“I am well aware that confidence in the ability of the United Nations to keep the peace and to build a better world has been shaken […] The undeniable fact that the United Nations has done well in many matters, that it has important accomplishments to its credit in many fields, has not offset in the minds of people the equally undeniable fact that the nations have not yet succeeded in making the organization work in regard to other very important matters”.

These are not my words. This is the beginning of the speech of former Secretary-General of the United Nations, Mr. Trygvie Lie, at Harvard University, 74 years ago, in June 1948.

The world today is radically different from the one in 1948 or in 1945, when the Charter of the United Nations was drafted. But the “disappointment and dismay” that its people feel is similar, if not worse, today, as there are 77 years of UN history to consider, and often blame.

It is not easy to speak as Legal Counsel of the United Nations at a time when the world is facing the most serious global peace and security crisis in decades. More personally, belonging to a generation for which multilateralism and globalization appeared to be the only viable option, it is even more difficult to conceive of a failure of the basic framework of international relations which was progressively built during the 20th century.

I wish to seize the opportunity of being in this extraordinary academic forum to raise questions, rather than providing answers, in line with the question which is in the title of today’s presentation.

Are we experiencing a tournant, a historic turning point in international relations? Is multilateralism fatally wounded? Is the UN still relevant?

As a lawyer, I wish to focus my remarks on the discourse about the crisis of the United Nations from an international law perspective.

In particular because the United Nations is, first, a creation of international law. The United Nations was established through a treaty, reflecting an exceptional agreement among nations, at an exceptional time.

Second, because international law, as well as justice, are enshrined in the very first paragraph of Article 1 of the Charter of the United Nations and once again in paragraph 3 of Article 2 – as the foundations of international society.

And third, because as a lawyer, but also as an engaged citizen, the question of compliance with international law and of the effects of non-compliance, needs to be constantly reassessed.

I. [Institutional perspective: Is the United Nations still the core framework “to maintain international peace and security”?]

On the first point —the United Nations as an exceptional institution reflecting a unique international agreement between States— the question I wish to ask is whether the United Nations is still, as stated in Article 1 of the Charter, the framework “to maintain international peace and security”.

The General Assembly, at the level of Heads of State and Government, recalled this not so long ago, on 21 September 2020, when it adopted by consensus a Declaration on the commemoration of the seventy-fifth anniversary of the United Nations. The Declaration recognizes, among others, that “[t]here is no other global organization with the legitimacy, convening power and normative impact of the United Nations”.

And less than two years later, here we are, wondering whether the United Nations is

Protecting civilians in peacekeeping operations. Mediating conflicts. Supporting refugees and migrants. Advancing human rights. Standing, delivering, extending a lifeline of hope.”

- In other words, the United remains a major actor for the weak and forgotten; and it is sometimes the only actor assisting in certain countries — an institution that is ready and able to go where others are not.

- Meanwhile, at one might call the other end of the spectrum, States, in seemingly ever increasing numbers and from all regions of the world, entrust the settlement of their disputes to the International Court of Justice. And not just about what might be thought of as technical issues of maritime delimitation and such. We see the Court now seized of cases relating to major contemporary crises, including the situations in Ukraine and Myanmar.

- Also, from an accountability perspective, I can only but recall that United Nations courts and tribunals and United Nations-assisted tribunals have been established through processes governed by international law, and that the United Nations has been a place of choice for such an extraordinary development to fight impunity and to hold accountable those responsible of serious violations of international law. Almost 30 years later, we clearly see how unique were the early 90s at the United Nations, when United Nations tribunals were established by the Security Council to judge individuals for the atrocity crimes which had been committed in the former Yugoslavia and in Rwanda. Nowadays, United Nations Member States seem to have opted for the establishment of mechanisms mandated to collect evidence of crimes, to be used in the future in judicial proceedings, including with regard to the situation in Ukraine.

- Even those who have lost hope in the ability of the United Nations to maintain international peace and security will cynically agree that the General Assembly is, at the very least, a showcase — a vitrine — of Member States’ positions. If the United Nations is “just” a “talking shop”, it is, at the same time, a unique forum in which Governments have to meet with each other, to explain and justify themselves and to set out their standpoints.

Things are certainly not as they should be.

The Secretary-General, in his Global Wake Up Call of July 2020, had already sounded the alarm, when he noted that "[t]oday's multilateralism lacks scale, ambition and teeth – and some of the instruments that do have teeth show little or no appetite to bite, as we have seen in the difficulties faced by the Security Council […] A new, networked, inclusive, effective multilateralism, based on the enduring values of the United Nations Charter, could snap us out of our sleepwalking state and stop

Similarly, it may well be, as Immanuel Kant said, that, “Der Friedenszustand unter Menschen, die neben einander leben, ist kein Naturstand (status naturalis), der vielmehr ein Zustand des Krieges ist”. [“The state of peace among men living side by side is not the natural state (status naturalis); the natural state is one of war”.] Nevertheless, it is in terms of international law that “men” justify their resort to war and it is in terms of international law that they justify their responses; likewise, when it comes to how war is waged. International law thus provides stability, even when and where other processes and tools fail.

The ongoing armed conflict in Ukraine and the situation that led to it are no exception. The Russian Federation has justified its actions in terms of international law; and others have also justified their responses in terms of international law. However, using the language of international law does not necessarily mean that its use is legally sound. Still, it is an endorsement of the existence of international law as a process, a tool and, as I just mentioned, a common language.

The principal organs of the United Nations, when they speak, use the language of international law as well. The International Court of Justice is an obvious case. But it is far from being the only one.

Intergovernmental organs also speak international law. They do so in abstract declarations that are specifically aimed at articulating their understanding of the state of international law. The so-called Friendly Relations Declaration, adopted by the General Assembly in 1970, is but one example.

But they also do so when responding to specific situations.

The Security Council has done so on a number of occasions, in particular under Chapter VII of the Charter. Among others, it has determined that a particular use of force was unlawful: for example, the Iraqi invasion and occupation of Kuwait or Israel’s attack on nuclear installations in Iraq in 1981. It has interpreted what would constitute a threat to the peace, as for example regarding terrorist acts. And it has also

referred to specific acts that would constitute a violation of international humanitarian law in the context of the protection of civilians.

The role of the General Assembly in articulating international law views is also an old question from an international law perspective. Strong legal positions have been expressed in General Assembly resolutions in a number of occasions, for example with regard to apartheid in South Africa. The most recent ones are those related to the situation in Ukraine.

The General Assembly, meeting at the 11th emergency special session, adopted a resolution entitled "Aggression against Ukraine" on 2 March 2022, with 141 votes in favor, 5 against and 35 abstentions, which deplored "in the strongest terms the aggression by the Russian Federation in violation of Article 2(4) of the Charter". The General Assembly also deplored its decision related to "certain areas of the Donetsk and Luhansk regions of Ukraine as a

violation of the territorial integrity and sovereignty of Ukraine and inconsistent with

the principles of the Charter".

As to the Secretariat, and in particular the Secretary-General, while States have from time to time contended that it is not for the Secretary-General to make interpretations of international law or to assess if States are implementing or complying with it, he nevertheless plays an important role. In particular, he speaks where others may not be in a position or willing to do so.

I have recently advised the Secretary-General on his authority to make public statements characterizing the actions of specific States as unlawful and, in exercising that authority, his duty to be impartial, but not neutral.

On Ukraine, the Secretary-General has, like his predecessors, reaffirmed his role as a guardian of the Charter.

Thus, he was the first to express a legal position on the decision by the Russian Federation to recognize Luhansk and Donetsk as independent States. In his Press Statement of 21 February, the Secretary-General considered "the decision of the Russian Federation to be a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter of the United Nations".

He reiterated this the next day, referring not only to the inconsistency of that decision with the UN Charter, but also "with the so-called Friendly Relations Declaration of the General Assembly which the International Court of Justice has repeatedly cited as representing international law", and strongly stating that "[t]he principles of the UN

Charter are not an a la carte menu. They cannot be applied selectively. Member States have accepted them all and they must apply them all."

And then again, the following day, at the General Assembly.

And, on 24 February, he immediately spoke out when the Russian Federation launched its military offensive in Ukraine, affirming that it conflicted directly with the Charter and its prohibition of the threat or the use of force. Interestingly, the General Assembly endorsed the Secretary-General's statement in its resolution of 2 March 2022.

In this regard, it appears that the Secretary-General is in a unique position to call upon States to comply with their obligations under international law, and to resolve their disputes in accordance with international law. The Secretary-General, as well as previous Secretaries-General, has done so in a wide range of contexts. Their calls, and reminders, for States compliance with international law have not only been made publicly but have also been made away from the public eye and to those directly concerned as part of the behind-the-scenes political activity of the Secretary-General.

I understand that the frustration is immense nowadays as we are confronted with major violations of the most basic rules of international law. But we need to recall that international law is most of the time a tool that is used and respected by States and other international actors. Also, that the role of international law is more important now than ever, as we confront existential problems that no State can handle on its own and that can only be resolved through the negotiation of specific multilateral agreements.

For the last seventy-seven years, the United Nations has demonstrated its unique role both as a place where international law, particularly in the form of multilateral treaties, is developed, and as an actor directly participating in the making and interpretation of international law.

The United Nations continues to offer a unique platform and international law framework to address contemporary global challenges. Article 1(4) of the Charter provides that one of the purposes of the United Nations is to be a "centre for harmonizing the actions of nations". The Sixth Committee, open to all Member States, is the primary forum for the consideration of legal questions in the General

Assembly. The International Law Commission, established by the General Assembly and composed of 34 independent experts, is entrusted with the mandate of making recommendations for the purpose of "encouraging the progressive development of international law and its codification". Other intergovernmental bodies, like the Human Rights Council or UNCITRAL, contribute to normative developments in specific thematic areas and in accordance with their mandates.

The ongoing discussions within United Nations intergovernmental bodies on a number of issues of global concern, such as the use and misuse of information and communication technologies, show Member States' commitment to the United Nations as a place of choice. Again, the discussions in the framework of the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction underscore the importance of the United Nations as a unique forum specifically for the development of international law. I could go on.

All this having been said, we cannot equate the success of international law with the adoption of new legal instruments. What really matters is that international law instruments are implemented and complied with. Which brings me to the third question that I anticipated at the beginning: where are we regarding compliance with international law?

III. [Where are we regarding compliance with international law?]

In the General Assembly's Declaration on the occasion of the 75th anniversary of the UN, Member States declared that "[w]e will abide by the international agreements we have entered into and the commitments we have made". Interestingly, they also reiterated "the importance of abiding by the Charter, principles of international law and relevant resolutions of the Security Council" and specifically stated that "[i]international humanitarian law must be fully respected".

This statement, which favors a robust and international law-based approach to international relations, might now be thought a cynical statement, considering what has happened less than two years later.

Yet, if we are tempted to think in such terms, we should also reflect upon what States have done in response.

The consequences for agThe aes f(o t)8.5.006 T-0 0 1ginationtifact q01 Tc 0.002.3(m]4

Court, but also through the dispatch of forensic teams to assist in investigating possible atrocities.

On a different note, I think there must be consequences in terms of “soft power”. Just to look at things from a legal perspective: the Russian school of international law has been an important influence for well over a century. Russia was the moving force behind the two Hague Peace Conferences of 1899 and 1907; and all international lawyers are familiar with the so-called “Martens clause”, named after the Russian delegate to the Conference of 18