THE ROLE OF USAGES IN THE UNIFORM LAW ON INTERNATIONAL SALES

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I. INTRODUCTION

It is the purpose of the Uniform Law on the International Sale of Goods—adopted by the Diplomatic Conference held at The Hague on April 2–24, 1964—to create non-mandatory rules (*jus dispositivum*). Thus, article 3 stipulates:

> The parties to a contract of sale shall be free to exclude the application thereto of the present Law either entirely or partially. Such exclusion may be express or implied.

The principle of party autonomy here established is further developed in the provisions which deal with usages. This is particularly true of article 9, which provides:

> 1. The parties shall be bound by any usage which they have expressly or impliedly made applicable to their contract and by any practices which they have established between themselves.
>
> 2. They shall also be bound by usages which reasonable persons in the same situation as the parties usually consider to be applicable to their contract. In the event of conflict with the present Law, the usages shall prevail unless otherwise agreed by the parties.
>
> 3. Where expressions, provisions or forms of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning usually given to them in the trade concerned.

Accordingly, the general approach to usages of the Uniform Law on International Sales in article 9 seems to involve two aspects. First, the parties are bound by usages which they have expressly or impliedly made applicable to their contract (paragraphs 1 and 3). Second, the Uniform Law may be subordinate to usages even in the absence of reference to them by the parties; in other words, when there is conflict between the rules of the Law and usages, the latter shall prevail unless otherwise agreed by the parties (paragraph 2). Finally, there is a third point as to usages which is worth mentioning here: in certain articles of the Uniform Law it is provided that usages shall be applicable to a particular question; in these cases usages are on the same level as the provisions of the Law.

When speaking of usages one is inclined to think primarily of commercial transactions. It is true that lawyers are mostly concerned with practices which occur in the field of commerce, but it should be borne in mind that usages exist in other fields as well. This reminder is particularly warranted inasmuch as it is laid down that the Uniform Law "shall apply to sales regardless of the commercial or civil character of the parties or of the contracts" (article 7).

Even though the provisions referred to above convey a general impression of the position of usages within the framework of the Uniform Law on Sales, a great many questions concerned with the enforcement of usages still remain open. One may ask, for instance: "What is the meaning of usages under the Uniform Law? Is it possible to distinguish, for the purposes of that Law, between usages and national legal rules? How is it possible in each case to designate the usages applicable thereto?"

II. THE DOCTRINAL BACKGROUND

Since the Uniform Law on International Sales has been drafted by lawyers from countries which adhere to different systems of law, it is likely that its language reflects the draftsmen's different legal ways of thinking and the different legal techniques to which they are accustomed. It may therefore be useful to outline the basic theories of the legal effects of usages.

A suitable starting point is the following definition taken from the system of common law: "Usage may be broadly defined as a particular course of dealing or line of conduct generally adopted by persons engaged in a particular department of business life . . ."[1] This statement, which is merely an introduction to a more detailed definition, is not likely to meet with opposition anywhere. In other words, usages are known and recognized in different legal systems.

There are, however, different opinions about other points. The differences are mainly concerned with the legal grounds that one relies upon when explaining the fact that in the practice of the courts usages can form the basis for decisions. In the search for such grounds one particular point has been crucial, namely the relation between usages and customary law.

[1] Halsbury, *The Laws of England*, vol. 11, 3rd. ed. 1955, p. 182.

First, there is the contractual approach. This approach is natural, since there are a great many contracts in which an express or implied condition is to be found to the effect that usages are applicable to the contract. This view has given rise to a theory according to which usages constitute only one of several elements that have to be taken into account when a contract is interpreted. According to this subjective theory it is not necessary to require the parties to a contract to make an express reference to a particular usage. Such a reference may be inferred from the circumstances, and even a presumed (hypothetical) intention of the parties may be a sufficient ground for the enforcement of usages by a court. This general approach, with slight modifications, probably prevails in England, France, and Switzerland, as well as in the United States of America.[2] The modern American trend is illustrated by section 1–205 of the Uniform Commercial Code.[3]

Another view is represented by the advocates of the "objective theory". According to this theory one must distinguish between usages which cannot be enforced by a court unless the parties to a contract have made express or implied reference to them, and usages which may be applied to a contract even in cases where one of the parties or both have not known of the usage in question. Usages of the latter type (*usages normatifs*) are on the same level as non-mandatory legal rules proper (*jus positivum*), and accordingly considered to be legal rules of a non-mandatory type. The objective theory has been adopted in a number of countries, for example Austria and Italy,[4] and is reflected in legal writings in many others. This is probably so because in most jurisdictions customary law is recognized as a source of legal rules, and it would, therefore, be an elegant solution to the problem if a considerable proportion of usages could be included in the sphere of customary law.[5]

Scandinavian law and German law are regarded as intermediate between the above-mentioned theories.[6]

[2] See Rabel, *Das Recht des Warenkaufs*, vol. 1, 1957, p. 59.

[3] See Honnold, "The Influence of the Law of International Trade on the Development and Character of English and American Commercial Law", in *The Sources of the Law of International Trade*, ed. Clive M. Schmitthoff, 1964, pp. 78 ff. See also the official comment to U.C.C. sec. 1–205.

[4] Rabel, *op. cit.*, p. 59.

[5] Cf. Ross, *Om ret og retfærdighed*, 1953, pp. 107 ff.

[6] Rabel, *op. cit.*, p. 59. As for the Scandinavian view, see Almén, *Om köp och byte av lös egendom*, 4th ed. 1960, pp. 26 ff., Karlgren, *Kutym och rättsregel*, 1960, pp. 10 ff.

Despite the differences in doctrinal background, the courts of different countries, when dealing with usages, to a large extent arrive at similar results. The role of the courts is always the same in so far as they exercise a measure of control with regard to usages. It is up to the court to decide whether usages comply with certain tests, in particular the test of reasonableness.[7]

There is another feature which is characteristic of the development of usages in modern societies, namely that the judicial climate does not favour the growth of usages with a wide range of application. On the contrary, usages tend to be more limited in scope; their function consists in the fulfilment of such special requirements as occur in the professions, in ports, on the markets, etc., and cannot be treated adequately under the ordinary legal rules.[8]

This attitude is also reflected in some national legislative enactments, such as section 1, subsection 1, of the Scandinavian Sale of Goods Act, which reads as follows:

> The provisions of the present Act concerning the rights and obligations of a seller and a buyer shall apply if nothing else has been expressly agreed upon or may otherwise be considered to be agreed or is consistent with customs of trade or other usages.

It is submitted that the reference to usages in this provision deals only with usages which are, in each particular case, more limited in scope than the corresponding rules of the Act. This view is based on the assumption that it was one of the purposes of the Act to repeal all existing non-mandatory rules with the same range of application as that given to the provisions of the Act. On the other hand, the Act presupposes the existence as well as the future development of more detailed rules which govern limited questions within the range of the general rules of the Act. The usages especially referred to in section 1, subsection 1, of the Act constitute examples of such detailed rules. It is plain that there may also exist, within the general system of the Act, provisions laid down by other statutes which have the same function of special rules as the usages.

[7] For the English law see Cross, *Precedent in English Law*, 1961, pp. 159 ff.
[8] See Marty & Raynaud, *Droit civil*, 1956 vol. 1, p. 196; Gilissen, *La rédaction des coutumes dans le passé et dans le présent*, 1962, pp. 34 f.

III. THE LEGISLATIVE HISTORY

Since the draftsmen's attitude to *usages normatifs* seems to have been far from clear throughout the period of the drafting of the Uniform Law on International Sales, some information on this matter may perhaps be needed.

The present rule of article 9, paragraph 2, of the Uniform Law can be traced back to the first draft of 1935, in which paragraph 1 of article 10 states that the parties shall be bound by usages of which they knew or ought to have known. Moreover, the judge is given power to reject an unreasonable usage if one of the parties did not know of the usage at the time of the conclusion of the contract.[9] The second draft of 1939, article 13, paragraph 1(b), contains a rule practically identical with the respective provision of the final Law. In the official report on the second draft it is stated: "c'est la méthode de l'interprétation typique qui est suivie dans cette formule, comme ailleurs au Projet". This report further shows that according to the view of the authors of the second draft a party may under article 13 be bound by a foreign local usage of which he has not known.[1]

During the discussions on the second draft at The Hague in 1951, the Diplomatic Conference made an effort to elucidate the underlying policies of article 13. It was then asked whether the rule given in paragraph 1(b) governed also *usages normatifs* as distinguished from "contractual" usages. No definite answer was reached on this point[2] and section VIII of the Final Act of the Conference therefore contains the following statement: "Usages. Les termes de l'alinéa *b*) de l'article 13 visent-ils également les usages d'un caractère normatif par opposition aux usages contractuels? Cette question, ainsi que celle de la possibilité de faire cette distinction, sont réservées."[3]

The Special Commission instituted by the Conference of 1951 was charged with the duty of revising the second draft on the basis of the resolutions of the Conference. In 1956 this work

[9] Unidroit, *Projet d'une loi internationale sur la vente*, 1935.

[1] Unidroit, *Projet d'une loi uniforme sur la vente internationale des objets mobiliers corporels et Rapport*, 1951, pp. 60 ff.

[2] Unidroit, *Actes de la conférence ... sur un projet de convention relatif à une loi uniforme sur la vente d'objets mobiliers corporels*, 1952, pp. 221 ff.

[3] Unidroit, *Actes ...*, 1952, p. 276.

resulted in a third draft, article 14 of which accepts with slight modifications the rules of article 13 of the second draft. It stipulates:[4]

> The parties shall be bound:
> (a) by usages to which they have made express or implied reference;
> (b) by usages which persons in the condition of the parties commonly consider to form one of the terms of their contract.

The way from this proposition to the corresponding wording of article 9 of the Uniform Law on Sales is interesting in that at the Conference of 1964 there was strong support for the exclusion from the text of the rule contained in paragraph 1(b). This opinion was based on two grounds: first, the rule was regarded as an obstacle to the unification of law; second, it was probably thought that the rule was a needless repetition of the principle of party autonomy already expressed in the other provisions of the draft.[5] The rule, however, was maintained.

There are two differences worth mentioning, in this connection, between the third draft and the final text. First, the reference to the hypothetical terms of contract in article 14, paragraph 1, of the third draft has been replaced by a reference in article 9, paragraph 2, of the Uniform Law to what the parties usually consider to be applicable to their contract. Second, a provision regulating conflicts between usages and the Law has also been included in article 9, paragraph 2.

IV. USAGES UNDER ARTICLE 9, PARAGRAPH 2

The provisions of article 9 of the Uniform Law on International Sales reflect various theories about the function of usages framed on the national level. Thus, paragraph 1 expounds the contractual approach. An interesting addition to this paragraph was accepted by the Conference of 1964, to the effect that the parties shall also be bound by any practices which they have established

[4] Commission spéciale nommée par la conférence de La Haye sur la vente, *Projet d'une loi uniforme sur la vente internationale des objets mobiliers corporels*, 1956.

[5] See Riese in *Rabels Zeitschrift* 1965, p. 21.

between themselves.[6] This amendment probably does not indicate any change in the scope of article 3, *supra,* but constitutes a helpful illustration of the implied reference to usages or other relevant rules.

Paragraph 2 of article 9 seems to go beyond the purely contractual basis. Since paragraph 1 of the same article, as seen in the light of article 3, already covers usages referred to by the parties either expressly or impliedly, it would have been needless, from a logical point of view, to include paragraph 2 in article 9, unless for the purpose of widening the range of application of the rules concerning usages. But strictly logical considerations are not the only ones that are relevant in the construction of statutes. The question therefore deserves further investigation.

The language of article 9, paragraph 2, of the Uniform Law on Sales conforms with the definition given in article 13, paragraph 1, of the Uniform Law on the Formation of Contracts for the International Sale of Goods: "Usage means any practice or method of dealing which reasonable persons in the same situation as the parties usually consider to be applicable to the formation of their contract." These words convey the impression that it has not been considered necessary for the application of a particular usage that the parties have actually known about it at the time of entering into the contract. What is required in this respect is that there shall be a general feeling as to the validity of the usage in question among reasonable persons in the same situation as the parties.

The language of article 9, paragraph 2, of the Uniform Law on Sales as well as its legislative history seems to warrant the assumption that this article is not meant to be limited to the application of only those usages which are, strictly speaking, contractual. The official comments attached to the third draft (1956) are enlightening. The Special Commission states as its opinion that the rule in question should be considered to comprise even those usages of which the parties have not thought or known, and to which, therefore, they have not been able to make reference in their contract.[7] What has been said in this paragraph does not, however, give a definite answer to the crucial question whether *usages normatifs* in the proper sense fall within the scope of article 9.

[6] This amendment was proposed by the American delegation; see Riese, *op. cit.,* p. 21.

[7] Commission spéciale . . ., *op. cit.,* p. 50.

If, in our search for an answer to the question just mentioned, we turn to legal writings, the first expert to be consulted is Professor Frederico de Castro y Bravo, who was *rapporteur* on this topic at the Conference of 1951.[8] When dealing in 1960 with article 14 of the third draft of 1956, he stated that this article is not concerned with usages as means of interpretation in the proper sense of the word, nor is it concerned with usages of "clair caractère normatif". Speaking especially of paragraph 1(b) of article 14, he states: "Il ne s'agit pas ici de la fonction interprétative de l'usage, dans laquelle celui-ci est utilisé comme disposition présumée voulue (présomption 'iuris tantum'), comme élément utile pour connaître la véritable volonté de ceux qui ont contracté; mails il s'agit de donner à l'usage la valeur d'un Droit dispositif ayant la préférence sur les dispositions de la Loi Uniforme . . ."[9]

There are also other Continental authors who have dealt with article 14, paragraph 1, of the third draft or with the corresponding provisions of its predecessor. It seems to be a general opinion among them that the rule in question will apply to *usages normatifs*.[1] The same is true of opinions relating to the pertinent provisions of the Uniform Law on Sales as well as the Uniform Law on Formation of Contracts.[2]

The Scandinavian approach to the problem may be illustrated by the opinion of the prominent Swedish legal writer Mr. Justice Karlgren, who is inclined to assume that the number of cases to which the rule of article 14, paragraph 1(b), of the third draft could be applied is very limited.[3] On the other hand, Mr. Justice Karlgren asserts that the end which is intended in this rule could be achieved under the rule of paragraph 1(a) of the same article if one resorted to the interpretative technique commonly used within the Scandinavian law of contracts. On this basis he observes: "If the custom is unknown to one of the parties, A, but not to B, and if we also assume that parties in general consider the custom as an implicit clause in the contract, it may well be

[8] See Unidroit, *Actes . . .*, 1952, pp. 212 ff.

[9] "Les usages dans le projet de loi uniforme sur la vente internationale" in *Mélanges offerts à Jacques Maury*, vol. 2, 1960, pp. 92 f.

[1] See von Steiger, "Der 'internationale Kauf'" in *Vom Kauf nach schweizerischem Recht* (Festschrift . . . Theo Guhl), 1950, p. 231; Luithlen, *Einheitliches Kaufrecht und autonomes Handelsrecht*, 1956, p. 23.

[2] See Riese, *op cit.*, pp. 21 f.; von Caemmerer, *Rabels Zeitschrift* 1965, p. 141.

[3] Karlgren, "Usage and Statute Law", *Scandinavian Studies in Law* 1961, pp. 43 ff.

held that B is justified in reading the applicability of the custom into the contract as objectively interpreted, and it follows that [paragraph 1(a)] is indeed applicable. And it is not impossible, under the same hypothetical assumption, that the objective meaning of the contract would remain unchanged even if both parties were ignorant of the custom."[4]

It may be inferred from the opinions stated above that both the Continental and the Scandinavian approaches to the problem of usages under article 9 of the Uniform Law are possible. The Continental method, which reflects the objective theory concerning usages, may be the most suitable for the patterns of construction as developed on the Continent. The Scandinavian approach, on the other hand, complies with the contractual theory of usages as applied in various countries, e.g. in the United Kingdom and the United States of America.

Since both these approaches are objective in that actual knowledge by the parties themselves is not made the decisive criterion of applicability of usages, it may well be that practical solutions under them would usually not differ from each other. But different solutions are more probable under different theories of interpretation than in the case of a common background. Therefore, it would be highly important, in the interest of a uniform interpretation of the Uniform Law, to establish a common manner of dealing with usages within its framework.

In the opinion of the present writer these two methods of interpretation, the Continental and the Scandinavian approaches, should be co-ordinated. If an objective test is applied to this case, too, we see that there are in the present structure of the Uniform Law clear reflections of the objective theory of usages. This is shown especially by paragraph 2 of article 9 as compared with paragraph 1 of the same article. First, paragraph 2 would have been needless from the point of view of the purely contractual approach, as is clearly shown by Mr. Justice Karlgren. Secondly, the wording of paragraph 2 no longer contains a literal reference to the terms of the contract. Thirdly, the present paragraph 2 stipulates: "In the event of conflict with the present Law, the usages shall prevail *unless otherwise agreed by the parties*" (my italics). The sentence is hardly understandable if the first part of paragraph 2 is to include solely usages on a contractual basis. Fourth, the amendment of paragraph 1 of article 9 to cover any

[4] Karlgren, *op. cit.*, p. 45 (footnote).

practices which the parties have established between themselves has emphasized the contractual nature of this paragraph as distinguished from paragraph 2.

The discussion above shows that the text of the Uniform Law as it was finally adopted accentuates the differences between the rules contained in paragraphs 1 and 2. This fact should be taken into account in the construction of those rules. It is submitted that the new wording tends to make the interpreter pay more attention to *usages normatifs* than he might have done under the earlier drafts.

V. THE DETERMINATION OF APPLICABLE USAGES

Reference to usages in article 9 of the Uniform Law on International Sales means reference to something outside that Law. If the parties to a contract have expressly or impliedly indicated those usages that they have regarded as applicable to their contract, there are no major difficulties in ascertaining what the relevant rules are. Nor is it necessary to determine whether the usages in question fulfil the requirements of the Uniform Law. Freedom of contract given to the parties particularly by articles 3 and 9 covers all those cases anyway.

The situation becomes more complicated in the absence of a contractual basis. It is not clear, at the outset, to what extent there are truly international usages which would be legally binding everywhere without support of the contract.[5] It must be borne in mind that such devices as Incoterms, the E.C.E. standard forms of contract, etc.—sometimes referred to as international commercial custom[6]—constitute "clausal law" in the sense that those rules derive their force from the contract.[7] Accordingly, the reference to usages may only have major practical significance if, on the national level, there are usages vested with power to replace the provisions of the Uniform Law.

[5] The question is somewhat controversial, see Luithlen, *op. cit.*, pp. 32 ff.; Schmitthoff, "The Law of International Trade, its Growth, Formulation and Operation" in *The Sources of the Law of International Trade*, ed. Schmitthoff, 1964, pp. 35 f.

[6] Schmitthoff, *op. cit.*, p. 16.

[7] Sundberg, "The Law of Contracts. Jurisprudential Writing in Search of Principles", *Scandinavian Studies in Law* 1963, pp. 141 ff.; Schmitthoff, *The Unification of the Law of International Trade*, 1964, pp. 7 f.

The question of the relationship between the Uniform Law and national rules is somewhat controversial. It is obvious that when a state accepts the Uniform Law as a part of its legal system, the state legislature in so doing substitutes the provisions of that Law for the corresponding national rules, if any. In order to elucidate to what extent the Uniform Law will in such a case modify the pre-existing national rules relating to the international sale of goods, I may refer to what has been said above in connection with section 1, subsection 1, of the Scandinavian Sale of Goods Acts. It is submitted that in the case of the Uniform Law, too, pre-existing national rules will be replaced only as far as they have the same range of application as the provisions of the Uniform Law. Thus national rules with other fields of application will not be affected. Article 9 indicates a favourable predisposition towards specialized rules, but this does not, of course, imply that such national rules, usages among them, should necessarily be regarded as applicable within the framework of the Uniform Law.

It is appropriate to turn now to those provisions of the Uniform Law which contain special references to usages. In general, there seem to be no clear indications as to whether or not the usages contemplated in each particular case should be international ones. It is true, however, that a slight deviation from the general trend may be found in article 38, paragraph 4, according to which "the methods of examination shall be governed by the agreement of the parties or, in the absence of such agreement, by the law or usage of the place where the examination is to be effected". The favourable attitude of the Uniform Law towards usages is also illustrated by, *inter alia*, article 21:

> Where by agreement of the parties or by usage delivery shall be effected within a certain period (such as a particular month or season), the seller may fix the precise date of delivery, unless the circumstances indicate that the fixing of the date was reserved to the buyer.

It may be, in connection with such a reference, that the usages required for the settlement of a particular point at issue in the relationship between the seller and the buyer are to be found at the international level. On the other hand, one can imagine cases where there are no international usages available, or where the question to be settled is so closely connected with a certain locality that only the local usages are practical. Suppose, for example, that the contract deals with the delivery of timber from a

northern country where the time of delivery may depend to a large extent on circumstances, such as weather conditions, season, etc., which also constitute the basis for the usages applicable to such deliveries. It is probable that the parties to the contract in question as well as the judge would, when interpreting article 21, consider those local usages to be applicable. On the other hand, if local usages are susceptible of being applied under article 21, the same should be true of article 9, paragraph 2, because the former provision, as far as the reference to usages is concerned, is nothing more than a repetition in a particular context of the general rule already expressed in the latter.[8]

Assuming that national usages are pertinent in the system of the Uniform Law, certain difficulties may arise relating to the identification of the applicable usages in each particular case. First, when the transaction in question consists of several parts, each one having its place of occurrence within a different jurisdiction, it must be ascertained which is the connecting factor to be relied upon in order to designate the relevant usages. In the absence of support in the Law itself, the problem can, in my opinion, be solved by applying a technique similar to that of "the most real connection" well known in the field of private international law. Such a proposition implies that we have here an exception to the general exclusion in article 2 of the Uniform Law of the rules of private international law. This exception, however, can be based on the second part of the article which states that the general rule is "subject to any provision to the contrary in the said Law". I would include in provisions to the contrary the rules relating to usages.[9]

The second problem of identification is how to distinguish, within a certain jurisdiction, the usages contemplated by the Uniform Law from other categories of rules. We know that there may be varying degrees of usages within each jurisdiction. Apart from those usages which can be taken into account only in so far as the parties have referred to them, there is a second group

[8] See, however, de Castro y Bravo, *op. cit.*, p. 95. The learned author points out that there may be differences in scope between various provisions of the third draft (1956) as to usages.

[9] As for the question of to what extent the exclusion of the rules of private international law is possible in connection with the Uniform Law on International Sales, see de Winter, "Loi uniforme sur la vente internationale des objets mobiliers corporels et le droit international privé", *Netherlands International Law Review*, 1964, vol. 11, pp. 271 ff.; Zweigert & Drobnig, "Einheitliches Kaufgesetz und internationales Privatrecht", *Rabels Zeitschrift* 1965, pp. 146 ff.

comprising usages designated as *usages normatifs*; and closely related to them is a third group consisting of usages which, supported by judicial precedent, have achieved the position of established trade custom.[1]

When dealing with usages in the second and third categories mentioned above, we might ask whether we should differentiate here between two distinct issues, namely usage and law. The answer to this question depends on the meaning of the term "usage" in the Uniform Law. If, as I have tried to show above, it is the purpose of the Uniform Law in this context to refer to specialized rules, whether national or international, as distinct from general ones with the same range of application as the provisions of the Uniform Law, then it seems to be unnecessary, or even dangerous, to make the distinction. The danger lies in the fact that national classification techniques concerning legal rules vary from one country to another and that, therefore, such differences might easily affect the application of the Law. It is submitted on these grounds that the main criterion should be the *function* of the rules in each particular case. The application of this test leads to the suggestion that, in principle, the reference to usages in the Uniform Law would include all those rules which have the same function as usages normally have, namely that of a specialized rule. The simple fact that a rule which originally appeared in the form of a usage has been converted into a legal rule proper cannot exclude the rule from the sphere of the Law.[2]

The Uniform Law on Sales is not concerned with the validity of usages (article 8). It is understandable that courts in different countries apply their own tests when they determine whether a particular usage prevailing in that country can be enforced. On the other hand, courts are probably willing to exercise a certain amount of control upon foreign usages as well, if these come up in disputes of an international character.

VI. CONCLUSIONS

First, it is the purpose of the Uniform Law on the International Sale of Goods to supplement by reference to usages, whether international or national, the system of general rules laid down in

[1] See Wortley, "Mercantile Usage and Custom", *Rabels Zeitschrift* 1959, pp. 261 f.

[2] Cf. Karlgren, *op. cit.*, pp. 44 f.

that Law. Usages in this context constitute rules more detailed than those of the Uniform Law.

Second, different legal systems may have different approaches when dealing with usages, as illustrated by two methods, viz. the contractual approach and the technique which differentiates usages on a contractual basis from *usages normatifs*, the two methods probably being equal in their practical consequences. On the other hand, the rules of the Uniform Law are wide enough to comprise both methods. This means that each jurisdiction in which the Law is to be applied is free to choose its own method; but the method used should not have any influence on the applicability of usages under the Law.

Third, the choice of usages to be applied in each particular case is a question of interpretation, in that the connecting factors presented by the contract or by the Uniform Law designate those usages—either international or national—that are to be taken into account. The question of whether or not a particular rule is to be qualified as a usage should not depend on the national qualification of rules. On the contrary, special emphasis should be laid on the function of the rules, in the sense that any rule with the function of a specialized rule with regard to the corresponding provision of the Uniform Law is susceptible of being regarded as a usage, or in any case something similar to that, within the framework of the Law.