priate course, according to him, ought to be to build up areas of agreement first and see how far the propositions adopted by the Committee were acceptable to Asian and African countries rather than to start with the difference of opinion between the various Delegations.

The Observer from the League of Arab States as also the Observer from COMBODIA made general statements on the subject.

At the end of the above discussion, the Chairman appointed an Ad Hoc Sub-Committee to go into the question of finding a starting point for discussion and to report back to the Committee at its next meeting. The Ad Hoc Sub-Committee consisted of the delegates of India, Pakistan, Iraq, Ghana and Japan.

In the Fourth Meeting held on 22nd January, 1970, the Chairman of the Ad Hoc Sub-Committee reported that the Ad Hoc Sub-Committee had agreed to recommend that the Committee should devote its attention to the uses of waters particularly in the context of food and agricultural programmes of Asian and African countries. The Chairman added that although this was the general consensus in the Ad Hoc Sub-Committee, the Delegate of Japan was of the view that the subject should be considered with particular reference to agricultural, industrial and consumptive uses of waters. As regards the basis for discussion, the Chairman said that the Ad Hoc Sub-Committee had agreed that the Sub-Committee should take up the joint proposal of Iraq and Pakistan and the first eight articles of the Helsinki Rules which would be formally introduced by the Delegation of India as their proposal for the basis of discussion.

The Delegate of Japan stated that the industrial uses of waters could become a vital question for the Asian-African countries in the process of their industrialisation and consequently he felt that the industrial uses of waters should be given no less priority than other uses of waters when the

Committee considered the subject. He pointed out, however, that if the consensus in the Committee was to adhere to the Karachi Session resolution, his delegation would leave the matter for the decision of the Committee.

The Delegate of IRAQ stated that he wished to make it clear that the joint proposal of Pakistan and Iraq and the proposal of India for proceeding on the basis of the Helsinki Rules should have the same status.

The Delegate of PAKISTAN stated that the Karachi Session resolution contemplated examination of the problem in the context of food and agricultural developments and that the approach of the Committee should, therefore, be to formulate the rules on that basis.

The Delegate of INDIA said that since the joint proposal of Iraq and Pakistan had been moved within the past twenty-four hours, it was essential that it was circulated to the Governments of the participating countries for comments before it was examined by the Committee.

The Delegate of IRAQ suggested that the Committee should prepare a new draft on the basis of the two proposals and thereafter the new draft could be referred to the Governments for their comments. He recommended a study of the two proposals by a Sub-Committee.

The Delegate of NIGERIA stated that the Committee should concentrate on the ways and means by which international rivers could be developed. He felt that the rules and practices hitherto adopted by the European powers should only serve as guiding factors or possible means to an end in the search for possible avenues to meet the special requirements of the two continents. He stated that since international rivers run through the territories of more than one State, it was essential that such rivers must be utilised by the riparian States without adversely affecting the legitimate interests of one another. In this connection, he mentioned certain broad principles

for consideration of the Committee. He expressed satisfaction that the *Ad hoc* Sub-Committee had found a solution and said that the Committee should consider the joint Pakistan-Iraq draft and also the Helsinki Rules. He suggested that the two proposals should be sent to the Governments and their replies obtained and thereafter the Secretariat should prepare a text incorporating the various views and areas of agreement. This, in his view, would facilitate the task of the Committee.

The Associate Member for the Republic of KOREA suggested that instead of simply sending the proposals to the Governments, the Committee should first listen to the proposals, find out what they meant, and also hear the views of other Delegates, and thereafter the proposals should be sent to Governments together with the comments and explanations that might be given in the course of discussion in the Committee. This, he said, would facilitate the task of the Governments in giving consideration to the problem. He supported the view of the Delegate of Japan that the industrial uses of international rivers should also be considered by the Committee.

The Delegate of PAKISTAN supporting the proposal of the Delegate of Iraq stated that the Committee should consider all the proposals at this stage as there was nothing new in the joint proposal of Iraq and Pakistan. So far as the Helsinki Rules were concerned, he said, the Committee was aware of their existence all along.

The Delegate of INDIA reiterated his position that the proposals having been made so recently, he had no time to consider them in detail and that his Delegation would like to obtain the Governments' views on the various draft articles.

The Delegate of JORDAN stated that no useful purpose would be served by inviting opinions of the Governments at this stage and that the proper procedure should be to consider the two drafts and see what the consensus was on them and thereafter the matter could be referred to the Governments.

The President then summed up the discussion and invited the Committee to indicate in concrete terms as to what was to be done. After some discussion, it was decided to constitute a Sub-Committee to go into the subject.

The Chairman of the aforesaid Sub-Committee reported in the Seventh Meeting held on 27th January, 1970, that no progress could be made on the subject in the Sub-Committee. It was decided that the report of the Chairman be kept on record and circulated.

The Committee then decided to consider as to how best the subject could be discussed in the future. Divergence in views centred around the question as to whether the subject should be considered at an Inter-Sessional Sub-Committee or at the next session of the Committee. There was also a discussion on the question as to what should be taken as the basis of discussion, i.e. whether the Helsinki Rules or the joint proposal of Iraq and Pakistan or both.

There was further discussion on this matter in the Eighth Meeting held on 28th January, 1970. The Delegates of Iraq and Pakistan pressed for the constitution of an Inter-Sessional Sub-Committee for consideration of the subject in view of the move by Finland for bringing up the Helsinki Rules for the consideration of the United Nations. The Delegates of IRAQ and PAKISTAN stated that they would have no objection to proceed on the basis of the Helsinki Rules as suggested by the Delegation of India provided their own proposals were considered at the same time.

The Delegate of INDIA said that he had two alternatives to suggest : either the Committee should take up the subject at its next session when the joint proposal of Iraq and Pakistan together with the proposal of India could be considered article by article or if it was decided to set up an Inter-Sessional Sub-Committee to consider the matter in view of the Helsinki Rules being taken up for discussion in the U.N. General Assembly, he

would have no objection if the Helsinki Rules were taken as the basis of discussion. He reiterated the advisability of considering the subject at the next session as Delegations would have sufficient time to prepare themselves and discussions would be proceeded with straight away by considering article by article without having to spend any time on procedural discussions.

The President proposed that the subject be taken up at the next, i.e. twelfth session in order to make discussions effective and to avoid discussion on procedural matters. The proposal of the President was adopted by the Committee. It was also decided that the joint-proposal of Iraq and Pakistan as also the proposal put forward by the Indian Delegation be circulated to the Governments of Member States inviting their comments.

VI. THE LAW RELATING TO INTERNATIONAL SALE OF GOODS

I. THE LAW RELATING TO INTERNATIONAL SALE OF GOODS

The subject "International Sale of Goods" was included in the programme of work of the Asian-African Legal Consultative Committee under Article 3 (c) of its Statutes at the suggestion of the Government of India. A study concerning the rules of conflict of laws relating to International Sales was prepared by the Secretariat of the Committee and placed before the Committee at its Fourth Session held in Tokyo in 1961. The matter was considered by a Sub-Committee at that Session which recommended collection of further material. Attempts at collection of material from Member Countries did not bear much fruit and it was not possible to bring up the subject for further consideration by the Committee in view of the fact that other important items required urgent consideration.

The United Nations Commission on International Trade Law (UNCITRAL), which was constituted by the U.N. General Assembly resolution No. 2205 (XXI), held its First Session in New York in 1968 and the major items which were selected for study and consideration by the UNCITRAL included the topic of International Sale of Goods. At the Second Session of the UNCITRAL which was held in Geneva during March 1969 this subject was taken up for further discussion and some progress was made. The UNCITRAL decided to set up two inter-sessional working groups : (i) on the International Sale of Goods, which met in January 1970 in New York to examine the extent to which the Hague Conventions of 1964 and 1955 could be used as a basis for a world-wide unification of law; and (ii) to report on the question of time-limits and limitations (prescription) in relation to sale of goods. This working group

met in Geneva in August 1969. The subject was further considered at the Third Session of the UNCITRAL on the basis of the recommendations made by these working groups.

At the Second Session of the UNCITRAL, the representatives of Ghana and India made statements suggesting that the Asian-African Legal Consultative Committee should revive its consideration of the subject of International Sale of Goods so as to reflect Asian-African viewpoint in the work of the UNCITRAL and that the subject might be taken up at the Eleventh Session of the Committee to be held in Accra. In view of this proposal, the subject was placed on the agenda of the Eleventh Session and the Secretariat of the Committee transmitted a request to the Governments of Asian-African States, Chambers of Commerce and international organisations, both governmental and non-governmental, for views and information. In response, replies were received from some Governments and institutions and the material so received was included in the Brief of Documents prepared by the Secretariat and placed before the Eleventh Session.

The Eleventh Session of the Committee was attended by Mr. M. H. van Hoogstraaten, Secretary-General of the Hague Conference on Private International Law, Mr. John Honnold, Chief of the International Trade Law Branch of the United Nations and Mr. A. M. Akiwumi, Regional Adviser on the Economic Commission for Africa.

Summary Record of Discussions held at the Eleventh Session

The Committee considered this topic at the fifth, sixth and tenth meetings of the Eleventh Session held respectively on 23rd, 26th and 29th January, 1970.

Initiating the discussion in the fifth meeting held on 23rd January, 1970, the Delegate of GHANA made a detailed statement and suggested that the Delegates should give their comments on the Hague Conventions of 1964 and on the needs of the developing countries generally in the area of international

trade law. Further, he proposed that a Sub-Committee should be appointed to identify in precise terms those parts of the Conventions which were unacceptable and to prepare a concise statement of the requirements of the developing countries in the field of international trade law. He also proposed that the Committee should circulate the recommendations of the Sub-Committee to the governments of the Member States for their comments and that a permanent Sub-Committee be appointed to prepare proposals in the light of the aforesaid Sub-Committee's recommendations and the comments of the Member Governments thereon.

The Delegate of PAKISTAN made a detailed general statement on the subject indicating the work done by the International Institute for the Unification of Private Law and the Hague Conference on Private International Law. He pointed out that the developing countries were not associated with the drafting of the two Hague Conventions and that their interests were not fully taken into account in either of them. In considering this subject, he said, three fundamental aspects had to be borne in mind, namely the definition of international sale, the determination of the scope of the operation of the law, and the stipulation of remedies for the violation of obligations. He said attempt should be made : (i) to have progressive unification of the law of international sale of goods, substantive as well as conflict norms, (ii) to prepare a standard form of contract, and (iii) to eliminate diversity in the periods of prescription and time-limitations.

The Delegate of CEYLON said that the Hague Conventions were on the whole favourable to the seller at the expense of the buyer. He felt that in formulating any principles on the subject, the needs of developing countries should be taken into account.

The Delegate of JAPAN felt that the Committee could make a more effective and useful contribution if it took up the subject after some concrete work was done by the UNCITRAL.

He suggested that the twelve Asian and African Member States of the UNCITRAL should first of all find out where the problem lay and thereafter develop a consensus in the UNCITRAL itself in order to draw up and reflect their views in the work of that U.N. body. He, therefore, did not favour the appointment of a Sub-Committee to look into substantive issues of the subject at this stage.

The Delegate of INDONESIA stated that the present conditions in International Trade showed the ever increasing gap between the developed and developing nations and he appreciated the efforts that were being undertaken to minimise that gap. He affirmed his support for the initial effort of harmonisation, and if necessary, for unification of a set of rules.

The Secretary-General of the *Hague Conference on Private International Law* stated that the subject of international sale of goods was a matter of world wide interest. He indicated the work that had been done by the Hague Conference and also explained the scope of the various conventions.

The Observer for the *League of Arab States* referred to the work done by that body concerning the subject.

The Delegate of PAKISTAN stated that whatever good there was in the existing conventions, the Committee would accept, but where there were deficiencies, it should seek to find out a remedy, and where it was found that the provisions were detrimental to the interests of Asian-African community, then steps should be taken for suitable modifications and alterations.

The Delegate of JORDAN associated himself with the remarks of the other Delegates and said that the countries of Asia and Africa must have a hand in the preparation of a set of principles which was acceptable to all nations.

The Secretary of *UNCITRAL* made a detailed statement on the work done by the Commission and also by its working

group which had met in New York. He also circulated the report of the working group for consideration of the Delegations.

Further discussion on the subject took place in the sixth meeting held on the 26th January, 1970. The Delegate of INDIA after referring to the progress made on the subject in the two sessions of the UNCITRAL said that to begin with, the Asian-African countries should look into the matter, familiarise themselves with what were the issues involved so that some preliminary preview might be had of the problems that were likely to come up before the UNCITRAL. The first question, he said, therefore, was to decide as to what direction should be given to the Asian-African community in its handling of the subject and other related problems.

The Associate Member of the Republic of KOREA considered the subject to be a very important one because if harmony and consensus could be reached on this complex and difficult problem, it would have a far-reaching effect on the work of this Committee.

The Delegate of IRAQ said that his Delegation was in full agreement with the views expressed by the other Delegates. He thought it was essential to study the subject as it was of particular importance to all the developing countries.

At the end of the discussion, the Committee set up a Sub-Committee of seven consisting of the Delegates of Ceylon, Ghana, India, Japan, Nigeria, Pakistan and the U.A.R. to give detailed consideration to the subject.

An interim report of the aforementioned Sub-Committee was presented in the Tenth Meeting held on the 29th January, 1970. The Chairman of the Sub-Committee said that a further report will be sent to the Secretariat for circulation among Member Governments. In the interim report a suggestion was made for the establishment of a Standing Sub-Committee with a view to making a report at the Twelfth Session of the Committee. The interim report was adopted by the Committee.

II. INTERIM REPORT OF THE SUB-COMMITTEE APPOINTED AT THE ELEVENTH SESSION

Mr. President, Distinguished Delegates and Observers,

I have the honour to submit an interim report of the Sub-Committee on International Sale of Goods. The Sub-Committee was established on the 26th January, 1970 after the general statements had been made in the open sittings of the Committee which were held on the 23rd and 26th January, 1970. The Sub-Committee consisted of the Delegates of Ceylon, Ghana, India, Japan, Nigeria, Pakistan and the U.A.R. The Sub-Committee held three meetings between the 26th and 28th January, 1970. The Delegate of Pakistan and the Delegate of India were unanimously elected as Chairman and Rapporteur of the Sub-Committee respectively.

In the meetings of the Sub-Committee, apart from the members of the Committee, observers from other Governments and international organisations also participated.

The report of the Sub-Committee has not yet been completed and will be circulated among Member Governments as soon as it is ready.

In the meanwhile, I should like to report that the work of the Sub-Committee was concentrated on two points :

(1) to increase familiarity of the members of the Committee with the work being done on the subject by UNCITRAL and other organisations, and

(2) to make recommendations regarding the manner in which the subject may be discussed in the Committee on a regular basis.

As regards the first point, the Secretary of UNCITRAL, Prof. Honnold, was invited to acquaint the Sub-Committee with the work of UNCITRAL as well as its working groups on International Sale of Goods and on Time-Limits and Prescription. The Working Group on Prescription had held its meeting in Geneva in August 1969; the Working Group on Uniform Law had held its meeting in New York in January 1970.

Thereafter, the Secretary-General of the Hague Conference was invited to address the Sub-Committee on the relation between the Hague Convention of 1955 on Applicable Law and the Hague Convention of 1964 on Uniform Law.

The discussions in the Sub-Committee concentrated on the following items:

(1) relations between unification of conflict norms and unification of substantive rules on International Sale of Goods;

(2) relations between the Convention proposed by the Working Group on Prescription and the Uniform Law on International Sale of Goods;

(3) the manner in which Uniform Law, whether of substantive rules or conflict norms, or a combination thereof, should be embodied in the final texts; whether the final texts should be a Convention or a Code or should take some other form ?

(4) encouragement of conclusion and adoption of standard contracts especially in the regions of Asia and Africa;

(5) promotion of uniform interpretation of Convention or Code and of standard terms of contract.

Mr. President, I do not wish to go into the details of the subject-matter discussed under these headings. These matters

as well as references to the United Nations and other documents will be included in the report of the Sub-Committee.

On the second question, namely the organisational aspect of our further study of the subject, the Sub-Committee agreed to make the following recommendations :—

(1) The Sub-Committee should continue to function as a Standing Committee for exchanging views on the subject of International Sale of Goods. The views and suggestions will be exchanged through correspondence and by circulation of documents. If it becomes necessary, the Sub-Committee may meet on a formal basis as may be arranged by the Secretariat.

(2) The Secretary of the A.A.L.C.C. will keep the members of the Sub-Committee informed about the developments in the UNCITRAL and its working groups in regard to the study of the subject. He will provide such services to the Sub-Committee as may become necessary, including the circulation of relevant documents.

(3) The Secretary will keep the Member Governments informed about the work of the Sub-Committee, its recommendations and suggestions, and will send them necessary materials.

I take this opportunity to express deep appreciation of the Sub-Committee of the contributions made by the Secretary of UNCITRAL, the Secretary-General of the Hague Conference and our Rapporteur.

III. REPORT OF THE SUB-COMMITTEE ON INTERNATIONAL SALE OF GOODS

The subject of International Sale of Goods was taken up by the Asian-African Legal Consultative Committee in its Plenary Session on the 23rd and 26th January, 1970. General statements on the subject were made by a number of Delegates and Observers as well as by the Secretary of UNCITRAL and the Secretary-General of the Hague Conference on Private International Law. A Sub-Committee was appointed on the 26th January, 1970. The Sub-Committee consisted of the Delegates of Ceylon, Ghana, India, Japan, Nigeria, Pakistan and the UAR. The Sub-Committee held three meetings between 26 and 28 January, 1970. The Delegate of Pakistan, Mr. Sharifuddin Pirzada, and the Delegate of India, Dr. S. P. Jagota, were unanimously elected as Chairman and Rapporteur of the Sub-Committee, respectively.

2. An interim report of the Sub-Committee was submitted to the Committee by its Chairman on the 29th January, 1970.

3. In the meetings of the Sub-Committee, apart from the members of the Committee, observers from other Governments and international organizations also participated.

4. After some discussion, it was decided that the Sub-Committee should concentrate its attention on two points : 1) increase familiarity of the members of the Committee with the work done by UNCITRAL and other organizations, and 2) make recommendations regarding the manner in which the subject may be discussed in the Committee on a regular basis.

5. The discussion on these two aspects is summed up hereunder under I and II.

6. Keeping in mind the suggestions made in the *Brief of Documents* prepared by the A. A. L. C. C. Secretariat at pages 23-29, as well as in the Secretary's introduction to the *Brief*, and the work of UNCITRAL done heretofore, and in particular of its Working Group on Sale of Goods which had held its session in New York from January 6 to 16, 1970, about which Professor Honnold, Secretary to UNCITRAL, had made a short report in the Committee on January 23, 1970, the discussions on the Sub-Committee concentrated on the following items:

(1) relations between unification of conflict rules and unification of substantive rules on International Sale of Goods;

(2) other subjects considered by UNCITRAL Working Group;

(3) relations between the Convention proposed by the Working Group on Prescription and the Uniform Law on International Sale of Goods;

(4) the manner in which Uniform Law, whether of substantive rules or conflict rules, or a combination thereof, should be embodied in the final text, namely, whether in the form of a Convention or a Code or in some other form;

(5) encouragement of conclusion and adoption of Standard Contracts or General Conditions of Sale especially in the regions of Asia and Africa; and

(6) promotion of uniform interpretation of Convention or Code.

7. Where appropriate, the introductory statement was made either by the Secretary of UNCITRAL, or by the Secretary-General of the Hague Conference on the Unification of Private International Law. The discussion on the items referred to above may be summed up item-wise as follows :

(1) Relations between unification of conflict rules and unification of substantive rules on International Sale of Goods

8. On this item, detailed statements were made by the Secretary of UNCITRAL and the Secretary-General of the Hague Conference. The Secretary of UNCITRAL recalled that this subject had been extensively discussed in UNCITRAL Working Group in New York in January 1970. On this point a number of Governments had made comments. It was realized that although most Governments would prefer unification of substantive rules, this by itself would not eliminate the need for conflict rules. On the question of the relations between the Hague Convention of 1955 on Applicable Law (unification of conflict rules) and the Hague Convention of 1964 on Uniform Law (substantive rules), no definitive opinion had emerged. But on the question of the applicability of conflict rules in relation to substantive rules, which was dealt within Article 2 of the Hague Convention of 1964, a number of proposals were made. In its present text, Article 2 excluded the application of rules of private international law, subject to any provision to the contrary in the said law. The UNCITRAL Working Group, Professor Honnold reported, had suggested the revised ruie to read as follows :

"1. The Law shall apply where the places of business of the contracting parties are in the territory of States that are parties to the Convention and the law of both these States makes the Uniform Law applicable to the contract;

2. The Law shall also apply where the rules of private international law indicate that the applicable law is the law of a contracting State and the Uniform Law is applicable to the contract according to this law."

9. Thus, the Uniform Law will apply where the places of business of the contracting parties are in the territories of the States parties to the Convention. It will also apply, if under the rules of private international law, the proper law of the contract is the law of a contracting State. The rules of private international law will be applied by the forum in which remedy is sought, and will thus depend upon whether or not such rules have been unified. Thus, if the rules of private international law have been unified, such as in the Hague Convention of 1955 on Applicable Law, these rules will apply among parties to that Convention. Among States not parties to the Hague Convention of 1955 or other similar agreements or codes, the rules of private international law followed by the forum will apply.

10. The need for the unification of conflict rules and the desirability of the adoption of the Hague Convention of 1955 was highlighted by the Secretary-General of the Hague Conference in his intervention in the Sub-Committee. In his view, the unification of rules of choice of law would promote uniformity of internal laws of the nations. This was particularly needed, since the unification of substantive law rules may take a long time. The uniform rules of choice of law would promise immediate progress, and should not be neglected. In our contemporary world, the basic element of justice for the courts was to take into account the position of those parties to the contract whose activities had been pursued under a foreign law, and to apply that foreign law if the contract had its closest connection with that country. He argued that even after the adoption of Uniform Law in its 1964 text or as may be revised by UNCITRAL, conflict rules would be necessary (1) for the subject-matter not covered by Uniform Law, (2) where Uniform Law itself required such reference, and (3) among States not parties to the Convention on Uniform Law or those making one or more important reservations. In his view, therefore, international codification of choice of law rules would have a use and would eliminate a point of uncertainty of the law.

Against this background, he commended the revised text of Article 2 considered by the UNCITRAL Working Group.

(2) Other subjects considered by UNCITRAL Working Group

11. The Secretary of UNCITRAL briefly described the subjects, other than the one referred to in item (1) above which were considered by UNCITRAL Working Group on Sale of Goods (reported in A/CN. 9/35). With reference to the subjects suggested by the A.A.L.C.C. Secretariat in its *Brief of Documents*, these subjects were as follows :

(1) Definition of "International Sale of Goods" for the purpose of defining the scope of the Uniform Law.

(2) The relationship between Uniform Law and the proposed Convention on Prescription [referred to in item (3) below], and

(3) Principles of interpretation of the Uniform Law.

12. The other items considered by UNCITRAL Working Group were the following :

(1) Uniform Law provisions on the binding effect of the general usages,

(2) Rules of avoidance or cancellation of contracts, with special reference to whether a contract could be deemed avoided or cancelled without notice of that fact, and

(3) Time-limits with which a buyer must give the seller notice with respect to defects in the goods.

13. He also mentioned that on the question whether the Commission may consider the adoption of a new convention, the UNCITRAL Working Group decided to consider it after further study of existing texts, "since this would indicate the number and nature of any modifications required for the production of a more widely acceptable text". Since the members

of the Sub-Committee had not perused the report of the UNCITRAL Working Group, which had just been distributed to them, no discussion took place on these items, except those which are covered elsewhere in this report.

(3) Relations between the Convention on Uniform Law and the proposed Convention on Prescription

14. The Secretary of UNCITRAL referred to the report of UNCITRAL Working Group on Prescription (A/CN.9/30) which held its meetings at Geneva from 18 to 22 August 1969. The report will be presented to the Third Session of UNCITRAL in April 1970. He said that studies submitted by States show that the prescriptive limits varied widely among the different national systems. It was difficult to predict which national law would apply, particularly in view of the fact that under some legal systems the running of the prescriptive limit was considered to extinguish the substantive right, while under others a prescriptive limit was considered a rule of procedure so that the forum could apply its own law even though it was different from the limit fixed under the substantive law applicable to the claim. He mentioned that the UNCITRAL Working Group on Prescription had suggested that the scope of the proposed Convention and the types of transactions and claims should be the same as covered by the Convention on Uniform Law. As regards the commencement of the period of prescription, the Working Group had considered three alternative tests to cover when time would start running, namely (1) from the date on which the breach of contract occurred, (2) from the day on which action could first have been taken, and (3) from the date on which the fulfilment of the obligation first became due. The opinion in the Working Group was divided equally between the first and the third alternative, hence no choice was definitely made. As to the length of the prescriptive period, the period favoured was 3 or 5 years, again without a definitive choice. The Working Group on Prescription had also dealt with the suspension or prolongation of the prescriptive

period when suit was made difficult or impossible under various circumstances. The Group also considered the question of extending the statutory period by agreement. All these questions would come up before the Third Session of UNCITRAL, when the Commission would consider the further programme for completing a Convention on Prescription, whether separately or as part of the Convention on Uniform Law.

15. It was further reported that the UNCITRAL Working Group on Sale of Goods (New York, January 1970), had proposed the deletion of Article 49 of the Uniform Law which deals with the prescriptive limit of one year for remedies against defects in goods. The question of set-offs and counter-claims was still under consideration. The question of notices of breach of obligations would continue to be regulated by Uniform Law, such as in Article 39.

16. Upon this item also there was not much discussion in the Sub-Committee.

(4) Whether the final text of Uniform Law, substantive rules or conflict rules, or a combination thereof, should be a convention or a code or should take some other form

17. This subject had been discussed at the Second Session of UNCITRAL but not at the UNCITRAL Working Group's Session in New York. The Indian Delegate explained the three views held on the subject in Geneva in March 1969, and the reasons therefor. Those who wanted a convention emphasised the need for establishing a clear obligation relating to uniform law so that uniform law will be applied effectively in the territories of the contracting States. Those who pressed for a code, such as Professor David of France, highlighted the difficulties in increasing the number of ratifications of conventions and the resulting ineffectiveness of uniform law. If the emphasis was on promoting uniform law, its rules should be embodied in a code which should be applied by the courts or the arbitration tribunals in all the States, except in regard to the mandatory provi-

sions of the local law or where the local law had made specific exceptions relating thereto. The third course was to consider a system of code as adopted in the General Conditions of Delivery established among members of the Council of Mutual Economic Assistance (CMEA), which although named a code applied automatically in all Member States without the need for ratification or express legislation.

18. The views expressed in the Sub-Committee supported the approach of a Convention which would clearly establish the obligations to be accepted by contracting States.

(5) Conclusion and adoption of Standard Contracts in Asia and Africa

19. The Secretary of UNCITRAL enquired if AALCC would consider the desirability of holding regional conferences to encourage the conclusion and adoption of standard or model contracts, confined in the beginning to special commodities of interest to the buyers and sellers in the region. He cited the example of the UN Economic Commission for Europe which had brought together sellers and buyers of specific commodities (plant and machinery, lumber, citrus, etc.) and adopted standard or model contracts relating thereto.

20. The Delegate of Ghana expressed the view that the promotion of standard contracts or general conditions of sale should not adversely affect the free bargaining capacity of various parties, nor freeze their bargaining positions at the time of the conclusion of the standard contract. The Delegate of UAR enquired whether the standard contract would in effect be adhesion contract, that is "take-or-leave it" contract, would it be a model contract which may be accepted in whole or in part or which may be varied. In reply, the Secretary of UNCITRAL stated that it would be a model contract, concluded under international supervision, which could be revised or modified to suit the needs of the parties. The General Conditions of Sale or Model Contracts had achieved considerable

success in Europe and to some extent in its trade with other regions.

These had been developed in the interest of fairness to all parties and were simple enough to be understood by parties in different countries and legal systems. This clarity reduced misunderstanding and disputes. The representative of the Economic Commission for Africa informed the Committee that although the ECE General Conditions of Sale had been referred to them, and they had circulated them among Governments and other bodies, only three replies had been received, which were non-commital.

21. The Sub-Committee was of the view that each Government would have to consider the desirability of promoting contracts in conjunction with the trading organizations and interests concerned, and that the matter may be reviewed by the Committee at its next session.

(6) Uniform interpretation of convention or code

22. On the question of uniform interpretation, an interesting statement was made by the Secretary-General of the Hague Conference. He explained the difficulty in promoting the jurisdiction of the International Court of Justice for giving definitive interpretation of conventions, particularly those dealing with private law questions. Short of that, it would be up to States of each region to establish a common court or other institutions for the purpose, such as the Court for the European Economic Community. Failing this, the convention must make provisions within its own text to promote uniform interpretation. This could be done by a) providing that the uniform law should be interpreted "in conformity with the general principles" on which that law was based (see Article 17 of Uniform Law), b) including neutral terms in the convention rather than technical terms or terms of art having different meanings in different systems, and c) by ensuring uniformity in drafting in the various languages.