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## Impressions - Reviving a Tradition

Beginning in 2011, EJIL published occasional *Impressions* – ‘reviews’ of sorts, in which academics reflected on works that shaped their approach to international law. Introducing the idea, Isabel Feichtner, EJIL’s Book Review Editor at the time, expressed her hope for ‘personal reflections’ by ‘older, possibly wiser, scholars of public international law’, which would highlight ‘the impact a book has had on their own thinking as well as its past and continued relevance for public international law scholarship’ (22 *EJIL* (2011), 617). That very much remains our hope today; and we continue to believe that *Impressions* can complement and enrich EJIL’s Review section. We are delighted to revive the tradition with an *Impression* by Pierre-Marie Dupuy, who reintroduces a book published nearly 50 years ago – Michel Virally’s *L’Organisation mondiale*.

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The new reading of a work nearly 50 years after its publication is a revealing test; we know, from reading the first pages, in which respect it is still interesting and whether it remains interesting at all. For Wolfgang Friedmann’s book, *The Changing Structure of International Law*, published in 1964,<sup>1</sup> the result is very positive – as I have had occasion to describe in the pages of this journal.<sup>2</sup> For the purposes of this new series of *Impressions*, I intend to focus on a second work, which equally meets the test of ‘rereading,’ and it is Michel Virally’s *L’Organisation mondiale*, published in 1972, eight years after Friedmann’s *Changing Structure*. The two authors knew each other well; both had discerned, with a few others,<sup>3</sup> the importance of the radical change in international relations brought about by the creation of the United Nations (UN) in 1945 and the attendant institutionalization of international politics and law. The title of Michel Virally’s book is in some respect a play on words: *L’organisation mondiale*, in French, can be rendered as the ‘World Organization’ but also as the ‘Organization of the World’. What the author sought to achieve is an analysis of the structure and functions of the UN as the most ambitious organization at the international level. Beyond this specific institutional framework, which includes the specialized agencies of the UN, he also shows how much the management of relations between sovereign states has been deeply modified by this institutional innovation, of which the League of Nations was only a very imperfect precedent.

<sup>1</sup> W. Friedmann, *The Changing Structure of International Law* (1964).

<sup>2</sup> See Dupuy, ‘A Transatlantic Friendship: René-Jean Dupuy and Wolfgang Friedmann’, 22(2) *European Journal of International Law* (2011) 401.

<sup>3</sup> See *ibid.*

To analyse a phenomenon that was at once juridical, political and social required an author who was both a sharp-minded jurist and a specialist in political science. Michel Virally was both, and brought many more qualifications to the task: he had been trained according to the requirements imposed on public law professors in France, which, at the time perhaps even more than today, meant he would approach international law from a broad academic background.<sup>4</sup> But Virally, quite apart from his ‘French’ education, was also, let us remember, familiar with Friedmann’s work and a prominent philosopher of law who had published *La pensée juridique* (*The Legal Thought*),<sup>5</sup> a rigorous critical commentary on Hans Kelsen’s *Pure Theory of Law*, in 1960. Virally is furthermore credited with having coined the concept of *droit du développement* (law of development), which was particularly fertile in the legal science of French expression, and he wrote the first seminal French language article on the concept of *jus cogens*. Last but not least, Virally was also a practitioner, pleading several times before the International Court of Justice (ICJ) and later becoming one of the very first members (and vice-presidents) of the Iran–US Tribunal. He was thus well placed to analyse the ‘Organization of the World’.

The stated purpose of the book is to provide an overview of the UN system ‘with which the World Organization today identifies itself’, in a world that, as Virally pointed out even then, was marked by the rise of electronic technologies. This technology was heralding a general movement of interdependence and communication between peoples on a planetary scale along the model of what Pierre Teilhard de Chardin had called some decades before the ‘noosphere’ – a concept that prophetically seemed to anticipate the digital revolution and the creation of a universal network of communication of global scale. If the word ‘globalization’ was not yet used by Virally, the reality of the phenomena associated with globalization was nevertheless identified in this 50-year-old book.

Of course, what characterized international relations at that time was the division of the world between ideologically antagonistic blocs and the triangle of inter-competitive relations between East, West and the new sovereign countries claiming, following decolonization, their right to development and using, in particular, the United Nations General Assembly (UNGA) as a quasi-universal forum and the main source of ‘soft law’. And, indeed, Virally’s discussion reflects the fact that the UN had more political and legal importance at the time than it does today. However, this is yet another reason for rereading Virally: it allows us to appreciate the relative erosion of the role of the UN as the only universal institution with general competence for the promotion and maintenance of peace through cooperation. *L’Organisation mondiale*, by the depth of its analysis combining the theoretical, legal and social dimensions, recovers the significance of the creation and functioning of the UN and the dense network of specialized agencies it coordinates.

In the first part of the book, the examination of the institutional instrument reveals the originality of the World Organization in relation to historical antecedents, focusing on the dynamic analysis of what the author calls ‘the constitutional balances within

<sup>4</sup> Professors of law are recruited in France at the national level, every two years, after the writing of a special doctoral degree, through the highly selective *concours d’agrégation des facultés de droit* (public law) covering, among other disciplines, constitutional law, theory of law and that part of political science directly connected with constitutional law.

<sup>5</sup> M. Virally, *La pensée juridique*, preface by P.M. Dupuy and C. Leben (2010).

the Charter' and their evolution in UN practice. Michel Virally was one of the first to highlight the importance of the 'deliberative function' in the international order and to underline how the institutional framework gave multilateral diplomacy a new framework, achieved notably by borrowing features from the life of parliamentary institutions to establish a 'diplomatic forum' at the international level. His description of this forum was not offered from an exclusively academic context. The author having spent a great deal of time in New York as well as in Geneva,<sup>6</sup> observed the institution from inside, empirically examining how it functioned and how, to a large extent, it still does today. The analysis of the UN decision-making process allowed him to highlight the complexity of relations established between the Secretary-General, the Secretariat and the delegations of member states – important interactions left to a side in many of the more doctrinal legal texts. Nevertheless, Virally's analysis was sensible to how the ICJ in 1949 had characterized the legal personality of the organization in relation to its member states.<sup>7</sup>

The author thus notes not only the real significance, but also the limits, of the political weight of the UN. He observes, strikingly enough, the symbolic dimension of the organization's procedures, noting, for example, that its 'kind of action may [at times] be close to a show. It is intended to impress a public from which the authors do not always separate. One could sum everything up with one word: it's theater; political theater – as formerly in Greece – but true theater' (at 221). And he adds:

At the level of the intergovernmental organs, at least when there is no illusion about the chances of obtaining the necessary means to act in the sense desired by the great number [of member states], one can seek to give the illusion of action by the multiplication of debates and resolutions, the accents of which are as categorical and radical as possible, to the extent and in consideration of the impotence in which the organization is placed. It is ... an international form of 'agit-prop' but which quickly leads to a culture – and almost to a worship – of unreality, if not inefficiency, and which can also be marked by partisan preoccupations rather than a concern to promote the development of international cooperation. (at 222)

As this passage makes clear, while mindful of the qualitative leap marked by the adoption of the Charter of the United Nations (and while sharing the UN's underlying ideology), Virally did not yield to the lyricism or hyperbole popular among authors who are (or were) not always fully aware of the actual functioning of international institutions.<sup>8</sup> On the contrary, Virally emphasized the need to rationalize the often incoherent activities of the UN's organs whose competences were becoming entangled, and he was acutely aware of the dangers inherent in the increasing bureaucratization of any institution.

The second part of the book is entitled 'The Construction of International Society'. It analyses the UN as an instrument of universalizing, unifying and developing both international relations and the law governing them. In this well-structured analysis,

<sup>6</sup> Michel Virally was still at that time professor at the Institut de Hautes Etudes Internationales in Geneva (now the Graduate Institute of International and Development Studies) before becoming professor in Paris at the Université Panthéon-Assas.

<sup>7</sup> *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 11 April 1949, ICJ Reports (1949) 174.

<sup>8</sup> This critical remark may in some respect be applied to some highly stimulating authors including Raymond Aron and Jürgen Habermas.

Virally assesses the UN's action in support of non-self-governing territories and the granting of independence to peoples under colonial domination. The author highlights, in particular, the degree of ideological unification of the world around a core set of principles, achieved in spite of (or thanks to) a constant confrontation between competing ideologies: the phenomenon of 'peaceful coexistence' among states with different political regimes is examined with precision. This is of interest, especially at the present time when the period between the late 1940s and late 1980s is roughly depicted under the catch-all name of 'Cold War'. Virally's analysis allows us to appreciate the amazing fertility of peaceful confrontation between competing ideologies within UN bodies, culminating in UNGA 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.<sup>9</sup> It is a powerful reminder of how, ever since its creation in 1945, the UN has aimed to construct an international community radically different from the interstate society that failed to avoid two world conflicts.

This desire for change, beyond the heated rivalries between the Western bloc, faithful to economic liberalism, and the socialist countries attached for their part to communist ideology, was at the time encouraged within the UN by the search for a common ground of mutual understanding. Soviet diplomacy under the auspices of Andrei Gromyko then particularly animated the ranks of the UNGA, and the normative record of the period proves that the East-West rivalry of the time could be constructive in contrast to today's challenges. Virally obviously could not compare his own experiences with those of the present times, but he was one of the first to show masterfully how the UN, as a meeting point (for the demands of the South for development, of the West for human rights and of the East, anxious for political and strategic stability), was the privileged site of normative effervescence, which characterized the period until the collapse of the Berlin Wall. His discussion of the 'Construction of the International Society' also includes an appreciation of the relationship between human rights and peoples' rights, which would eventually converge with the adoption, in 1986, of the UNGA's declaration on 'the right to development' – an evolution anticipated in the work of Michel Virally. Quite apart from human and peoples' rights, Virally analyses the UN's influence on the gradual unification of international law, which includes not only comments on the codification and progressive development undertaken by the International Law Commission (ILC) but also coverage of other fields (such as conventions of international space law), which were codified outside the ILC.

It is also worth recognizing, upon rereading this work, how masterfully the author knew how to change his focus, almost in the photographic sense of the term, and, taking a step back, comment on the socio-political dimension of the various activities of the UN as well as of the UN specialized agencies. He did so by re-examining the

<sup>9</sup> GA Res 2625 (XXV).

visions developed even before the creation of the organization – in particular, by David Mitrany and the functionalist school.<sup>10</sup>

While recognizing the relevance of a number of postulates of functionalists, including the unlimited nature of the process of generalization of international cooperation, Michel Virally shows how much functionalism under-estimated the need to complement technical governance with political decision-making. There is no field of functional cooperation that does not become a political issue, and, yet, '[t]he ideology of functionalism ... is a reformist ideology, but, passively, it expects the changes it aims for to come about quite naturally' (at 345ff). The author points to the contrast between the purely functionalist vision of international cooperation and the voluntarist ideology of development as it animated the organization at the time. He compares in a rather prophetic way the goal of economic development with that of the protection of the environment, still in its infancy in 1972; both can only be attained if the slow pace, with which the functionalist mechanisms operate by themselves, is overcome. Virally's analysis highlights how much the effectiveness of actions of international institutions in pursuit of common goals depends on political support. Any functional cooperation must be animated in any case by the broadest possible measure of political support; as the UN's attempts to bring about effective policies of environmental protection illustrates, this remains a problem to this date.

While Virally could not anticipate these particular developments, his analysis of the UN's activities in the field of functional cooperation is of lasting relevance. The pages dedicated to the UN as a tool for development are of particular interest for understanding the genesis of the international development strategy and the way in which the organs of the organization have gradually learned, particularly with the establishment of the United Nations Conference on Trade and Development, to broaden and deepen their perception of development, not only as an economic, but also as a political and social, process.

The last part of the book, dedicated to the maintenance of peace, seems the most removed from the present time. In this regard, *L'organisation mondiale* reflects the concern of an earlier era. Yet, again, future developments are anticipated with surprising foresight. For example, Virally noted the evolution from peacekeeping – from a narrow vision of the non-use of force – towards the promotion of peace and 'peace building', and he clearly saw the need to diversify the mandates of peacekeeping operations, the number of which was already increasing at the time of his writing. In this sense, Virally's work anticipates the broader perspectives that Secretary-General Boutros Ghali developed in his Agenda for Peace in June 1992. The need for a clear mandate for operations as well as for the cohesion and support of the UN Security Council for the long-term actions undertaken by the UN and the need for economic, military and, even more, financial support from member states (beginning with the permanent members of the Council) were already inscribed in Virally's conclusions, in which he outlined a 'strategy of peace'. His book, in many ways prophetic, allows readers to understand not only the UN's 'purpose of purposes' (*le but des*

<sup>10</sup> D. Mitrany, *A Working Peace System* (1943).

*buts*’) and its internal dynamics but also the intrinsic limits to the effectiveness of the organization:

The question of the ability of the World Organization to preserve peace thus relates directly to the ability of Member States to make the contributions – political, financial, military and otherwise – without which it would be nothing but an empty shell. Once again, this is the question: to want or not to want? which is posed. The instrument exists. It is in working order. Do we want to use it? (at 530)

The reading of Michel Virally’s work has had a decisive influence on my teaching of the law of international organizations and, more particularly, that of the UN.<sup>11</sup> It has also encouraged me to further analyse the actions of states within the organization, as well as the actions of the organization towards the member states, by seeing it as an entity that is at the same time politically dependent of the latter but also legally autonomous and able to take initiatives that are often decisive, including in the political order. Over the course of my own career, I was able to assess the accuracy of Virally’s analysis when working directly with several international organizations, including the Organisation for Economic Co-operation and Development and the European Union, as well as with the UN itself. From a broader point of view, Virally’s approach – combining rigor, method, theoretical and philosophical culture as well as empiricism and well-ordered intuition – to me remains a model of scholarship that offers inspiration for everyone.

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<sup>11</sup> See P.M. Dupuy and Y. Kerbrat, *Droit international public* (14th edn, 2018), part 1, ch. 2; see also Dupuy, ‘L’unité de l’ordre juridique international: cours général de droit international public’, 297 *Collected Courses of the Hague Academy of International Law* (2003), in particular at 106–116.