**Summary of speech delivered by Mr. Rajiv Dutta, Senior Advocate at the 2nd Annual LegalEra International Arbitration Law Summit (IALS 2015) held on 17th January, 2015 at Hotel Taj Mahal, New Delhi‏.**

**PANEL - 2 : International Experts Panel on Dispute Resolution - "Ways to Deal With Dispute Resolution Globally"**

**Role of cultural differences in resolving global disputes:**

In the contemporary day and age, disputes arise out of transactions taking place in the global arena where, in a majority of cases, parties are from different countries. Coming from different countries would naturally involve different cultural considerations and a different cultural outlook. For instance, a Japanese would have a distinguishable cultural viewpoint from an American or an person of African origin. Understanding this type of dispute and taking remedial measures towards this at the outset would enable the mediator/arbitrator/conciliator to bring about a better dispute settlement outlook to the negotiating table. Culture is to be dealt both at the macro level as well as the micro level inasmuch as even a minute difference or alteration in the viewpoint of the mediator would impact the outcome of the dispute. Therefore, to ensure better resolution of disputes, one of the ways would be to understand the cultural outlook of both the parties.

**Role of Globalisation:-**

Globalisation has reduced the importance of National Boundaries. The international borders between States have reduced in importance as parties are quickly traversing the boundaries by referring matters to Institutional Arbitration which are not bound within States. Along with the phenomenon of Globalisation, cultural traits have also started gaining importance with international parties expecting negotiators to have a fairly clear idea concerning their particular cultural affiliations and cultural mannerisms which, while being different, have to nevertheless, be kept in mind for faster resolution of disputes at the global arena. Understanding the twin criteria of Globalisation and the impact it would have vis-a-vis culture would help immensely to cull out the main dispute and resolve the same, rather than getting bogged down in technical circumstances that detract from the main dispute. A negotiator getting bogged down in cultural niceties and technical considerations would never be capable of progress. Therefore, one of the ways would be to keep in mind the cultural sensitivities of the parties for faster and effective dispute resolution.

**Role of international conventions in resolving disputes:-**

In the international arena, various conventions have been framed, enforced and enacted which are in force to regulate international conduct between parties. This can be considered as merging public international law, inter-se nations and private international law, inter-se private contesting parties and therefore, conventions have been framed to regulate disputes that can arise. Certain of the more important conventions that have been framed especially in relation to Dispute Resolution at the global arena are as follows:-

* **Convention on the Recognition and Enforcement of Foreign Arbitral Awards** framed at the United Nations Conference on International Commercial Arbitration held on 7 June, 1959 at New York. (In short called the "New York Convention")

The Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges Parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of Parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal. (India ratified the Convention on 13.07.1960 and was enforced on 11.10.1960)

* **United Nations Commission on International Trade Law (UNICTRAL) Arbitration Model Law (1985), with amendments as adopted in 2006**

The Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world.

* **United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, 1976 (2010 Revision)**

The UNCITRAL Arbitration Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in ad hoc arbitrations as well as administered arbitrations. The Rules cover all aspects of the arbitral process, providing a model arbitration clause, setting out procedural rules regarding the appointment of arbitrators and the conduct of arbitral proceedings, and establishing rules in relation to the form, effect and interpretation of the award.

The original UNCITRAL Arbitration Rules were adopted in 1976 and have been used for the settlement of a broad range of disputes, including disputes between private commercial parties where no arbitral institution is involved, investor-State disputes, State-to-State disputes and commercial disputes administered by arbitral institutions. In 2006, the Commission decided that the UNCITRAL Arbitration Rules should be revised in order to meet changes in arbitral practice over the last thirty years. The revision is aimed at enhancing the efficiency of arbitration under the Rules and does not alter the original structure of the text, its spirit or drafting style.

* **Convention on the settlement of investment disputes between States and nationals of other States**

(Framed at Washington, April, 2006)

The **International Centre for Settlement of Investment Disputes** (ICSID or the Centre) is established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention or the Convention). The Convention was formulated by the Executive Directors of the International Bank for Reconstruction and Development (the World Bank). In accordance with the provisions of the Convention, ICSID provides facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States. The provisions of the ICSID Convention are complemented by Regulations and Rules adopted by the Administrative Council of the Centre pursuant to Article 6(1)(a)–(c) of the Convention (the ICSID Regulations and Rules)

* **Pacific (Peaceful) Settlement of Disputes under International Law :**

 Dispute resolution mechanisms are an important part of public international law. Peaceful settlement of disputes is essential for upholding the international law regime. This has lead to the creation of PCA in the year 1899, inclusion of Chapter VI for the pacific settlement of disputes and Part XV of the United Nation of the Convention of the Law of Sea etc. Article 25 of the WTO Dispute Settlement Understanding also provides for arbitration, but which has not been utilised completely for the settlement of disputes.

This push for settlement of disputes under international law, has lead to the creation of many institutions exclusively to handle disputes. From the creation of the International Court of Justice (ICJ) which is the successor court to the Permanent Court for International Justice(PCIJ) at The Hague, Netherlands; the International Tribunal for the Law of the Sea (ITLOS) under the UNCLOS based out of Hamburg, Germany and the creation of many ad-hoc Arbitration Tribunals.

**Permanent Court of Arbitration (PCA) :-**

The PCA was established by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899 during the first Hague Peace Conference. The Conference was convened at the initiative of Czar Nicolas II of Russia "with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments." The most concrete achievement of the Conference was the establishment of the PCA: the first global mechanism for the settlement of disputes between states. The 1899 Convention was revised at the second Hague Peace Conference in 1907.

The PCA is an intergovernmental organization with 116 member states. Established in 1899 to facilitate arbitration and other forms of dispute resolution between states, the PCA has developed into a modern, multi-faceted arbitral institution that is now perfectly situated at the juncture between public and private international law to meet the rapidly evolving dispute resolution needs of the international community. Today the PCA provides services for the resolution of disputes involving various combinations of states, state entities, intergovernmental organizations, and private parties. International commercial arbitration can also be conducted under PCA auspices.

Dispute resolution administered by the PCA includes arbitration, mediation, conciliation, and fact-finding commissions of inquiry. Through a Host Country Agreement, the host country and the PCA establish a legal framework under which future PCA-administered proceedings can be conducted in the territory of the host country on an ad hoc basis, without the need for a permanent physical PCA presence in that territory. The PCA has signed such a Host country Agreement with India but which has not been utilised nor published.

But, India has been a party to arbitration in the PCA with the Indus Waters Kishenganga Arbitration (Pakistan v. India) and the Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India).

**Private International Dispute Resolution Institutions:-**

Apart from the above, there are other private international institutions who are also involved in Dispute Resolution at the international level amongst sovereign States inter se and citizens of sovereign States inter-se. Examples of such institutions are the LCIA,SCIA, ICC, HKIAC etc who require all parties who refer disputes to adhere to their particular rules and regulations.

**Domestic Legislations dealing with International arbitration:**

Various nations have made unique statues to deal exclusively with international commercial arbitration. This can be seen in Singapore International Arbitration Act (Singapore),Swiss Private International Law Act (Switzerland), France etc. These legislations are progressive steps to encourage international arbitration and allows for quicker and effective remedies for the parties participating in international arbitration.

**Requirement of a World Arbitration Court:-**

Setting up of a World Arbitration Court along the lines of CAS which would lead to harmonization of international arbitration law and lead to final adjudication of dispute between the parties, against which no appeal lies, and whose decisions are deemed enforceable in Domestic Jurisdiction through the New York Convention or any other treaty based body. The World Arbitration Court would be the final authority to decide all matters capable of arbitration and which would have overarching authority over the various institutional arbitration mechanisms. It may also be suggested that enforcement, which for so long has to be carried out in the domestic jurisdiction can be referred to the World Arbitration Court so to cut through enforcement challenges. Compelling sovereign States to enforce awards would ensure transparency and lead to better implementation at the global arena and hence ensure a level playing field between developed and developing countries.

**\*\*\*\*\*\***

**Additional points discussed for taking International Arbitration Forward**

1. Framing of a separate legislation having ad-hoc status for regulating International Commercial Arbitration within India. Instead of having one combined legislation dealing with both domestic and international arbitration, as is the present case (Arbitration and Conciliation Act, 1996), separate legislations needs to be enacted, wherein one Act deals exclusively with all aspects connected with domestic arbitration and another which deals exclusively with International Arbitration.
2. Setting up of an International Arbitration Tribunal on the lines of SIAC, LCIA, HKIAC to welcome settlement of disputes within India. Institutional Arbitration as it exists within India is limited in its applicability and is not widely resorted to. Indian corporate entities resort to foreign institutions such as LCIA, SIAC etc. leading to unnecessary expenses and needless travel. Having a tribunal on lines of the other International Tribunals would enable faster and better disposal rates.
3. Setting up of a World Arbitration Court capable of being a final appellate body over the various Institutional Arbitration mechanisms including ad-hoc arbitration so as to finally resolve all arbitration disputes without recourse to the domestic jurisdiction. The World Arbitration Court ought to have the power to enforce the awards. Having a matter proceeding in a regular civil court, and thereafter getting referred to Arbitration, where the enforcement has to be done by the domestic court is a needless waste of time and needlessly stretches the matter. A number of matters are pending enforcement as on present date in domestic jurisdictions. Giving the power to enforce awards to the World Arbitration Court would ensure that faster disposal rates are achieved. The present structure requires parties to enforce both domestic as well as international courts in the domestic Courts.
4. Remove the right to set aside arbitral awards, and granting such right only in exceptional circumstances. Arbitral awards, by and large, are deemed to be enforceable on both the parties. Belatedly challenging the award at a later stage due to certain fallacies or grant of lesser benefits than envisaged would sully the entire arbitration process, as time, effort and resources have already been expanded.
5. Enforcing international conventions on resolving disputes in a stringent manner so as to ensure predictability and security to the global commercial arena.
6. Establishment of Review Committee to relook at the New York Convention of 1958 and to suggest changes, amendments, modifications as may be required keeping in mind the changing times. It is pertinent to note that global 0arbitration is conducted under the New York Convention, despite the presence of the later European Convention on International Commercial Arbitration framed in 1961 at Geneva. Therefore, it is important to review the New York Convention.
7. Making Arbitration a prerequisite between parties, granting powers to refer parties to arbitration if, at the outset, the domestic Courts feel that there is nothing in the dispute and the same is inherently capable of settlement due to personal relations between parties.
8. Having international arbitrators to arbitrate between parties, which would permit an international perspective and understanding to disputes while being regulated under rules of the seat of arbitration.

\*\*\*\*