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### Overview of Panel: Judges, Diplomats, and Peacebuilders: Evaluating International Dispute Resolution as a System

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## JUDGES, DIPLOMATS, AND PEACEBUILDERS: EVALUATING INTERNATIONAL DISPUTE RESOLUTION AS A SYSTEM

This panel was convened at 9:00 am, Friday, April 11, by its moderator, Anna Spain of the University of Colorado Law School, who introduced the panelists: Steven Hill of the Office of Legal Affairs, North Atlantic Treaty Organization; Won Kidane of the University of Seattle Law School; Stephen Schwebel of the International Court of Justice and Permanent Court of Arbitration; and Jolynn Shoemaker of the Center for Strategic and International Studies.\*

### OVERVIEW OF PANEL BY ANNA SPAIN<sup>†</sup>

On Friday, April 11, 2014, the ASIL Dispute Resolution Interest Group brought together a distinguished panel of experts to evaluate international dispute resolution as a system by considering if and how its varied methods, actors, and institutions interact. The panelists included the individuals listed below.

- Steven Hill is the current Legal Adviser to the NATO Secretary General and Director of NATO's Office of Legal Affairs. He formerly served as Counselor at the U.S. Mission to the United Nations (New York) and Attorney-Adviser at the U.S. Department of State's Office of the Legal Adviser.
- Won Kidane is an Associate Professor at the University of Seattle Law School and former legal counsel to the government of Ethiopia during the Eritrea-Ethiopia Claims Commission. He has authored and co-authored several books on international arbitration, including his forthcoming book *Diverse Cultures in the New World of International Arbitration* (Oxford University Press).
- Judge Stephen M. Schwebel is a leading figure in the fields of public international law and international arbitration. He served as a judge of the International Court of Justice from 1981-2000, and was the Court's President from 1997-2000. He has served as chairman or member of the tribunal in numerous international arbitration proceedings including as a member of the ICSID Panel of Arbitrators, the ICSID Panel of Conciliators and as President of the World Bank Administrative Tribunal. He is the author or editor of seven books, including *Justice in International Law—Selected Writings of Judge Stephen M. Schwebel* (1994; republished in paperback in 2008).
- Jolynn Shoemaker, an expert on women in international peace and security, is a non-resident senior associate at the Center for Strategic and International Studies, Special Advisor to the CEO of the Alliance for Peacebuilding, and former director of Women and International Security. She has also served as a legal and policy adviser at the U.S. Department of Defense and the U.S. Department of State.

The panelists took as their starting point Article 33 of the UN Charter, which envisions that the promotion of peace among nations can be achieved, in part, through the pacific settlement of international disputes.<sup>1</sup> In this way the roles of the international judge, the

\* Mr. Hill, Professor Kidane, and Ms. Shoemaker did not contribute remarks to the *Proceedings*.

<sup>†</sup> Associate Professor, University of Colorado Law School; Co-Chair, ASIL Dispute Resolution Interest Group.

<sup>1</sup> UN CHARTER art. 33:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. . . . The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.''

diplomat, and the peacebuilder, as the panel's title suggests, are connected. Recognizing that the twenty-first century is bearing witness to increasingly complex international disputes prompting the need for more nuanced forms of dispute resolution, the panel engaged in a robust discussion and debate about the interactions that can and should take place between those engaged in international adjudication and those engaged in diplomacy, mediation, peacebuilding, and other methods. In this context, the panel addressed the following issues and questions:

- What is the role of international dispute resolution—broadly defined—in the promotion of peace in today's world?
- How might we apply Hans Kelsen's vision of "peace through law"<sup>2</sup> in today's world, given changes such as the rise of non-international armed conflict?
- What role, if any, should international dispute resolution play in addressing ongoing armed conflicts such as the situations in Crimea between Russia and Ukraine, in the Central African Republic, and in Syria?
- Is the UN Security Council willing and/or able to promote international dispute resolution through, for example, strengthening the implementation of arbitral awards?
- As discussed in the context of the Eritrean-Ethiopian Claims Commission and the Abyei Dispute, arbitrating disputes in the context of armed conflict poses special challenges as well as opportunities. Given these, is arbitration an effective tool for addressing such cases?
- Noting UN Security Council Resolution 1325 (adopted on October 21, 2000), what steps should be taken to strengthen women's leadership and participation in the prevention of conflict and promotion of peace?
- In 1992, UN Secretary-General Boutros Boutros-Ghali's *An Agenda for Peace* identified the concept of post-conflict peacebuilding defined as "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict." What relationships, if any, should exist between the aims of peacebuilding and of international dispute resolution today?<sup>3</sup>

In discussing these and other important topics, this panel raised awareness about the value of understanding international dispute resolution as a system and the need to create forums for increased interaction among the institutions and actors responsible for resolving international disputes.<sup>4</sup> To heed this call, we must recognize that although the international judge, diplomat, and peacebuilder serve different functions and are subject to distinct rules, they ultimately work toward a common aim of strengthening the mechanisms that support the promotion of peace in the twenty-first century.

<sup>2</sup> This was the title of the important book by Hans Kelsen, published in 1944, which set forth his vision for a UN system that aimed for "peace guaranteed by compulsory adjudication of international disputes" (Part I).

<sup>3</sup> Boutros Boutros-Ghali, *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*, REPORT OF THE SECRETARY-GENERAL PURSUANT TO THE STATEMENT ADOPTED BY THE SUMMIT MEETING OF THE SECURITY COUNCIL ON 31 JANUARY 1992, A/47/277 - S/24111 17, (June 17, 1992) available at [http://www.unrol.org/files/A\\_47\\_277.pdf](http://www.unrol.org/files/A_47_277.pdf).

<sup>4</sup> For scholarship considering interactions among various methods of dispute settlement, see DIPLOMATIC AND JUDICIAL MEANS OF DISPUTE SETTLEMENT (Laurence Boisson de Chazournes, Marcelo G. Kohen & Jorge E. Viñuales eds., 2013); Susan D. Franck, *Using Investor-State Mediation Rules to Promote Conflict Management: An Introductory Guide*, 29 ICSID REV. 1, 3 (2014) ("The United Nations Conference on Trade and Development (UNCTAD) has published multiple proceedings suggesting the utility of mediation, and other recent publications indicate that UNCTAD believes that ADR constitutes a vital piece of the puzzle related to the future of international investment law."); Anna Spain, *Integration Matters: Rethinking the Architecture of International Dispute Resolution*, 32 U. PA. J. INT'L L. 1, 2 (2010) ("[T]here is a need to restructure the international dispute resolution system to create a framework for understanding how to systematically integrate IDR methods across forums.").