refuses to accept delivery.[159]

In Nigeria, Sierra Leone, and Ghana where the enactment on the sale of goods[160] is based on the English Act, the rules regarding the passing of property, transfer of risk, etc. are the same as under English law.

The New Civil Code of the Philippines generally provides[161] that the ownership of the thing sold is acquired by the buyer from the moment it is delivered to him in accordance with provisions thereof or in any other manner, signifying an agreement that the possession is transferred from the seller to the buyer.

In Kenya, Tanganyika, Malawi, Zambia, and Uganda, the statutory provisions as to the passing of property in the goods from the seller to the buyer follow those in the English Act. In Zanzibar, where the law[162] adopts the old sections 76-123 of the Indian Contract Act (now repealed by the Indian Sale of Goods), statutory rules govern the passing of property and provide that in a sale of ascertained goods, the property in goods sold passes to the buyer when the price or the earnest money is paid or when the goods are delivered, except in cases where the parties agree, expressly or by implication, that payment on delivery be postponed, when the property passes as soon as the proposal for sale is accepted. In most other respects the Zanzibar law approximates the English Act.

6. General Comments

Within the complex universe of trade, the power of the parties over the law of their transaction is complete and the parties can have the transaction as they want.

159. *Lohmann* v *Mowg Huaj* (1931) S.S.L.R. 129.
160. Sale of Goods (Cap. 115).
161. Article 1496.
162. Zanzibar Contract Decree (*Laws of Zanzibar*, Revised Edition, 1959, Cap. 149).

There are a few important issues on which a unifying statute needs to declare a general policy or approach, and on most problems of sales law, complex and detailed statutory provisions are unnecessary and may even be dangerous. If the uniform statute avoids harsh technicalities, the law's greater contribution will not be what it says but what it becomes, a common language and referrant for developing jurisprudence that one day could constitute an international law merchant.[163]

The ULIS seeks to eliminate from the law of international sale the application of national law, including the large body of international commercial law and custom contained in national laws and tries to substitute as a self-sufficient code, a relatively few general rules. However, the ULIS does succeed admirably in harmonizing, in a generally acceptable way, the basic principles of the law of international sales reflected in various legal systems.[164] Most of the provisions of ULIS relating to the obligations of the seller and the buyer could be adopted by most of the major trading nations of the world without too much difficulty and indeed without substantially changing their existing laws. But the ULIS does not eliminate those national diversities that are most oppressive to international trade; these diversities are not of basic principles but of specific application.

The great many gaps that exist in the ULIS are because of exclusion from consideration, for instance, the various types of documentary sales like c.i.f., f.o.b., etc. ; neither are documents, where mentioned,[165] defined and nowhere is there any reference to the obligations of the seller and the buyer in documentary sales. Neither does the ULIS mention bills of lading, marine insurance certificates or policies, or other

163. Honnold : "Uniform Law" in 30 *Law and Contemporary Problems*, (1965), P. 327.
164. Berman, *op. cit*.
165. Articles 50-51 for example.

particular types of documents. The result is that as a law, it is too simple to be helpful for the typical international sale of goods in the documentary sales, and from the documentory sales stems a very large part of international sales law. It may be pointed out that an earlier draft of the ULIS had attempted to cover clauses on trade terms, but since a satisfactory solution could not be reached, such clauses were excluded from the draft. The ULIS, though it does mention excuse for non-performance,[166] it is silent as regards denial or revocation of export or import licences, or governmental intervention of any kind and contains almost nothing on agency or on rights of bonafide purchasers or of bailees.[167]

The weaknesses of the ULIS have been considered to be many. One of the criticisms[168] levelled against it is that it was "conceived primarily in the light of external trade between common boundary nations geographically near to each other". Further, insufficient attention has been given to international trade problems involving overseas shipments and to the reciprocal rights and obligations as between the seller and the buyer which viewed in the light of practical realities of trade practice are not well balanced. The ULIS has the drawback of being too intricate and may not be understood by individuals in the commercial field.

The ULIS is generally more favourable to the sellers. Some instances such as the buyer's right of rejection and his duty to salvage, may be due to special considerations of international sales but in others, such as the seller's power to disclaim waranties, it is not. Further, the ULIS tends to be brief, a bit abstract and not very detailed, as in its treatment of the buyer's right to reject and trade terms in connection

166. Article 74 of the ULIS.

167. These matters are subject of separate preliminary drafts, the "satellite" drafts prepared by UNIDROIT.

168. Report of the American Delegation to the Diplomatic Conference, 1964. Also USA, UNCITRAL UN. Doc. A/CN. 9/11/Add. 1. p. 33.

with risk of loss. It has also employed some artificial concepts of academic or regional significance which may be difficult to apply with clarity and uniformity. For the desired unification to be effective rather than illusory, a uniform law must speak to and solve the real problems of international trade.[169]

It is felt[170] that on comparison with the existing different national laws relating to the same subject, the "defects" of the ULIS are already inherent in the various national laws which might be designated as the governing law of the contract.

The purpose of the ULIS is not to be excluded, but to be applied despite Article 3 which provides for exclusion of the ULIS. The excessive generality of the ULIS, in practice, will have to be regulated by specific contractual provisions viewed in the context of international trade usage, the legal rules playing a subsidiary role. It is a matter of common commercial experience that international sale contracts are generally drafted against a body of law, and that the less specific the law, the more detailed the contracts must be.

If the contract is to be governed solely by the 101 Articles of the ULIS, which in itself is often vague, the parties would need to insert into their contract specific clauses covering those rules of international trade law not contained in the ULIS and not clearly defined by usage, like standard trade terms. Even with respect to matters not omitted but covered by general rules in the ULIS, the parties may have to specify in their contracts many of the detailed application of those rules. Matters of expenses of inspection, notice, damages, payment, etc. are dealt with generally and not in the detailed manner as contained in national laws and

169. U. S. A. *Ibid.*

170. H. J. Daw: "Some comments from the Practitioner's Point of View" in XIV *AJCL* (1965), p. 242.

judicial decisions, and therefore the overriding need for certainty in sales transactions between nationals of different States is not satisfied.

From a practical point of view, the emergence of long contract forms could become oppressive, apart from the likely opposition of trade associations in favour of abandonment of short contracts that now predominate in many types of trade and that are easily understood by merchants, and apart from the high legal expenses that would be necessarily incurred in drafting and negotiating such contracts.

In the words of Prof. Riese,[171] "The draft is not intended to bring about a pure compromise but it aims at setting in a clear, understandable language the most important principles which can be considered as practicable and reasonable, proper to indicate the direction to the future development of the law".

The ULIS does not also strive to be and is not, a self-sufficient code of law on international sales and is merely a portion of the entire work in this field envisaged by the UNIDROIT. As mentioned earlier, a number of "satellite" drafts are in the various stages of preparation and acceptance, and these drafts along with the ULIS, as well as other drafts not yet under preparation, will form the complete code of uniform law on international sales. But the position is uncertain as to the law applicable to matters and relations not covered by the ULIS itself till such drafts are finalized and adopted. To cover all aspects of sales transactions, which are inherently of infinite variety and of varied nature since sales of goods come in endless shades and patterns, bulky and more detailed uniform code would be required. The Diplomatic Conference of 1964 held at the Hague, how-

171. Prof. O. Riese : "International Problems in the Law of Sales" in *Some Comparative Aspects of the Law Relating to Sale of Goods.* (ICIQ Supp. Pub. No. 9 (1964), P. 36-37.

ever, found the draft of the ULIS (113 Articles) too lengthy and complex to be dealt with adequately in the time available. The ULIS, consequently, appears to have been hastily adopted. What seems to be now required to achieve the much desired unification and harmonization of the law of International Sale of Goods, is that with the ULIS and possibly the other "Satellite" drafts prepared by the UNIDROIT as a basis for further work in the field, a more comprehensive and complete code on the law of international sales, without the inherent defects, gaps and short-comings of the ULIS, be prepared for universal application under the sponsorship of an international agency, like the UNCITRAL, which has uniform and equal representation of the major legal systems of the world, as well as of the various regions and types of economies in the world.

VI. LAW OF THE SEA

INTRODUCTORY

The subject "the Law of the Sea including questions relating to Sea-Bed and Ocean Floor" was referred to this Committee for consideration by the Government of Indonesia under Article 3 (b) of the Committee's Statutes. Having regard to the recent developments in the field and the proposal for convening of a UN Conference of Plenipotentiaries to consider various aspects of the Law of the Sea, the Committee at its Eleventh Session decided to include the subject as a priority item on the agenda of its Twelfth Session.

In order to appreciate the background of the Committee's study, it may be recalled that the International Law Commission of the United Nations, soon after its establishment, took up the Law of the Sea as a priority topic for codification. The Commission after considering the subject at a number of its sessions drew up its conclusions in a set of draft articles which formed the basis for discussion at the Conference of Plenipotentiaries convoked by the United Nations in 1958. That conference suceeded in adopting four conventions on the subject, namely, (i) the Convention on the Territorial Sea and the Contiguous Zone, (ii) the Convention on the High Seas, (iii) the Convention on Fishing and Conservation of Living Resources of the High Seas and (iv) the Convention on the Continental Shelf. The question of the breadth of the territorial sea, however, remained unresolved due to wide divergence of views and another Conference of Plenipotentiaries convened in 1960 to consider the problem also failed to resolve the question as no proposal received the requisite two-thirds majority. Some of the other questions which appear to have been left unresolved by these two Conferences were those relating to the regime of international

straits and the special rights of coastal States, if any, on fishing resources of the sea.

Within a few years of the two UN Conferences on the Law of the Sea it became apparent that the international community would have to seriously tackle the problem of the breadth of the territorial sea as a number of States began taking unilateral action in this matter following upon the failure of the 1958 and 1960 UN Conferences to resolve this question. The technological advances made in the field of exploitation of the sea-bed also made it necessary to define with sufficient precision the extent of the national jurisdiction of coastal States in the sea-bed and to think in terms of exploration and exploitation of the natural resources of the sea and the sea-bed beyond the limits of national jurisdiction for the common good of mankind. Moreover, the emergence of new nations in Africa during the 1960s brought home the necessity for re-examination of some of the issues and it became obvious that any new order of the Law of the Sea must adequately reflect their views.

Recognising the need for orderly development of the sea-bed and the ocean floor, the General Assembly by its Resolution 2467A (XXIII), adopted on the 21st December 1968, established a Special Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. During 1968-69 the Soviet Union and the United States of America consulted with a number of States regarding the possibility of holding of another international conference on the Law of the Sea to settle the outstanding issues on the subject, and the General Assembly of the United Nations by its Resolution 2574A (XXIV), adopted at its 1833rd plenary meeting, requested the UN Secretary-General to ascertain the views of member States regarding the desirability of convening a Conference on the Law of the Sea at an early date to review the regimes of the high seas, the continental shelf, the territorial sea and the contiguous zones, fishing and conservation of the living resources of the high

seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the sea-bed and the ocean floor which lay beyond the limits of national jurisdiction. The overwhelming support that this Resolution received made it evident that the holding of a Conference to settle the outstanding issues on the Law of the Sea was almost a matter of certainty and that the Asian and African States would have an important role to play in the formation of the law on the subject and in the establishment of a new order of the sea.

It was at this stage that the Government of Indonesia proposed to the Committee that it should take up this subject at a very early date in order to assist the member States of the Committee to prepare for the proposed UN Conference and also to enable them to have an exchange of views on important issues prior to the holding of the Conference. Indonesia's proposal was placed before the Committee at its Accra session held in January 1970 and the Committee resolved that, having regard to the paramount importance of the subject to the Asian-African States, the Committee should take up the matter at its next regular session and that prepartory work should be proceeded forthwith. The Committee also decided that its activities with regard to the assistance to be given in preparation for the proposed UN Conference on the Law of the Sea as also affording of facilities for exchange of views should not be confined to member States of the Committee alone but should be offered to all Asian and African States following upon the previous practice which it had adopted in connection with the preparation for the Law of Treaties Conference with such signal success.

The Secretariat of the Committee, in pursuance of the aforesaid decision, sent a communication to practically all the Asian and African Governments inviting them to participate in the discussions on the Law of the Sea which were to be held at the Colombo Session of the Committee in

January 1971. Along with the invitation a list of topics for discussion and a Questionnaire was sent out to these Governments inviting their views with regard to the topics which the proposed UN Conference should consider as also their comments on substantive issues raised in the Questionnaire. In response to this invitation, 25 States including 18 of the members of the Committee participated in the Colombo Session. Twelve other Governments requested us to furnish them with the preparatory material and the proceedings of the Colombo Session on the Law of the Sea. In addition, delegations from the United States of America and five of the Latin American Governments attended the Session in order to explain their viewpoints on various issues before the Colombo meeting of this Committee.

At the Colombo Session the subject was discussed in detail in the plenary meetings held on the 19th, 20th, 21st, 22nd and 27th January 1971 and the principal topics which were taken up for consideration were as follows : (1) Breadth of the Territorial Sea, (2) Rights of coastal States in respect of fisheries in areas beyond the territorial sea, (3) Exploration and exploitation of the sea-bed including the question of national jurisdiction over the sea-bed, the concept of "trusteeship" over the continental margin, the type of regime to govern the sea-bed and the ocean floor beyond the limits of national jurisdiction (4) Islands and the archipelago concept, (5) international straits, and (6) preservation of marine environment. Following the discussions in the plenary the Committee appointed a Sub-Committee consisting of all the participating member States of the Committee and a Working Group was established composed of the representatives of Ceylon, India, Indonesia, Japan, Kenya and Malaysia for detailed study and preparation on the subject. It also appointed as its Rapporteur Mr. Christopher W. Pinto of Ceylon.

The Sub-Committee presented its Report on the work done during the Colombo Session which was approved by the Committee at its plenary meeting held on the 27th January

1971. The decisions taken by the Committee at its Twelfth Session on the recommendations of the Law of the Sea Sub-Committee in respect of further work to be done were as follows :

(i) The Rapporteur of the Sub-Committee should prepare a paper containing a list of various issues on the Law of the Sea, summary of the views expressed in the Committee on those issues and a Questionnaire inviting the views of the Governments.

(ii) The Secretariat shall send the Report of the Sub-Committee and the Documents mentioned in (i) above to the Governments of participating States and also to the Governments of other Asian-African States by the 15th February 1971 requesting them to give their comments within two months. The Secretariat shall send directly to each member of the Working Group the replies of Governments as soon as received.

(iii) The Sub-Committee should request the members of the Working Group to prepare one or more working papers on special issues. These working papers should be sent to the Committee's Secretariat by 1st June 1971.

(iv) The Secretariat shall circulate the working papers referred to in (iii) above among the members of the Sub-Committee on the Law of the Sea as soon as they are received, and invite their comments.

(v) The members of the Sub-Committee who are also members of the United Nations Sea-Bed Committee will maintain close liaion during meetings of that Committee.

(vi) The Sub-Committee on the Law of the Sea shall convene in Geneva on the 15th July 1971 just before the Summer Session of the UN Sea-Bed

Committee, and consider the Working Papers referred to in (iii) above, and discuss matters relating to the agenda of the UN Sea-Bed Committee.

(vii) The Secretary-General shall in consultation with the members of the Sub-Committee prepare a further programme of work to be done on this subject prior to the Lagos Session of the Committee in 1972.

(viii) The Delegation of Ceylon in consultation with the Committee's Secretariat shall act as the Convenor for all inter-sessional meetings.

The proceedings of the Colombo Session on the Law of the Sea and the Working Paper prepared by the Rapporteur containing a list of various issues, a summary of views expressed in the Committee on those issues and a Questiónnaire were made available to practically all the Governments in the Asian-African region.

REPORT OF THE SUB-COMMITTEE APPOINTED AT THE TWELFTH SESSION

Chairman :	Hon'ble Dr. T.O. Elias	(Nigeria)
	Mr. D. Ogundere	(Nigeria)
Rapporteur :	Mr. C.W. Pinto	(Ceylon)

I. Organisation of work

The Sub-Committee first took up the question whether the various issues of the Law of the Sea ought to be divided among two or more working groups. It was agreed that, at least initially, all issues relating to the Law of the Sea should be considered by the entire Sub-Committe, and that one or more Rapporteurs could be appointed in respect of those issues.

The Delegation of Malaysia proposed that in view of the contribution made by Ceylon in the United Nations towards progress on principles governing the sea-bed and the ocean floor and the sub-soil thereof beyond the limits of national jurisdiction, a member of the Delegation of Ceylon be appointed Rapporteur on that subject. On the proposal of the Delegation of Iran, the Sub-Committee agreed that a member of the Delegation of Ceylon should act as Rapporteur on all subjects relating to the Law of the Sea.

The Chairman placed before the Sub-Committee a list of the subjects for discussion and it was agreed that the Sub-Committee should consider them in groups as follows, without prejudice to the order in which any particular subject might be taken up :

1. The extent of the territorial sea, including the matter of rights of coastal States in respect of fisheries beyond the territorial sea.