My Excellency, Madame Secretary General, Ladies and Gentlemen:

It is a great pleasure to speak to you today at this wonderful conference about "Arbitrating for Peace"; I am very grateful to the SCC and in particular to its Secretary General, Annette Magnusson, for this invitation.

Indeed, this conference celebrates not only the 100 years of the Arbitration Institute of the Stockholm Chamber of Commerce but also the launch, at this occasion, of this remarkable book with the same title "Arbitrating for Peace – How Arbitration Made a Difference", which includes contributions from some of the most renowned arbitration practitioner and scholars around the world.

Particularly for the SCC, this topic is very well chosen: SCC arbitration has a long tradition of being chosen by parties from different ideological and political systems as a neutral mechanism to resolve their disputes in a peaceful manner.

In these opening remarks, I will not address any specific cases but rather limit myself to two overall questions that hopefully will help to set the scene for the debate that will follow. First, what do we mean by "Arbitrating for Peace"? Second, how can arbitration contribute to the development of peace?

What do we actually mean when we say "Arbitrating for Peace"? What is "peace"?

I did something which I always tell my students *not* to do. I googled "definition of peace" and here is what I got:

- "*freedom from disturbance*"; or
- "*absence of violence and disorder*"; or
- "*a period in which there is no war*".

The first definition, "freedom from disturbance", is very broad – it encompasses ways to prevent or address any form of disturbance. In that sense, any arbitration, any court litigation, indeed any form of dispute resolution, aims for peace – peace that is between the disputing parties, between the claimant and the respondent – as an end to their specific dispute.

However, in this book, and for today's conference, "peace" is understood in the other, more specific, more restrictive way – and that is how arbitration can make a difference in the general quest to reduce violence, political tensions or even outright war.

I have to admit, I could not resist the temptation to go a little bit beyond a mere google search – so I looked into some definitions proposed in the social and political sciences. And here, scholars make an interesting distinction between "negative" and "positive" peace: "Negative peace" is the absence or elimination of direct violence; "positive peace", however, focuses on the inherent causes that might bring about violence, such as social injustice or the failure to meet basic human rights. In the latter sense, arbitration could also be seen as promoting peace in contributing to economic and social development. I'll come back to this idea a little later.

Now, having defined what we mean by "arbitrating for peace", we can now turn to the second question: how can arbitration in concrete terms make a difference and help foster or preserve peace?

Looking at the various excellent contributions in this book, one can distinguish a number of different types of arbitrations that in the past have helped to promote peace. I have put them into five separate categories:

1). The first category that comes most readily to mind are **inter-State border disputes** – and indeed the book contains some salient examples.

One is the **Rann of Kutch Arbitration** between India and Pakistan, which was about the border of this region between the two States. The arbitral tribunal, chaired by no one less then Gunnar Lagergren, rendered an award in February 1968. As noted by Robert Volterra in the relevant chapter of this book,[1] following the award the boundary was demarcated and the two countries did not resume armed conflict over sovereignty of the area. So clearly, this award can be seen as a good example of how arbitration can help to peacefully resolve territorial boundary disputes between two States on the brink of war.

2). Related to this first category of inter-State territorial dispute are other border disputes which not only involve States but also **non-State actors**, such as indigenous people.

A remarkable example of this second category is the **Abyei Arbitration**, discussed by Wendy Miles in the book.[2] This arbitration concerned the demarcation of the border of a region, the Abyei region, in Sudan which, at the time of the dispute, was still one country, a country deeply entrenched in decades of civil war. One of the parties in this arbitration was the Sudan People's Liberation Movement, a non-State representative of the indigenous people of the South fighting for the independence of South Sudan. (I should disclose that my firm, WilmerHale, represented this party in the arbitration.)

Again, an example of an arbitration in which parties (State and non-State parties) who had fought the most terrible civil wars against each other for decades accepted arbitration as an attempt to peacefully resolve their disputes.

While you may be all aware that there continues to be violence plaguing the region, the Abyei award allowed the referendum of secession to take place and South Sudan to become the world's 193rd independent State in 2011.

3). Moving along to the third category of disputes, these are inter-State disputes, but this time, not about borders but about other **issues that have the risk that the disputing States use or continue to use military violence** (if it were not for the arbitration).

Some well-known examples discussed in the book include:

- The 1872 **Alabama Claims** Arbitration between the United States of America and Great Britain about the delivery of a war ship by Great Britain to the Confederation;[3]
- The so-called **Asser Arbitration** of 1902 between the US and Russia about certain whale or seal hunting techniques;[4]
- And, just to mention a more recent one, the 1990 **Rainbow Warrior** arbitration between New Zealand and France about the consequences of French secret agents

[1] Chapter 5: The Rann of Kutch Arbitration.
[2] Chapter 14: The Abyei Arbitration: A Model for Peaceful Resolution of Disputes Involving Non-state Actors.
[3] Chapter 1: The Alabama Claims Arbitration: Statecraft and Stagecraft.
[4] Chapter 2: The Asser Arbitration.

causing the explosion and sinking of a Greenpeace ship in the Auckland harbour, because the ship and crew were protesting again French nuclear tests in the Pacific.[5]

In each of these cases, the underlying dispute (be it about ships, seal hunting, or acts of secret service agents) had the potential, according to the authors of the book, for the parties to enter (or re-enter) into armed conflict or at least face a period of serious political or economic tension (were it not for the arbitration).

4). The next and fourth category of cases are arbitrations **between a company (or individuals) and a State**.

In this category fall all the disputes arbitrated before the **Iran/US Claims Tribunal**. In the words of Karl-Heinz Böckstiegel, former President of the Tribunal and who has also contributed a chapter in the book: "*Seldom in history have States accepted and complied with undertakings regarding peaceful dispute settlement under such difficult circumstances*."[6]

He cites one example, in the fall of 1987, when Iran and the United States were undertaking military action against each other in the Persian Gulf, and a large oral hearing of the Tribunal took place at the Peace Palace in The Hague regarding a dispute which could not have been more delicate under the circumstances, namely a claim by Iran against the United States to return great quantities of certain military equipment. But according to Böckstiegel, "*the hearing was able to proceed in a professionally appropriate manner*."[7]

Also in this category of disputes between a company or individual on the one hand, and a State on the other hand, of course are **investor-State arbitrations**. Now you might ask, how is investment arbitration contributing to peace? Meg Kinnear and Francisco Grob from ICSID mention in their chapter[8] two possible ways:

First, the ICSID system has sought to depoliticise investment disputes by moving away from "gunboat" diplomacy and creating a self-contained set of rules with direct access for the investor to investment arbitration.

Second, in promoting foreign direct investment, investment treaties promote prosperity, and as such, one of the most important pre-conditions for peace. This is the notion of "positive peace" I mentioned earlier.

5). The fifth and last category are **commercial arbitrations** between two commercial companies.

Most of the time, these arbitrations will not be seen to have war or peace implications but there are exceptions where the commercial disputes are of such importance, in terms of the amounts at stake or the geopolitical implications, that indeed their resolution by arbitration might have been seen as avoiding more violent ways of confrontation.

[5] Chapter 10: The Rainbow Warrior Affair: Thirty Years After.
[6] Chapter 6: The Iran-United States Claims Tribunal: A Unique Example of Arbitrating for Peace, at §6.07.
[7] Chapter 6: The Iran-United States Claims Tribunal: A Unique Example of Arbitrating for Peace, at §6.05.
[8] Chapter 12: Asian Agricultural Products Limited v. Sri Lanka: Twenty-Five Years Later.

That is the case, for instance, with various arbitrations between Russian and Ukrainian gas companies in the aftermath of gas supply crises in 2009 and then again in 2014, all of which have been under the auspices of the SCC, and some of which are still pending.[9]

I hope these different categories have given you a flavour of how arbitration can make a difference in helping to resolve disputes peacefully. Looking back and analysing these disputes in detail, as the excellent contributions of this book have done, is hugely important.

However, we should not become complacent. The study of various cases shows many positive possibilities for arbitration but also its limits. As Judge Schwebel points out in the Introduction of the book "Arbitrating for Peace", *"[a]rbitral commitments and arbitral processes did not avoid world wars and many lesser wars. But they contributed significantly to the enhancement of peace."*[10]

This reminder is particularly welcome in times where division, confrontation, populism and nationalism are back on the political agenda in parts of the world. Kofi Annan emphasized in the Foreword to the book, that while "*peaceful resolution of disputes rarely makes the headlines*", "*the rule of law is one of the most powerful instruments we have for sustainable peace. Let us not forget*"[11]

[9] Chapter 13: RosUkrEnergo versus Naftogaz of Ukraine.
[10] Introduction, at p. 3.
[11] Foreword, at p. xxii.