is, in the combination there are at least 12 or 13, or more than 13, various proposals. Ultimately, the working group on sales law has changed this scheme on this subject and have even interchanged the position of articles 1 and 2 of ULIS. What they have now provided is that the approach to uniform law will be conventional. It will be a convention. Uniform Law will apply to all sales among countries which are contracting parties to the convention, an approach which was taken by way of reservation by the United Kingdom while acceding to ULIS in 1964.

Secondly, they have said that where rules of Private International Law lead to application of the law of the contracting State and where that contracting state has changed, ULIS and Uniform Law will apply to that contract.

Finally, they have given the freedom to parties to choose ULIS as the proper law of contract, so that the manner in which they have now proceeded philosophically is that it is basically a law of consent. It is, I think, a matter of consent by the parties to the contract or it is a matter of the application of Private International Law. Obviously this is a reverse approach on what was the original approach to ULIS. ULIS had approached by calling it as the substantive law and therefore Private International Law will not have any place in this and those who want to restrict it to parties to the Convention will have to enter a reservation as the U K. has done. Now what was the reservation under the 1964 law has now become the rule so that the application will depend upon contract or consent, and that is why this basic change will have to be examined by us as to whether this direction is all right, because the main point will be whether we would like to go to a universalization of the law or allow the law to be pragmatic. There have been basic changes in regard to the scope of the law. They have excluded domestic sales from the application of uniform law. There have been changes in the definition of international sale of goods.

In the ULIS, there were four or five elements of definition. There was the question of the place of business in the territories of different contracting parties. There was the question of carriage of goods from one country to the other. There was the question of delivery of goods in a place other than where the contract was concluded. There was the question of co-ordination of contract-that both the offer and acceptance should be in different countries. All these elements have been removed. Only one element has been put in now, namely, the place of business. Whether that would be adequate has also to be considered.

They have then changed the basic place of trade customs and usages in Article 9. Formerly, it was considered that trade has been going on from time immemorial and everything is not in written form, and these usages in themselves have enormous value. Therefore, not only the expressed terms of the contract or the implied terms of the contract but even the applicable trade usages themselves should be taken into account when interpreting a contract and the rights and obligations of buyers and sellers. But it has been given a new place now by considering it to be an implied part of the contract. And then the question was, what should be the usage which should be considered to be implied in a contract ? Its drafting is such that there are some areas which, in the light of our own experiences with specific commodities, we may be interested in looking into.

There was a difference of opinion as to whether, essentially, a contract for the sale of goods must be in writing. The Soviet Union insisted that under their law and under the general conditions of delivery there is a kind of uniform law that they have developed among the socialist states—in the Soviet Union and in the States of Eastern Europe—that this is an essential requirement and that a contract which is not in writing is void. On the other hand, there was emphasis from other countries such as the United Kingdom that trade transactions today are done so much orally or over the telephone or

by telex messages, that it is not necessary that a contract must first be reduced to writing.

Finally, there was the residual question of what should be the method of interpretation where there is no clear provision in the Uniform Law relating to any particular question that is involved. That is in Article 17, and there are also various proposals that have been made which we could discuss in the Sub-Committee.

Coming to the second segment of the progress that took place in UNCITRAL, which is our point No. 3 raised in the Secretary's Paper, namely, Time-Limits and Limitations, a sub-committee met in August 1970 in Geneva. The question that had been raised divided almost equally : there were 10 in favour, 10 against, and 9 abstaining out of 29. Rather than take decisions on this majority or minority, why do we not elicit the views of the governments to find out their reactions to this in the light of their law as well as their experience. The major questions that had arisen were with regard to limitation laws, it all depends on the basic differences of philosphy of law. First, what is considered to be prescription or limitation ? There are various types of limitations of period. But we were talking only of extinctive prescription, a prescription which extinguishes the right. Even on this, there were differences whether it only extinguishes the right or only extinguishes the remedy. It only makes the right unenforceable.

The second basic difference was whether a rule of limitation is merely a procedural question, or whether a court is bound to dismiss a suit or an application or an action if it is not within the period of limitation. We are familiar in India. I believe in other countries of the former British Empire, the law is the same-that it is a mandatory rule, and it does not have to be pleaded or set up as a defence by a party. The court will not proceed with this and has to

dismiss this suit if it is after the period of limitation. But it is not the rule in Europe and other countries.

Then the question of period of limitation—should it be three years or five years ? There was an even distribution on this. Next the question, when should these three or five years commence ? On the question of period itself, whether three or five, the other question that was posed was—and there were differences of opinion on this too—if it is three years, could it be extended to five years by agreement of the parties; and if it is five years could it be reduced to three years by agreement of the parties ?

Then, there was the question of the period of limitation when there is a guarantee with regard to the performance of the subject-matter of the contract, particularly if it is machinery, the operation of which is over a period of years and the defects of which will not be visible until after, say five years, and there is a guarantee of five years or seven years. Then, should the period of limitation be after the period of guarantee, or, should it be co-related in some other form ? There were differences of opionion on this too. Finally, the question of suspension of the period of limitation and the effects of acknowledgement of date, and so forth.

These are the various matters on which the Working Group thought that in spite of variations, it was possible to advance and to develop a Uniform Law, and in fact, of all the things UNCITRAL has done so far, this has been a piece of their achievements. They have already drafted, after circulating a questionnaire and after getting the responses from governments—the questionnaire was also drafted by them-on a temporary basis, or on an informal basis, a draft Covention of 25 Articles indicating these various options within parenthesis. So, we thought that the various options that are available, in the light of our own legal systems and in the light of our own experiences, it would be useful or desirable for the Committee to consider. The report of that Committee has

not yet been circulated, but the questionnaire has been circulated and this must be with our governments too, and our governments must have either applied for them or must be considering them. At the same time, the draft Convention prepared by them has also been circulated. We have copies of this which we could consider in the Sub-Committee.

Apart from these three subjects, the question to be considered would be whether we would have sufficient interest in the Committee in extending our work to newer fields which are also being discussed or examined by UNCITRAL, particularly International Payments which is a very technical field. The interest in UNCITRAL also was not as substantial as in the field of International Sale of Goods. More work was done in International Sale of Goods than in International Payments. Nevertheless, the progress made during 1970 in the field of International Payments is fantastic. They had prepared a questionnaire which was circulated among the various banking institutions and the governments all over the world, and in December, 1970, in New York, I was shown almost 600 pages of about 80 responses to that questionnaire from all over the world. I thought if our Committee could, if not at this time, or even if the Secretariat could get copies of those responses to the questionnaire, that will be the best source or mine of information about the banking practices relating to the mode of payment for these transactions and the issues or other problems arising therefrom. Because these are highly technical matters, we have to proceed inductively. Various banking systems and various approaches are already indicated in these responses. The UNCITRAL is examining the desirability of developing a new system of international cheques or balance of exchange for payments but this will be confined only to International Sales of Goods. It will also be optional. But the manner in which it should be developed or advanced will be facilitated if we approach the matter inductively, looking at these responses from the large number of people who actively deal with this problem day to day. May be, this is

a question which we cannot discuss now. We could, probably, request the Secretariat to get in touch with UNCITRAL and receive this and prepare some kind of basic paper for the consideration of our Committee next year.

On the question of International Commercial Arbitration, I think this is a subject in which our Committee and our region as a whole can make a substantial contribution. It is a subject which has been most extensively studied in our countries. It is a subject on which ECAFE has already prepared model rules on arbitration. It is a subject on which India, particularly, has done a lot of studies and I am sure that as a matter of settlement of disputes the procedure for conciliation and arbitration should be promoted as they would reduce and mitigate the difficulties that are inherent.

Now, as a result of the imposition of the kind of model contract and the kind of arbitration clause to which our attention was invited by the distiguished Delegate of Ceylon, I personally feel that this is a subject which we should, even if we do not do it now for want of time, take up actively at our next Session. I might only mention that the next session of our Committee would not be too late, inasmuch as even in UNCITRAL the progress in this regard has only been to appoint a Rapporteur, Professor Nestor of Rumania. He is preparing a comprehensive report on the arbitration systems or arbitral provisions and practices all over the world. He had indicated the approach to this in a preliminary report in April 1970, but a comprehensive report will be submitted only in 1972. Thesefore, we would have our own time to look into our own systems. I suggest that after this has been done the Committee may transmit the records of all the factual data of our countries to Professor Nestor for his use in preparing his comprehensive report on arbitration which he will submit sometime in 1972.

Next, the question of Shipping. Now, shipping was already on our agenda last year. Unfortunately, because

of shortage of time we could not meet at length and the committee made a report that they had adopted only a short report which was submitted and the report was primarily on procedual questions, again, because herein there was a kind of misunderstanding as to how this subject should be handled both by UNCTAD and UNCITRAL. That misunderstanding has been removed by both organizations. That is why, about the middle of February the UNCTAD Working Group on Shipping will be meeting which will be attended also by the Chairman of the Working Group on Shipping of UNCITRAL. And, thereafter, in March, the Working Group on Shipping of UNCITRAL will be meeting and the next session of UNCITRAL which was to be held in Geneva in March or April this year will deal with this aspect of shipping.

The main controversy had been that UNCITRAL should not start legislating on a subject on which the commercial and economic aspects are not fully analysed as these will be analysed by UNCTAD.

Now, UNCTAD is making a world-wide survey on this problem and has taken up the question of the Bills of Lading and Charter Parties. To begin with, the manner in which they propose to complete the study will be discussed by them in February. All I wish to emphasize at this stage is that we will not have anything to contribute in our study of the subject at this session. There is nothing to discuss about. Nothing more has happened than what has happened last year on this subject. We will have to wait until next year. But, nevertheless, I think it will be useful to request the Secretariat to keep themselves informed, if possible, to send an observer or a representative to attend these working group meetings, to collect data and also include it in the Brief for our next session, so that at the next session if there are worthwhile conclusions or worthwhile studies prepared by the two working groups, we could examine it.

I am sorry for the time I have taken. I only wanted to

indicate that these are matters of interest to developing countries. These are the developments that are taking place in UNCITRAL and it would be useful for our Committee to continue to acquaint themselves with these issues. If possible we may exchange information about our own laws, our trade practices, and our interests in the matter. If nothing else happens, this information will be extremely useful for UNCITRAL particularly through the members of the Asian-African countries who are also represented on UNCITRAL because many of our countries are not represented on UNCITRAL. In both ways it will be useful. It will be useful to the Committee as well as to the UNCITRAL. I am sure this process will be useful for the cause of the development of the Law of International Trade.

PRESIDENT :

Thank you, Dr. Jagota. You have made a very valuable contribution and certain helpful suggestions and we are grateful for your elucidation of the progress made so far on this subject.

I have been informed by the Secretariat and Delegates will be glad to know that the responses to our questionnaire on this subject have been greater than the responses to the questionnaire of the Economic Commission for Africa on this subject as also to the questionnaire sent out by ECAFE.

REPUBLIC OF KOREA :

Mr. President, distinguished Delegates. On substantive matters involved in the Law of International Sale of Goods, my Delegation would concur on the points made by the distinguished delegate of India, Dr. Jagota. I should, however, like to address myself to one or two procedural aspects of the subject.

In regard to the question of continuing the discussion on this subject by our Committee, my delegation is in favour of doing so for the reason that not all Asian and African

States are represented on UNCITRAL, and we, Asian and African States, have certain peculiar and characteristic problems which should be dealt with adequately in any future law on the International Sale of Goods.

Secondly, I should like to refer to a certain movement, a great movement, now under way in Asia under the auspices of ECAFE relating to the liberalization of trade, namely, the Asian Payments Union, that is to say, the clearing house, and the possible establishment of Asian ways of banking and so forth.

I am sure a similar movement must be under way in Africa also under the auspices of the Economic Commission for Africa. I know that this Committee has certain consultative arrangements with ECAFE as far as Asia is concerned. I should like to emphasize the fact that we should intensify and strengthen our collaboration with Africa and so far as Asia is concerned the task may be delegated to the Government of Thailand in the capital of which country the headquarters of ECAFE is situated.

What I want to say is that our discussion on the International Sale of Goods is a part of a great movement of trade liberalization, and when and if this Committee and UNCITRAL agree on a set of rules governing the International Sale of Goods, their implementation would, of course, be done by the respective governments. The ideal forum, as far as Asia is concerned, would be ECAFE, an institution in which all Asian countries are represented. That is to say, it would be the body which could conveniently make a decision and implement the set of uniform rules that is to be formulated on the International Sale of Goods.

I am sure that the same would apply to Africa, and for that region, perhaps ECA would be the probable body to make finally governmental decisions to adopt these uniform rules on the International Sale of Goods.

Therefore, my last point is to say that this Committee should intensify and strengthen its consultation and collaboration with both ECAFE and ECA. Thank you.

NIGERIA :

Mr. President : My delegation in particular, and I am sure all of us, are grateful for the very wise and lucid statement made by the Hon'ble Attorney-General of Pakistan, the Leader of the Pakistani Delegation, and Dr. Jagota of India, who are the Chairman and Vice-Chairman of our Sub-Committee on the International Sale of Goods, for the very able way in which they have brought us upto-date not only regarding the work of that Sub-Committee, but also on the work of UNCITRAL itself.

Be that as it may, I think it is very important to have delegations express their views on the very important issue of whether or not this Committee should continue its work on the problems relating to the International Sale of Goods and related subjects in the province of international law. My delegation is in support of this Committee continuing its work for two or three main reasons.

First of all, we well know the pioneer work of the International Institute for the Unification of Private Law and the Hague Conference on Private International Law which was recently brought into focus by the acceptance of the uniform rules drafted and the conventions concluded by these two bodies. Because we of the developing countries hold the view that the international law and conventions relating to trade in regard to which all our countries depend for the necessary foreign exchange for development, we should have a part in formulating the rules.

Secondly, the European States, which were dominating a number of these institutions, did not find themselves in a position to advance the work of these two bodies by ratifying the various rules of law formulated and bringing them into force.

It has now become a big question of particular importance to the States Africa and Asia who also have an advantage in this respect in that, as we are entering into the field of private international law for the first time, we are in a position, not only of protecting our interests but also of influencing the development of the law in this field. That is why my delegation is very anxious that we continue our work which we have already begun so well.

Thirdly, the question of what is to be submitted to the Sub-Committee that is to be set up after the general debate, we will leave that to the Committee after other delegations have made their contributions. The work already done by UNCITRAL is, no doubt, of considerable assistance to us. Nigeria is a member of UNCITRAL, although, for certain reasons, we have not been able to participate in its work as we hope to do as from now on.

I think it might be wise for the Sub-Committee to review at least the work already done on the International Sale of Goods on the various answers to the questions contained in the questionnaire submitted. If we can do that, I think that alone is sufficient justification for putting the item on the agenda. If we could do that in detail, the other items on private law which we have and which have been put in our Brief, we can decide to do them in the future.

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT) :

Mr. President : I had not the privilege of attending your Accra Conference last year. So, I could not give to the Committee the explanation concerning the principles which presided over the Uniform Law on the Sale of Goods when the Commission undertook its work concerning this subject. But I had sent to the Honorary Secretary-General a short statement to be distributed to the members of this Committee, and I will not repeat what I had written in that paper. I shall confine myself to giving you some information

on the present state of the two conventions.

One is on the Obligation of Parties and Transfer of Risks, and the second on the Formation of the Contract of Sales. Firstly, I shall limit myself to giving you some information ; secondly, I shall make some general observations concerning some criticisms which have been made on the Conventions. In the first instance, I wish to inform the Committee that the two Conventions which have been ratified so far by the United Kingdom and Belgium are in the course of ratification by France, Italy, and Germany. In France and Italy, they are before Parliament, and in Germany, they have to be examined by the Cabinet. So, it is probable that before the end of this year, the Conventions having been ratified by the five countries will become effective. Now, I think, that this is a circumstance which should be kept in mind because the first rule in international law is to avoid overlapping and interference. We should not forget that we should not discuss on a draft the two Conventions of which have already been signed by ten countries and which will be ratified in the very near future by five countries.

Now, in proceeding to the analysis of these Conventions, I think we should consider the goal. In my opinion, there are three solutions. The first one is to utilize the work of the revision of the Conventions which is being made by UNCITRAL and which, as the distinguished Delegate of India has informed us today, has been carried out in the first 17 Articles, and which will be continued in the future. This work of revision by UNCITRAL should be utilized in a second stage for a general revision of the Conventions when they will be effective with the participation not only by countries which are parties to the Convention, but also of countries which are outside the Convention. In my opinion, this would be the best solution because it is not wise to have two separate Conventions. If we aim at a uniform law of sales, we should not have two uniform laws. Otherwise, it would be better to keep the present legislation. The first solution now

is, therefore, to continue the work of analysis of the Convention, to try to improve the Convention, and once this work is finished, the results of this work may be utilized for a revision of the Convention as foreseen by the Convention. I must mention that there is a provision in the Convention which provides for periodical revisions.

The second solution will be to utilize this material which will result from a discussion of UNCITRAL for a model law which could be circulated to the Governments and which should be adopted unilaterally by the countries which would be satisfied with it. I think this solution should be recommended because in my opinion - I have now 45 years' experience in this work of ratification - this system of international agreements and conventions is not the best system. It is a little obsolete. The conventions take a very long time. The general discussions and decisions take time, and sometimes, owing to the delay, the original draft, instead of becoming better, becomes worse, and the result of the convention is worse than the original draft. Further, many countries adopt reservations which make the Convention much less effective. And finally, the convention is a rigid form of agreement which cannot be modified by revocation or withdrawal. I think it is much better to have a model law which each country could adopt with some partial modification, but without modifying the bulk or the central provisions of that law.

The third solution which, in my opinion, would be a worse solution is to have a second conference for the adoption of the second Convention. I have already said that in my opinion it would be reasonable because unification in trade law would have a law universal in character. It is not purely original, and it would be nonsense to have a uniform law for a group of countries and a uniform law for other countries. Therefore, I hope that when the work of UNCITRAL is completed, it will be utilized for a general revision of the Conventions in a diplomatic conference which could be convened by the United Nations under its sponsorship.

Now, after these informal considerations, I should like to submit to you some remarks concerning the attitude of Governments, especially of developing countries with regard to these Conventions.

First of all, I do not think that we must expect too much from these Conventions. I remember that when in the Sixth Committee of the General Assembly of the United Nations some years ago the establishment of UNCITRAL was discussed and decided, some delegates, especially from some of the developing countries, had the very strong hope that by the adoption of uniform rules on the contract of sales and other trade contracts, the international trade of especially the developed countries would have great advantage from an economic point of view.

I spoke very frankly to these distinguished delegates and I said to them the real difficulties in international trade are not of a legal character; they are more of an economic and financial character. The real difficulty lies in the difficulty of payment, in the difficulty of credits, in customs duties, and all the obstacles which are raised by protectional systems of Governments. So, I do not think that the sale of goods as governed by uniform law, will provide a minimum advantage from an economic point of view to developed countries. It is a very good goal which should be achieved. But we should not expect too much from this work.

The second observation which was made by certain Governments—the same views were repeated here now-was to the effect that the Conventions on the sale of goods were the product of a European club and that they did not take into account the interests of developing countries. This is not entirely true. But there is some truth in this, and I quite agree that a revision of the old Conventions should be undertaken. But I think we should distinguish between two categories of contracts. There are the trade contracts like the sale of goods that are freely negotiated and stipulated. All

the provisions of the Convention are non-mandatory. Therefore, the parties, if they find it inconvenient, can reject or disregard the contract, and apply all the provisions. The autonomy of the will of the parties is completely respected. But there are other categories of contracts in which really it is possible and it is frequent that the party which is economically stronger can impose its will on the party economically weaker. These are contracts which I would call contracts of adhesion. A typical case is contract of carriage. A contract of carriage is not negotiated generally. There is a bill of lading which is prepared both by the owner and the carrier, and only subscribed to by the user. In this case, it is possible and it has so happened very often that the party economically weaker has been submitted to the will of the party economically stronger. Take for instance the Convention of Brussels of 1926 on the Bill of Lading and Maritime Transportation which contains provisions which are absolutely absurd in our times. Suffice it to mention that the provisions by which a carrier has no liabilities is exempted from any liabilities for damages of goods when the damages arise from a fault in the boat. It is, in my opinion, a thing which could be conceivable in the old times when the boats were sailing boats, but not today, when the rudder and other perfected instruments are used.

It is obvious that this kind of provision which exempts totally the responsibility for the liability of countries which have armaments and who have an objective, goes against the interests of another country to use the boats of the stronger countries.

I think that when you consider international contracts, you should distinguish betwen those which are freely negotiated and whose provisions are non-mandatory from other conventions or contracts in which the will of one party prevails on the will of the other party. On the other hand, the Convention on the Uniform Law on the Sale of Goods was finished in the year 1938, and it was sent to all the countries which were

members of the League of Nations, and those Governments had the possibility of making observations on the words that were used.

The first conference was convened in 1951. To this conference were invited all European countries, a certain number of countries of South America and from Asia, India, Pakistan, Iran, and Japan; and from Africa, Nigeria and U.A.R., which were the only two countries from Africa which were members of the Institute. The Institute could not address invitations to non-member governments. That is why the Convention was not open to all countries. It is to be hoped that at the next conference all the countries which are members of the United Nations will take part in this work.

It is not my task now to examine the Convention from a technical point of view. Some particular provisions have been quoted at the Accra meeting. I read it in the minutes. They seem to be particularly in favour of the seller and against the interests of the buyer. But if you consider these articles you will see that they foresee some measures, some precautions, not only in the interest of one party but in the interest of both parties. For instance, in the case of sale by instalments, a party which has a just reason to fear that the other party will not perform the contract, is authorised to suspend the performance of his obligations in the contract. This is a right given both to the buyer and the seller. Practically speaking, I am wondering whether any reasonable buyer or seller, who has a fear that the other party would be insolvent, would still continue to perform his obligations in the contract. In any case, I will not continue this analysis because the draft Conventions are now under examination by the UNCITRAL. I regret that Professor Honnold is not present. The distinguished Delegate of India has given us very important information on the work of the plenary meeting of the UNCITRAL as well as of the Working Group on Sale of Goods.

It is extremely interesting and useful that the Asian-African Legal Consultative Committee continues its work of supervision of the revision of the Convention which has been carried on by the UNCITRAL and its Working Groups. I do not think this work will be finished in a very short time ; it will take some years. In the meantime, the Convention will become effective. So we must consider that in the near future, there would be the possibility of a diplomatic conference, in which the work of the UNCITRAL may be utilized.

Secondly, in examining this draft, you should not think—and I can witness it because I have attended all this work which has taken more than 35 years—and it is not true to say that the work has been made solely in the interest of the economically strong countries, not considering the position of the economically weak countries. Even in Europe, in the western countries, there are developing and developed countries. There are countries who were developing countries 10 years ago and who are developed countries today. So, you must remember that the original draft was prepared by lawyers in a purely private capacity without any instructions from governments, and, therefore, they had tried to include provisions which govern the interests of both the buyer and the seller.

I will not lose this opportunity, Mr. President, to stress the possibility of further developments of unification in private law relations. When the problem of international rivers was discussed, I indicated to you some drafts which had been delivered by our organization to the Economic Commission for Europe, concerning navigation in international rivers, on the subject of carriage, which may have special interest for your countries. I refer to the Convention on International Carriage by Road which has been adopted 10 years ago by the Economic Commission for Europe. Now, communications by road are developing very strongly between eastern and western countries. I read some days

ago that a big highway, an international road, going from Europe and reaching Pakistan, has been finished or is going to be finished, and it will be a very important way of communicating between the two continents. This road will cross territories of many countries. Therefore, it will be necessary to have uniform regulations for this carriage.

Another matter which may be of some interest is the use of pipelines over public roads. Pipelines are also crossing territories of different countries, and it has not yet been established whether a pipeline is a form of transportation similar to carriage or whether it is another form of legal relationship.

I wish to indicate to you these subjects because they could be discussed by you and submitted to the Economic Commission for Asia and Africa for realization. It is obvious that my organization is at the service of your Committee, and we should be glad to supply to you with any documents and any study that we have already done. I hope that in any future work we are undertaking, the AALCC will be represented.

PRESIDENT :

I thank you. I am sure all the members of this Committee will be grateful to you for your remarks and we thank you for offering the services of the International Institute for the Unification of Private Law in the work of developing the Asian-African Legal Consultative Committee's studies.

IRAQ :

Mr. Chairman, distinguished delegates, as we have been informed by the important statements of distinguished speakers, I would like to state that the Law of International Sale of Goods is a very important subject for the developing countries, specially the Asian-African countries. Developing countries are producing the raw materials and importing the