memories and views with me. I remain of course responsible for any potential inaccuracies.

His doctoral dissertation, written while stationed in Germany, analyses an example of such experimentation, the international administration of Germany.¹³ After a first part of a rather descriptive nature, in which he highlights the novelty of the administrative system as compared with the international law of occupation and provides a detailed presentation of its structure, Virally explores how this system performs the three main functions of a political organization (normative, administrative, and judicial¹⁴). The analysis touches upon the incidence of political forces (the growing tension between East and West occupying powers) on the operation of the legal structures, and predicts that the economic needs of the German people will end up prompting an agreement between the occupying powers.¹⁵ This prediction was only partially accurate. Whereas the position of the USSR remained intractable, the political and economic development of Germany led indeed to an agreement among the other occupying powers (the Bonn–Paris Conventions in 1954 and 1955) and, effectively, to the end of the occupation.¹⁶ In a study published shortly thereafter, Virally perceptively argued that the legal situation in which these treaties had left the Federal Republic of Germany (FRG) would eventually call for a change, as the FRG had ‘received all the attributes of sovereignty’ but was technically still not ‘sovereign’.¹⁷ Virally concluded that:

the international condition thus described [could] not last without being transformed. In law or in fact, the problem of the division of Germany [would] have to be solved or set aside: either through a definitive re-establishment of the unity of Germany or through the acknowledgement, at least provisionally, of its division as an uncontroverted situation.¹⁸

As to the question of which of the two outcomes would eventually prevail, Virally simply noted that such was ‘the secret of tomorrow’.¹⁹ For present purposes, what one may gather from these early writings is the extent to which the German question, which some historians have qualified as the ‘thermometer of the Cold War’,²⁰ was at the centre of Virally’s intellectual concerns. And this was but a salient manifestation of a broader political fact that Virally called the ‘passive solidarity’ or ‘interdependence’ of the different parts of the world. Such passive solidarity or interdependence was already evident from the global character of World Wars I and II, the globalization of international economic relations, and the unprecedented scientific and technical developments of the first half of the 20th century. But Cold War and the risk of nuclear devastation had catalysed its implications.²¹

Another equally important and related concern in Virally’s work is the decolonization process. Like other French Catholic intellectuals of his generation, Virally had

¹³ See Virally, *L’Administration internationale de l’Allemagne*, *supra* note 9.

¹⁴ *Ibid.*, at 85.

¹⁵ *Ibid.*, at 158–160.

¹⁶ See Virally, ‘La condition internationale de la République Fédérale d’Allemagne Occidentale après les Accords de Paris’, 1 *Annuaire français de droit international* (1955) 31.

¹⁷ *Ibid.*, at 50 (our translation).

¹⁸ *Ibid.* (our translation).

¹⁹ *Ibid.* (our translation).

²⁰ Shell, ‘Berlin and the German Problem’, 16 *World Politics* (1963) 137, at 137.

²¹ Virally, *L’Organisation mondiale*, *supra* note 10, at 12.

deep social concerns, which progressively directed his attention to the analysis of the legal processes that could be used to integrate newly independent states into the post-war world order. His first study specifically devoted to this issue appeared in 1963 in the *Annuaire français de droit international*,²² but this concern can already be discerned in some of his earlier work. In a book published in 1961, *L'O.N.U. d'hier à demain*,²³ Virally analysed in some detail the implications of the new majority at the UN General Assembly, made possible by the policy of 'détente' following the death of Stalin and the change of administration in the United States:²⁴

Two dates are capital in this process: 1955, when the system of admissions is unlocked and sixteen States are admitted; 1960, with the admission of seventeen new members, all African except for one . . . In fifteen years – one could almost say in five years – the United Nations doubled its membership.²⁵

In another chapter of this book, Virally showed how the process of decolonization and the East–West confrontation interacted within the UN General Assembly:

On the difficult question of decolonisation, a majority will easily arise because most members of the United Nations are former colonies. The colonial powers are only a minority in numerical terms. The decisions thus taken may directly benefit some national interests, in particular those of States, such as the USSR, which compete in different fronts with former colonial powers or their allies and, as a result, benefit from whatever goes against the interests of those powers.²⁶

His 1963 study is more directly focused on the integration processes developed by the UN General Assembly.²⁷ Two years later, in a pioneering study on the international law of development, Virally took the analysis a step further.²⁸ In the opening paragraph of this study, Virally made a far-sighted observation, namely that, in the long run, the North–South chasm would be more difficult to overcome than the East–West ideological confrontation²⁹ because development was not a mere economic problem but a comprehensive socio-economic question. I will come back to Virally's contribution to this question in section 4 below.

For now, the main conclusion to be drawn from the foregoing remarks is that Virally's work on decolonization and, later, on development was in many ways an extension of his work on international organization. In retrospective, this is only natural, as the emerging international architecture had to take into account not one but two major political facts: the East–West confrontation and the North–South chasm.

²² Virally, 'Droit international et décolonisation devant les Nations Unies', 9 *Annuaire français de droit international* (1963) 509.

²³ M. Virally, *L'O.N.U. d'hier à demain* (1961).

²⁴ *Ibid.*, at 46 ff.

²⁵ *Ibid.*, at 48 (our translation).

²⁶ *Ibid.*, at 113 (our translation).

²⁷ Virally, *Droit international et décolonisation*, *supra* note 22, at 509. See *infra* sect. 4C.

²⁸ Virally, 'Vers un droit international du développement', 11 *Annuaire français de droit international* (1965) 3.

²⁹ *Ibid.*, at 1.

3 A Theory of International Organization

A A New Phenomenon

Although some forms of international organization had been attempted in the 19th century and, later, with the creation of the League of Nations after WWI, Virally saw the political reorganization that followed WWII as a new phenomenon. In the introductory chapter of his major study, *L'Organisation mondiale*, of 1972, he observed that 'the co-existence within one single institution of [the two] superpowers as well as of almost all States in existence, big or small, friends or foes, makes this institution a new factor in world politics'.³⁰

Perhaps because of its novelty, but also of its complexity, the scientific understanding of international organization was still full of holes in the 1960s and 1970s. Studies based on a purely positivistic approach of international law, such as Hans Kelsen's *The Law of the United Nation*, published in 1950,³¹ missed a very important point, namely that one cannot understand international organization by merely looking at its legal tissue. As Virally observed in his 1961 essay on the United Nations, 'knowledge of "UN realities" is particularly difficult because they have little to do with the legal texts to which we are used to refer'.³² Thus, it was necessary to develop conceptual tools to capture the complex and fluctuating realities of the international organization phenomenon. The foundations of this theory were laid out in three articles³³ and later summarized in a chapter of his general course at the Hague Academy.³⁴ By contrast, his main opus, *L'Organisation mondiale*, as well as an important article published the same year in the *Journal du droit international*,³⁵ should be seen rather as an application of this conceptual framework to the study of the United Nations.

³⁰ Virally, *L'Organisation mondiale*, *supra* note 10, at 15 (our translation).

³¹ H. Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems* (1950).

³² Virally, *L'O.N.U. d'hier à demain*, *supra* note 23, at 10 (our translation). This divide has deep roots. Although early in his career Virally had been quite fascinated by Kelsen's *Reine Rechtslehre*, the very logical power of Kelsen's positivism revealed its inability to illuminate the way in which law actually operates, at least in certain contexts such as international organization. Virally will increasingly distance himself from normativism, first, in his 'La pensée juridique', *supra* note 2, and even more resolutely in his study 'Le phénomène juridique', *supra* note 2. Kelsen undertook to reply to Virally's objections in a short and somewhat sketchy comment that was published after his death: see H. Kelsen, *Controverses sur la théorie pure du droit: remarques critiques sur Georges Scelle et Michel Virally* (avant propos by C. Leben and preface by R. Kolb) (2005).

³³ See Virally, 'De la classification des organisations internationales', in *Miscellanea W. J. Ganshof van der Meersch* (1972), at 365. The essence of Virally's theory of international organization is already present in this short contribution, written in 1970. In a later article, 'Définition et classification: Approche juridique', 29 *Revue internationale des sciences sociales* (1977) 61 (here I refer to the text of this article reproduced in M. Virally, *Le droit international en devenir. Essais écrits au fil des ans* (1990), at 227), Virally simply takes up and slightly develops the concepts expounded in his 1970 contribution. The implication of the concept of function in the theory of international organization will be substantially elaborated and developed in Virally, 'La notion de fonction dans la théorie de l'organisation internationale', in *Mélanges offerts à Charles Rousseau* (1974), at 277 (here I refer to the text of this article reproduced in M. Virally, *Le droit international en devenir*, *supra*, at 271).

³⁴ See Virally, *Panorama*, *supra* note 10, ch. VII, at 251.

³⁵ Virally, 'L'O.N.U. devant le droit', 99 *Journal du droit international* (1972) 501.

B Function and Types of International Organization

The starting point of Virally's theory is that the basic typologies that had been developed earlier to put some order in the classification of international organizations had little analytical value because they were unable to shed light onto the actual operation and evolution of a given international organization.³⁶ One consequence of the absence of adequate conceptual tools was, according to Virally, that the analysis of the work of international organizations was somewhat idealized, as it was based on *a priori* expectations of how they would carry out their mandates defined in their constitutive instruments. This, in turn, led almost systematically to disappointment and criticism, instead of genuine analysis and understanding.³⁷

Instead, Virally sought to develop a set of ideal-types, in the Weberian meaning,³⁸ using the function of international organizations as the main classification criterion.³⁹ International organizations are inherently functional because they are voluntarily established with an objective in mind and a structure that provides (or should provide) the means to pursue such objective. According to Virally, the advantage of the concept of function is that 'it allows both to determine the role of each organisation with respect to its own member States (and to the international society as a whole) and to explain the variety of existing organisations'.⁴⁰ Based on their function, Virally advances three main classifications.

The first concerns the function fulfilled by international organizations with respect to the international society. The function of some international organizations, which Virally calls 'global organizations' (*organisations mondiales*), is potentially to 'unify' all states in a given sector. Two important analytical consequences can be derived from this function. First, global organizations can succeed in their mandates only if they are sufficiently inclusive and are given a sort of monopoly. The failure of the League of Nations was largely due to the absence of its proponent, the United States, which France sought to integrate through a parallel and utterly ineffective treaty, the Briand-Kellogg pact of 1928.⁴¹ A more recent example is provided by the negotiations on climate change.⁴² Taking the negotiations outside the UNFCCC, irrespective of the advantages or disadvantages of such a course of action, would signal the end

³⁶ Virally, *De la classification*, *supra* note 35, at 371; *Définition et classification*, *supra* note 35, at 232–234. One consequence of the absence of adequate conceptual tools was, according to Virally, that the analysis of the work of international organizations was somewhat idealized

³⁷ Virally, *L'Organisation mondiale*, *supra* note 10, at 17.

³⁸ See M. Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* (1972 [1922]), pt I, ch. 3, 'Die Typen der Herrschaft'.

³⁹ He also refers to a 'structural' classification criterion (i.e., focusing on the structure of the organs of different organizations) as an alternative – albeit inferior – possibility: see Virally, *De la classification*, *supra* note 35, at 374–375.

⁴⁰ Virally, *La notion de fonction*, *supra* note 60, at 273 (our translation).

⁴¹ Treaty between the US and other Powers providing for the renunciation of war as an instrument of national policy, 27 Aug. 1928, available at: www.yale.edu/lawweb/avalon/imt/kbpact.htm (accessed 15 Feb. 2012).

⁴² See Viñuales, 'Du bon usage du droit international: Les négociations climatiques en perspective', 56 *Annuaire français de droit international* (2010/2011) 437.

of the institutions established by that treaty to ‘unify’ cooperation on climate change. A case in which Virally’s theory would appear less accurate is that of the WTO, which so far has managed to keep its overarching role despite the proliferation of regional and bilateral free trade agreements. The second analytical consequence of the global character of an international organization is that, by their very function, the actions of global organizations should benefit from a higher normative hierarchy than those of other international organizations. In his article of 1970, Virally called on lawyers to ‘think very seriously about this point’.⁴³ The clash between UN law and European law in the *Kadi* case highlights how far-sighted this insight was.⁴⁴ At the other end of the spectrum, some international organizations, which Virally calls ‘partial’ or ‘restricted’ organizations (*organisations partielles*), are intended to institutionalize an interest or a feature shared only by a limited number of states. Examples include regional organizations, which seek to develop the implications of sharing a common geographical location, or interest-based organizations such as the OECD, OPEC, or NATO. From an analytical standpoint, the most important issue is the relationship between such organizations and global organizations.⁴⁵ Virally refers as an example to Chapter VIII of the UN Charter,⁴⁶ which governs the relations between the UN and ‘regional arrangements or agencies’ organized for the maintenance of international peace and security.⁴⁷ Although dormant for several decades,⁴⁸ this chapter has become increasingly important since the end of the Cold War. Two major illustrations of the intricacies of UN/NATO relations are provided by the interventions in Bosnia in 1995⁴⁹ and in Libya in 2011.⁵⁰

The second classification of international organizations advanced by Virally looks at another dimension of their function, namely their substantive area of activity. From this perspective, Virally identifies two types of international organizations, general and sectoral. Virally observes that this classification is essentially descriptive and has limited analytical implications.⁵¹ Yet, the analytical lines drawn by this categorization may have significant practical importance when it comes to determining, from a legal standpoint, the scope of an organization’s mandate. Although Virally seemed to

⁴³ Virally, *De la classification*, *supra* note 35, at 375 (our translation).

⁴⁴ See Joined Cases C–402/05 P & C–415/05 P *Kadi & Al Barakaat v. Council of the European Union* [2008] ECR I–6351.

⁴⁵ See Virally, ‘Les relations entre organisations régionales et organisations universelles’, in Société française pour le droit international, *Régionalisme et universalisme dans le droit international contemporain* (1977), at 147.

⁴⁶ *Ibid.*, at 151 ff.

⁴⁷ See Art. 52(1) of the UN Charter.

⁴⁸ See M. Virally, *L’Europe et les Nations Unies* (1967), at 9 ff.

⁴⁹ See J. E. Viñuales, *The U.N. Secretary-General between Law and Politics* (2005), at 59 (discussing the concepts of ‘close air support’ and ‘air strikes’ under the ‘dual-key’ mechanism between the UN and NATO).

⁵⁰ See Res 1973 (2011) of 17 Mar. 2011, UN Doc S/RES/1973 (2011). On the controversy whether the armed intervention remained within the bounds set by this res. see ‘Incoming U.N. diplomat calls for Libya NATO investigation’, available at: www.usatoday.com/news/world/story/2012-01-04/un-libya-nato/52379246/1 (accessed 15 Feb. 2012).

⁵¹ Virally, *De la classification*, *supra* note 35, at 377.

play down this issue, which, in his view, would normally be resolved pragmatically,⁵² the legal significance of an organization's sectoral boundaries became apparent in the early 1990s, shortly after his death, with the requests for an advisory opinion submitted to the ICJ by both the World Health Organization and the UN General Assembly on the legality of the threat or the use of nuclear weapons.⁵³

The third classification is, according to Virally, the most important one from a theoretical perspective. It is based on the forms of cooperation that an organization may pursue, from mere consultation (*organisations de concertation*), to joint decision-making (*organisations décisionnelles*), to joint implementation (*organisations opérationnelles*).⁵⁴ These three categories correspond to increasingly sophisticated levels of cooperation. Three main analytical consequences can be derived from this classification. First, by capturing the main forms of cooperation performed through international organization, Virally's theoretical account provided an avenue for emancipating the analysis of international organization from the theory of the state (organized around the executive, legislative, and judicial functions), and thereby better to understand the specific features of this new phenomenon. Secondly, Virally's analysis suggests that cooperation, even in its most sophisticated forms, is fundamentally different from integration:

[I]ntegration is a process, i.e. the temporal form in which a change of state occurs, which in this case is the transformation of separate and perhaps disparate elements into a coherent whole . . . Co-operation is entirely different. It neither pursues nor produces a change of state: it is simply a way to act.⁵⁵

Cooperation and integration may be closely connected, as cooperation may serve as a means to bring about integration, but the two remain distinct. The third consequence is perhaps the one with the highest analytical potential. Virally saw these forms of cooperation as transversal conceptual tools the use of which could renew the understanding of international organization. He intended to use them as the conceptual basis of a research programme on the respective role of each form of cooperation in the actual operation of a given international organization over time.⁵⁶ In stating his project, Virally was in fact spelling out the assumptions of much of his earlier work, as well as laying out the conceptual foundations of the vast study of international organizations that he would conduct throughout his life.

⁵² *Ibid.*, at 378. However, in his 1974 'La notion de fonction' he devotes sustained analysis to what he calls 'le caractère normatif de la finalité fonctionnelle' or the legal implications of an organization's functional objective: see 'La notion de fonction', *supra* note 60, at 281–288.

⁵³ See *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* [1966] ICJ Rep 66 (rejecting the request on the grounds that it exceeded the mandate of the WHO); *Legality of the Threat or Use of Nuclear Weapons* [1966] ICJ Rep 266 (admitting the request of the UN GA).

⁵⁴ Virally, *De la classification*, *supra* note 35, at 379 ff. In his 1983 Hague course, Virally uses slightly different terminology (*organisations consultatives*, *organisations normatives*, *organisations opérationnelles*), *Panorama*, *supra* note 10, at 255. This can be explained by the conceptual refinement of these classification that he pursued in his 1974 'La notion de fonction', *supra* note 60, at 275–279.

⁵⁵ *Ibid.*, at 280 (our translation).

⁵⁶ Virally, *De la classification*, *supra* note 35, at 381.

4 The Practice of International Organization

A *Between Law and Politics*

A striking feature of Virally's work is his ability to move effortlessly from the realm of law to that of politics and back without blurring the boundaries between legal and political analysis. This is remarkable for at least two reasons. One is that the conceptual analysis of international law, portrayed as an innovation in the 1990s, was already being practised at its best in the 1960s and 1970s by Michel Virally. The references to the work of social scientists such as Karl Deutsch, Ernst Haas, Joseph Nye, and L. Lindberg that one finds in Virally's writings⁵⁷ are, indeed, extremely unusual for a European international lawyer writing in the 1970s.⁵⁸ Although he developed his own conceptual categories for the analysis of international organization, Virally was then already doing what many of us do today, namely resorting to other disciplines to develop conceptual tools that, after refinement, can be used to illuminate the operation of law. Yet, at the same time, Virally managed carefully to avoid the main risk of interdisciplinarity, namely succumbing to diluted disciplinary analysis. Like Andrei Tarkovsky's 'Stalker', he was able to return from other glowing disciplines to the dry reality of law and shed light on some of its most obscure corners. Two examples will help illustrate this point.

The first concerns the legal implications of the analytical concept of 'function'. This concept can guide the analysis of international organizations not only with respect to their practical relevance in preventing, containing or managing conflicts, to take but one example, but also when it comes to assessing questions such as their legal personality, the interpretation of their constitutive instrument, their scope of operation, or their implied powers.⁵⁹ From a legal standpoint, analysing international organizations in the light of their function leads to a number of legal conclusions, such as the assertion of an organization's (international and domestic) legal personality, the need for a progressive (teleological) interpretation of its constitutive treaty, the need to define an organization's scope of operation as regards other organizations (e.g., Chapter VIII of the UN Charter), as well as member and non-member states (e.g., Article 2(6) and (7) of the Charter),⁶⁰ or an organization's ability to perform functions not explicitly vested

⁵⁷ See, e.g., Virally, 'La notion de fonction', *supra* note 35, at 279. See also 'Le rôle des organisations internationales dans l'atténuation et le règlement des crises internationales', 41 *Politique étrangère* (1976) 529, at 545 (referring in n. 10 to O. Young, *The Intermediaries: Third Parties in International Crises* (1967) or 'Le champ opératoire du règlement judiciaire international', 87 *RGDIP* (1983) 281 (which has all the features of a quantitative analysis of the operation of judicial settlement of international disputes).

⁵⁸ Another remarkable example of an international legal scholar doing deeply interdisciplinary work (albeit by reference to other disciplines) is René-Jean Dupuy, whose work has already been discussed in this journal: see 22(2) *EJIL* (2011).

⁵⁹ See Virally, 'La notion de fonction', *supra* note 35, at 281–288; Virally, *L'O.N.U. devant le droit*, *supra* note 37 (where Virally conducts a strictly legal analysis guided by the concept of function); Virally, *L'Organisation mondiale*, *supra* note 10 (where Virally conducts both a political and a legal analysis of the role of the UN).

⁶⁰ See Virally, 'La notion de fonction', *supra* note 35, at 285. See also M. Virally (ed.), *L'Etat face à l'organisation mondiale* (1973), at 12–46 (on how the relations between states and international organizations are organized).

in it by its constitutive instrument (e.g., 'functional protection', as in the *Reparations* case⁶¹). Beyond its basic taxonomic usefulness, the concept of function can therefore provide guidance for both a political analysis of the role of international organizations and a strictly legal analysis of their powers and duties under international law.

The second example concerns the role of the 'recommendations' adopted by international organizations. Virally devoted several studies to this issue,⁶² including an important report to the Institut de droit international that touched upon this question.⁶³ From a conceptual perspective, Virally viewed the power to adopt recommendations as an intermediary stage in the level of cooperation ('*organisations décisionnelles*' or normative organizations). But, again, beyond a mere taxonomic purpose, this concept had implications for both the political and legal analysis of the role of international organizations. Politically, the adoption of a recommendation could serve as a powerful means of exerting pressure on one or more states, at least if the recommendation is backed by a large majority including the main powers.⁶⁴ This political perspective would be sufficient to explain why, in practice, the processes that can lead to the adoption of such recommendations are carefully regulated in the constitutive instruments, and why states take pains to negotiate in detail the wording of such recommendations.⁶⁵ Yet, this is not enough for one to understand the legal effects of such instruments. In this regard, Virally introduces a distinction among three types of recommendations subject to different principles: (i) 'internal' or 'intra-organization'; (ii) recommendations to member states; and (iii) recommendations to third parties (states, other IOs, non-state actors). Some internal recommendations (i.e., those addressed by a hierarchically superior body to a subordinated body of the same organization) are, by the very functional structure of the organization, binding on their addressees. Some others (i.e., those addressed by an independent body to another independent body within the same organization) are not binding and, yet, they deploy critical legal effects. By way of illustration, the UN General Assembly could not appoint the Secretary-General or admit a new member state in the absence of a recommendation from the Security Council, although it is not bound by such a recommendation.⁶⁶ Regarding recommendations to member states, from a legal standpoint they are measures to implement the basic obligations assumed by such states under the constitutive treaty.

⁶¹ See *Reparation for Injuries suffered in the Service of the United Nations* [1949] ICJ Rep 174, at 184.

⁶² Virally, 'La valeur juridique des recommandations des organisations internationales', 2 *Annuaire français de droit international* (1956) 66 (here I refer to the text of that article reproduced in M. Virally, *Le droit international en devenir. Essais écrits au fil des ans* (1990), at 169); M. Virally, *L'exécution des recommandations de l'Assemblée Générale des Nations Unies* (1960); Virally, 'Résolution et accord International', in *Essays in International Law in Honour of Judge Manfred Lachs* (1984), at 299; Virally, 'Les actes unilatéraux des organisations internationales', in M. Bedjaoui (ed.), *Droit International: Bilan et perspectives* (1991), at 253 (also published as: 'Unilateral Acts of International Organizations', in M. Bedjaoui (ed.), *International Law: Achievements and Prospects* (1991), at 241).

⁶³ M. Virally, *La distinction entre textes internationaux*, *supra* note 11.

⁶⁴ Virally, *De la classification*, *supra* note 35, at 380.

⁶⁵ Virally, *La valeur juridique*, *supra* note 65, at 171.

⁶⁶ See *Competence of Assembly regarding admission to the United Nations, Advisory Opinion* [1950] ICJ Rep 4, at 7 (commenting on the meaning of Art. 4(2) of the UN Charter).

More specifically, such recommendations can be seen as formulations of what the body adopting them sees as the implications of a given provision of the constitutive treaty. A state may agree (explicitly or tacitly) or object. Depending on the circumstances, the stance taken by the state may have legal effects. For example, abiding by a recommendation of the Council of the League of Nations under Article 15(4) triggered the obligation of other member states not to wage war against any complying state.⁶⁷ As for recommendations to third parties, Virally considered that, as a rule, they would not have any legal effects, but could have a strong political impact.

These two examples illustrate Virally's ability to move across different disciplinary boundaries without blurring the differences between legal and political analysis. But they are also useful to introduce the two remaining questions that I will discuss in this article, namely Virally's analysis of the conflict-management function of international organizations (4B.) as well as of the emergence, through an array of recommendations, of an international law of development (4C.).

B International Organization as a Conflict Management Instrument

Virally developed a sophisticated theory of how international organizations may help to manage international crises. As with other topics, his 'applied' analysis came before his theoretical elaboration of this conflict-management function. In a series of articles published in the *Annuaire français de droit international*, Virally analysed the expanding political role of the UN Secretary-General,⁶⁸ its legal basis,⁶⁹ and its modalities.⁷⁰ A broader study of the role of the UN in 'appeasement' (*pacification*) from both a political and a legal perspective appears in the third part of *L'Organisation mondiale*.⁷¹ But his most developed conceptualization of this role appeared four years later, in an article published in the review *Politique étrangère*.⁷² In this piece, he introduces a distinction between three forms of 'action' by a 'neutral third' in an international crisis: (i) assistance in defusing a crisis or negotiating an arrangement; (ii) action intended to modify the political strategy or the tactics of one or more parties involved in the crisis; and (iii) action to support one of the parties involved in the crisis. Given the dual nature of international organizations (as both associations of states and autonomous actors) and their limited material means (financial/military), Virally considered that their main contribution would be through (i), although they could also have an incidence through (ii) and (iii).

⁶⁷ Covenant of the League of Nations, 28 June 1919, Art. 15(6), available at : http://avalon.law.yale.edu/20th_century/leagcov.asp (accessed 15 Feb. 2012)

⁶⁸ Virally, 'Le rôle politique du Secrétaire général des Nations Unies', 4 *Annuaire français de droit international* (1958) 360.

⁶⁹ Virally, 'Les Nations Unies et l'affaire du Congo en 1960: Aperçus sur le fonctionnement des institutions', 6 *Annuaire français de droit international* (1960) 557 (analysing the power of initiative of the UN Secretary-General, the interpretation of his mandate, the scope for improvisation, and the distribution of responsibilities).

⁷⁰ Virally, 'Le testament politique de Dag Hammarskjöld', 7 *Annuaire français de droit international* (1961) 355; Virally, 'A propos de l'affaire de Cuba: "Diplomatie tranquille" et crises internationales', 8 *Annuaire français de droit international* (1962) 457.

⁷¹ Virally, *L'Organisation mondiale*, *supra* note 10, chs 18–23.

⁷² See Virally, *Le rôle des organisations internationales*, *supra* note 60.

International organizations are well equipped to assist in defusing a crisis or negotiating an arrangement because they can provide a pre-established setting for conducting negotiations as well as a mechanism to 'bank' or 'consolidate' (with respect to the other parties involved in the negotiations but also to third parties) results achieved through negotiations. More importantly, 'integrated' (as opposed to inter-state) bodies within an organization, such as the UN Secretary-General, are particularly well positioned to intervene in a crisis, either to offer good offices or to undertake more intrusive forms of action (e.g., negotiating the establishment of a peace-keeping force), because they are perceived as neutral. Virally illustrates the operation of such intervention by reference to several examples involving Dag Hammarskjöld (such as the 1954–1955 Sino-American crisis,⁷³ the 1956 Suez crisis,⁷⁴ and the 1960 Congo crisis⁷⁵) and U Thant (during the Cuban missile crisis in late 1962⁷⁶). Among these, the Congo crisis is particularly well suited to showing the interplay between legal and political considerations. Whereas it is often believed that international law plays little or no role in UN intervention, one must at least acknowledge that the UN Secretary-General cannot act without an explicit or implicit legal basis. Virally's analysis of the Congo crisis is illuminating precisely because it maps how Hammarskjöld went about developing the legal resources of Chapter XV of the UN Charter (particularly Article 99) in connection with the Secretary-General's right of initiative in peace and security matters, his own interpretation of the mandate entrusted to him, the difficult need for improvisation in certain urgent matters, and the distribution of responsibility. Virally thus viewed the Congo crisis as a sort of extreme test of the 'policy' developed by Dag Hammarskjöld on the involvement of the Secretary-General in questions of peace and security.

The two other channels of influence depend on the means of pressure and/or incitement available to each organization. As a rule, these are rather limited in organisations the mandates of which focus on political affairs. However, an international organization like the UN has at least three significant means of changing the political configuration of a crisis and/or supporting the position of one party. First, it can influence the public opinion of some of the countries involved in the crisis, thus exercising indirect pressure on the political strategy pursued by the government of a state involved in the crisis. Secondly, international organizations often have a legitimizing power that states or coalitions of states lack. Several examples can be provided. Virally refers to Security Council Resolution 242 (22 November 1967) on the situation in the Middle East.⁷⁷ This resolution laid down the principles for 'the establishment of a just and lasting peace in the Middle East'⁷⁸ and, as noted by Virally, 'dominated all [related] diplomatic efforts for several years, by providing an unavoidable benchmark'.⁷⁹ A third and related means of influence is the organization of a collective response, as provided

⁷³ Virally, *Le rôle politique du Secrétaire général*, *supra* note 71, at 316–317.

⁷⁴ See *ibid.*, at 304, 313; Virally, *Le testament politique de Dag Hammarskjöld*, *supra* note 73, at 374ff.

⁷⁵ Virally, *Les Nations Unies et l'affaire du Congo*, *supra* note 72.

⁷⁶ Virally, *A propos de l'affaire de Cuba*, *supra* note 73.

⁷⁷ Res 242, of 22 Nov. 1967, UN Doc S/RES/242 (1967).

⁷⁸ *Ibid.*, at para. 1.

⁷⁹ Virally, *Le rôle des organisations internationales*, *supra* note 60, at 558 (our translation).

for in Chapter VII of the UN Charter. The link between an organization's legitimizing power and its pivotal role in the coordination of a collective response,⁸⁰ can be illustrated by reference to the radically different perceptions of the 1990 and 2003 US-led military interventions in Iraq. In the first case, enforcement action had been authorized by the Security Council,⁸¹ whereas in the second it would be extremely difficult to conclude – although it was indeed argued⁸² – that the US-led military intervention was consistent with the UN Charter. A position taken by an international organization may thus 'modify the diplomatic configuration'⁸³ of a problem for some time.

Beyond conflict management, international organizations may of course play other roles in international politics. In his analysis of how they may shape the interplay of forces, Virally devoted considerable attention to one question that I have already mentioned in section 2 above, namely the impact of majority rule in a global (and therefore exclusive) organization. According to Virally, the application of this rule led to a sort of 'amplifying effect' (he uses the term '*effet de déformation*'), whereby a coalition of small states can have an influence on the outcome of an internal decision-making process which has no correspondence with the political power they would be able to muster outside the organization's framework.⁸⁴ The operation of this rule was critical in shaping, through an array of increasingly far-reaching resolutions of the UN General Assembly, the two related questions of decolonization and development.

C *International Organization as an Integration Platform*

Virally devoted several studies to the processes developed within the UN to integrate newly independent states and, later, to reformulate the principles governing relations between states.⁸⁵ His analysis provides a good illustration of the power of 'recommendations' in shaping both international law and international politics (see above section 4A).

The UN Charter established a distinction between 'trust territories' (Chapter XII), for which accession to independence was expressly envisaged (Article 76(b)), and

⁸⁰ On this link see V. Gowlland-Debbas, *Collective Responses to Illegal Acts in International Law. United Nations Action in the Question of Southern Rhodesia* (1990).

⁸¹ Res 678, of 29 Nov. 1990, UN Doc S/RES/679 (1990).

⁸² See Greenwood, 'The Legality of the Use of Force: Iraq 2003', in M. Bothe, M.E. O'Connell, and N. Ronzitti (eds), *Redefining Sovereignty: The Use of Force after the Cold War* (2005), at 387.

⁸³ Virally, *Le rôle des organisations internationales*, *supra* note 60, at 558.

⁸⁴ *Ibid.*, at 536.

⁸⁵ Virally, *Droit international et décolonisation*, *supra* note 22; Virally, *Vers un droit international du développement*, *supra* note 28; Virally, 'La notion de programme: Un instrument de la coopération technique multilatérale', 14 *Annuaire français de droit international* (1968) 530; 'La 2e décennie des Nations Unies pour le développement: Essai d'interprétation para-juridique', 16 *Annuaire français de droit international* (1970) 9; M. Virally, *Les résolutions dans la formation du droit international du développement* (1971); Virally, 'La Charte des droits et devoirs économiques des Etats: Notes de lecture', 20 *Annuaire français de droit international* (1974) 57; Virally, 'Où en est le droit international du développement?', *Revue juridique et politique: Indépendance et coopération* (1975) 279; Virally, 'Droit, politique et développement', in M. Flory *et al.* (eds), *La formation des normes en droit international du développement* (1984), at 157.

'non-self-governing territories' (Chapter XI), for which the possibility of acceding to independence was not mentioned. Thus, whereas the Charter recognized a right to decolonization to 'trust territories', no such right was explicitly recognized to 'non-self-governing territories'. The political configuration of forces prevailing at the time was, however, favourable to the anti-colonialist movement, which could find support both in the public opinion of the colonial powers themselves and in the attitude of the two super-powers. But the choice of the legal tool to prompt decolonization, namely recommendations of the UN General Assembly, is no less remarkable. This choice can only be explained if one understands that, despite their non-binding character, recommendations could have both political and legal effects. As noted by Virally, throughout the 1950s the General Assembly developed a comprehensive doctrine of decolonization, the effects of which was to confer a 'right to decolonization' also to non-self-governing territories.⁸⁶ Three important benchmarks in this process were Resolution 742 (VIII) (27 November 1953),⁸⁷ Resolution 1541 (XV) (15 December 1960),⁸⁸ and particularly Resolution 1514 (XV) (14 December 1960).⁸⁹ Interestingly, this last resolution, which technically is only an act implementing the obligations of the UN Charter, is at times in clear contradiction with the spirit, if not the letter, of the Charter. Specifically, '[t]he statement that the subjection of a people to another is contrary to the Charter is contradicted by the very text of Chapters XI, XII and XIII, which precisely contemplate such a situation and organise it legally'.⁹⁰ And yet the General Assembly went so far as to create a year later a special committee in charge of examining the application of Resolution 1514 (XV) and making recommendations.⁹¹ In practice, this committee was particularly pro-active and its operation signalled a looming crisis between the intervention of the UN in the decolonization process and certain colonial powers, particularly Portugal and the UK. This crisis and the legal effects of this body of recommendations are well illustrated by the case of Southern Rhodesia.⁹² For present purposes, it is sufficient to gather from this discussion that the decolonization process was deeply influenced by the action of the UN, particularly through the use of majority rule and the issue of recommendations. It was only a matter of time before the new majority would set out to use these tools to reformulate the classical legal order they had unwillingly inherited from industrialized powers.

The link between decolonization and development is evident in Virally's eyes:

It is only when, through decolonisation, a multitude of new actors breaks into the international sphere, all coming from the poorest and less economically advanced regions, that

⁸⁶ Virally, *Droit international et décolonisation*, *supra* note 22, at 332.

⁸⁷ 'Factors which should be taken into account in deciding whether a territory is or is not a territory whose people not yet attained a full measure of self-government', Res 742 (VIII), of 27 Nov. 1953, UN Doc A/RES/742 (VIII).

⁸⁸ 'Principles which should guide members in determining whether or not to transmit the information called for under Art. 73e of the Charter', Res 1541 (XV), of 15 Dec. 1960, UN Doc A/RES/1541 (XV).

⁸⁹ 'Declaration on the granting of independence to colonial countries and peoples', Res 1514 (XV), of 14 Dec. 1969, UN Doc A/RES/1514 (XV).

⁹⁰ Virally, *Droit international et décolonisation*, *supra* note 22, at 336 (our translation).

⁹¹ Res 1654 (XVI), of 27 Nov. 1961, UN Doc A/RES/1654 (XVI), at para. 4.

⁹² For a detailed study of this case see Gowlland-Debbas, *supra* note 83.

a new disequilibrium will become significant. It will now be a disequilibrium between the industrialised or developed world (capitalist or socialist), and those who will be called the Third World.⁹³

The article from which this paragraph is excerpted is interesting in many ways. It not only summarizes the past evolution of the international legal order as Virally sees it in the middle of the 1970s, but it also anticipates with remarkable accuracy the areas of international law that would become critical in the following years and remain so up to the present day. To understand his contribution in this respect two main observations are necessary. First, Virally sees the international law of development not as a separate ‘branch’ of international law but as a perspective that concerns all states (not just developing states) and that may affect most, if not all, branches of international law.⁹⁴ Secondly, the emergence of this perspective is a result of three main conceptual evolutions:⁹⁵ (i) the idea of a ‘permanent sovereignty over natural resources’, which is at the roots of our modern foreign investment regime; (ii) the understanding of an economic deterioration in the terms of trade in raw materials as compared to manufactured products, which led to the adjustment of the international trade regime; and (iii) the progressive expansion of the concept of development, which moved from an essentially economic view to a broader social and, later, environmental understanding. In connection with this point, it is worth stressing that Virally did not envisage ‘development’ as a mere quest for assistance or economic progress, but as a deeply social phenomenon.⁹⁶

The development ‘perspective’ arising from this conceptual matrix will take shape largely, albeit not only, through the use of majority rule in the UN General Assembly for the adoption of increasingly ambitious resolutions. The origins of this process were discerned by Virally as early as in 1965, in his pioneer article ‘Vers un droit international du développement’, and later analysed in more detail in four other studies. Two of them were devoted to the role of resolutions in the emergence of the international law of development,⁹⁷ and particularly to the ‘Charter of Economic Rights and Duties of States’.⁹⁸ The two others focused on the use of ‘programmes’⁹⁹ and, more specifically, on one important programme, i.e., the ‘International Development Strategy for the Second United Nations Development Decade’.¹⁰⁰ In retrospect, what is most striking about Virally’s contribution in this regard is less his analysis of the international law of development as such than the broader vision of the main areas of tension where the question of development would prompt radical legal changes in later decades: trade, investment, and the environment.

⁹³ Virally, *Où en est le droit international du développement?*, *supra* note 88, at 282.

⁹⁴ *Ibid.*, at 279–280.

⁹⁵ *Ibid.*, at 284 ff.

⁹⁶ Virally, *Vers un droit international du développement*, *supra* note 28, at 417

⁹⁷ Virally, *Les résolutions dans la formation du droit international du développement*, *supra* note 88.

⁹⁸ Virally, *La Charte des droits et devoirs économiques des Etats*, *supra* note 88.

⁹⁹ Virally, *La notion de programme*, *supra* note 88.

¹⁰⁰ Virally, *La 2e décennie des Nations Unies pour le développement*, *supra* note 88.

5 The Contribution of Michel Virally to International Legal Scholarship

The work of Michel Virally can be seen, in many respects, as a blend of conceptual, political, and legal analysis. It was perhaps this ability to see deeper into the socio-political changes of his time that allowed him insightfully to anticipate the future evolution of international law. Unfortunately, he died almost at the same time as the East–West confrontation was coming to an end, with the radical changes in the operation of international organization that this entailed. But his contribution is still with us. I would like to conclude this article by offering an appraisal of Virally's contribution to international legal scholarship. I have discussed, in previous sections, the substance of his writings. Here, I would like briefly to discuss his influence.

'Influence' is a difficult concept to measure precisely, but some clear indications of Virally's influence can be found in the recognition of his academic achievements by his peers, the reception of his work by different generations of academics, and his activity as a practitioner in different settings. Regarding the first indication, two main marks of professional esteem come to mind. Virally was not only a member of the selective *Institut de Droit International*, but he was also invited to give the general course of public international law at the Hague Academy of International Law, which is in many ways the 'Nobel prize of international law'. These two marks of recognition are (particularly when combined) perhaps the highest academic distinctions an international lawyer can achieve. Apart from these distinctions, Virally's influence is apparent in the numerous references to his work by scholars from different generations and horizons, including some of the foremost specialists in international organization.¹⁰¹ This influence was acknowledged in candid terms by Professor Niels Blokker who, in describing his and Schermer's ambition to organize, explain, and analyse the detail of how international organizations operate, referred to Michel Virally as the 'main source of inspiration'¹⁰² and characterized *L'Organisation mondiale* as 'one of the classics in our field'.¹⁰³ As for the third indication, Virally's professional

¹⁰¹ See, e.g., Schachter, 'The Crisis of Legitimation in the United Nations', 50 *Nordisk Tidsskrift International Ret* (1981) 3, at 12 (referring, in his Alf Ross lecture, to Virally on the interpretation of the Charter); Sorensen, 'Autonomous Legal Orders: Some Considerations relating to a Systems Analysis of International Organisations in the World Legal Order', 32 *Int'l and Comp LQ* (1983) 559, at 560 (referring to Virally's *L'Organisation mondiale* as the reference on international organization in French); Gowlland-Debbas, *supra* note 80 (originally a doctoral dissertation directed by M. Virally); Dominicé, 'La sécurité collective et la crise du Golfe', 2 *EoIL* (1991) 85, at 86 (referring to Virally and Kelsen to characterize the essence of collective security); Pellet, 'La formation du droit international dans le cadre des Nations Unies', 6 *EJIL* (1995) 401, at 402 (referring to Virally's classification of the powers of international organizations to deliberate, decide, and act); P.-M. Dupuy, 'The Constitutional Dimension of the Charter of the United Nations', 1 *Max Planck Yrbk UN L* (1997) 1, at 14 (referring to Virally's view that the UN Charter embodied the spirit of international law); Klabbbers, 'The Bustani case before the ILOAT: Constitutionalism in Disguise?', 53 *Int'l and Comp LQ* (2004) 455, at 455 (referring to Virally as the main influence for the adoption of a functionalist approach by Schermer and Blokker's *International Institutional Law* (5th edn, 2011)).

¹⁰² See Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermer's Book and Challenges for the Future of International Institutional Law', 5 *Int'l Orgs L Rev* (2008) 197, at 201.

¹⁰³ *Ibid.*

activities in multilateral negotiations, international judicial/arbitral proceedings, or as a president of Chamber in the Iran–United States Claims Tribunal also left a deep mark on international law. Much could be said about Virally’s practice, but it will be sufficient to recall here that, in the capacity of French representative, Virally played a major role in some of the most influential codification processes of his time, including the Vienna Conference on the law of treaties and the Special Committee which drafted Resolution 2625 (XXV) on the ‘Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations’.¹⁰⁴

With this in mind, one may ask whether Virally’s work is still influential today. Again, the answer largely depends on how ‘influence’ is understood. If one understands influence as ‘citation frequency’, one would be forced to conclude that Virally is less influential than many. If one instead poses the question to scholars such as N. Blokker, P.-M. Dupuy, or V. Gowlland-Debbas, the answer is rather that Virally’s work was pioneering and shaped the field of international organization. Yet another way to understand ‘influence’ is by focusing on the origins of the ‘standard model’, to use the terminology of physics, which has informed the study of international organization in recent decades. From this standpoint, the influence of Virally’s work on present scholarship is less explicit, but perhaps much deeper. As noted in sections 3 and 4 of this article, the conceptual platform developed by Virally was specifically intended to emancipate the analysis of international organization from the most extreme forms of normativism. In other words, it was intended to capture the fluctuating reality of international organization beyond black letter law. This may seem an obvious approach today, but it was not always so. Our present sense of obviousness is largely due to a generation of scholars, among whom Michel Virally was a leading figure, whose work laid the foundations for our current understanding, even when their names and work seem to have faded. Perhaps the best evidence of this deeper level of influence lies in the present day relevance of Virally’s contribution.

I have provided a few examples of this relevance in section 3 of this article. One could add here his views on the increasing importance of the UN Secretary-General’s political role, which was to be largely confirmed after the Cold War, particularly as regards the exercise of good offices, the surge in peace-keeping operations, and the softer role of the UN Secretary-General as a norm entrepreneur or supporter.¹⁰⁵ But it is perhaps in connection with the development ‘perspective’ that Virally’s contribution was more clearly ahead of his time. This conclusion may, at first sight, seem paradoxical to the extent that, by many standards, the international law of development seems to belong to another era. Yet, Virally foresaw quite precisely the areas where international law would require deep reform in order to accommodate the needs of newly independent and developing states. The North–South divide, which already

¹⁰⁴ Res 2625 (XXV), of 24 Oct. 1970, UN Doc A/RES/2625 (XXV). This is highlighted in Abi-Saab, ‘La reformulation des principes de la Charte et la transformation des structures juridiques de la communauté internationale’, in *Mélanges Virally*, *supra* note 12, at 1.

¹⁰⁵ The focus of Secretary-General Ban Ki-moon on the climate negotiations in these last few years offers but one current illustration of this role.

in 1965 he viewed as a potentially more powerful and enduring cleavage than the East–West divide, remains a major political fact of our present international legal system. And the areas of tension where this divide has found its most striking expressions, namely international trade law, international investment law, and international environmental law, were accurately identified by Virally as early as in the 1970s.

These are but a few reasons why I believe that the work of Michel Virally deserves the explicit attention of present generations of scholars. He was not only a man of his time, but in many ways he also possessed the secret of tomorrow.

Appendix: Chronological list of Michel Virally's published work

- Virally, M., *L'Administration Internationale de l'Allemagne: Du 8 Mai 1945 au 24 Avril 1947* (Paris: Pedone, 1948) [German translation: *Die internationale Verwaltung Deutschlands vom 8. Mai 1945 bis 24. April 1947* (Baden-Baden: Régie autonome des publications officielles, 1948)].
- Virally, M., *L'introuvable 'Acte de gouvernement'* (Paris: Librairie générale de droit et de jurisprudence, 1952)
- Virally, M., 'La condition internationale de la République Fédérale d'Allemagne Occidentale après les Accords de Paris', 1 *Annuaire français de droit international* (1955) 31–52.
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