

[Texte]

**Mr. Nicholson:** I believe it is, and the official is confirming that it is.

**Mr. Rideout:** The other aspect is that there is no problem in anybody contracting out of this particular convention at all. But if it is obviously not dealt with in the contract and there is no contracting out, then the assumption is that this convention is applicable.

**Mr. Nicholson:** Yes.

**Mr. Rideout:** So it would have to be a specific. . . I gather from some of the reading here that there would at least have to be something in writing to contract out, even if the rest of the contract was oral.

**Mr. Nicholson:** Yes, I believe that is the case.

**Mr. Rideout:** The other area where you come into some concerns from time to time deals with the area of trade usage and its applicability. I gather that comes to play in this particular piece of legislation. Perhaps you could explain to me how trade usage will supersede the effects of the convention.

**Mr. Nicholson:** I should be more of an expert on the sale of goods. I am not quite sure what you mean by "trade usage", Mr. Rideout.

**Mr. Rideout:** The notes we received say "trade usage to which parties have agreed take priority over the convention". It is under article 9. All it says is that this springs from some long-established tradition in international law, and I just wondered how it works, whether it should be tightened up or whether there should be amendments.

**Mr. Nicholson:** It would be my understanding that inasmuch as there are many, many different types of contracts and many ways of doing business, I believe—and the official can contradict me—that was an attempt to make sure someone was not placed at a disadvantage because of the convention. If you and I had been doing business in a particular manner over many years, you could not then invoke the convention to my disadvantage when you and I had an understanding, quite apart from the convention, based on our long-time usage or long-time practice.

**Mr. Rideout:** That is what I thought, although the reverse of that is what had me concerned. If you are dealing, say, with the Soviet Union, and they have all kinds of different trade uses you may not be familiar with, it seems to contemplate that trade usage would supersede the convention. Even though you had the aspects of the convention involved, somebody could pull one of these out of the hat and in effect scuttle the intent of the contract.

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**Mr. Nicholson:** Do you mean the usage would not just be particular to one party or one individual to the contract but would be widely known and international in scope?

**Mr. Rideout:** If it is international in scope, that would make a difference.

**The Chairman:** Now that we have listened attentively to Mr. Nicholson's explanation and Madam Christiane Verdon,

[Traduction]

**M. Nicholson:** Si, elle l'est.

**M. Rideout:** Chacun est libre de ne pas appliquer les dispositions de la convention. Mais si cela n'est pas stipulé dans un contrat, la convention s'applique.

**M. Nicholson:** Exact.

**M. Rideout:** Donc, même pour un contrat conclu verbalement, il faut des dispositions écrites si l'on souhaite que les dispositions de la convention ne s'appliquent pas.

**M. Nicholson:** C'est exact.

**M. Rideout:** Il y a par ailleurs la question de l'usage commercial. Pouvez-vous nous expliquer dans quelle mesure l'usage dit commercial prime les effets de la convention?

**M. Nicholson:** Je ne comprends pas au juste ce que vous entendez par usage commercial.

**M. Rideout:** D'après les notes qui nous ont été remises, aux termes de l'article 9 de la convention, les usages commerciaux auxquels les parties contractantes ont convenu priment les dispositions de la convention. Cela découlerait d'une ancienne tradition du droit international; je me demande si cela n'exigerait pas quelques amendements.

**M. Nicholson:** Étant donné qu'il existe une multiplicité de contrats et toutes sortes de façons pour faire des affaires, cette disposition a pour objet de veiller à ce que personne ne soit lésé à cause de la convention. Ainsi, si deux personnes font depuis longtemps des affaires ensemble, l'une d'elles ne pourrait pas invoquer les dispositions de la convention pour passer outre à des usages ou des pratiques convenus depuis longtemps.

**M. Rideout:** C'est bien ce que je pensais. Cependant, l'Union soviétique a certainement divers usages commerciaux que nous ignorons, et on pourrait dire en l'occurrence que ces usages commerciaux priment les dispositions de la convention. Donc, malgré la convention, quelqu'un pourrait invoquer ces usages pour torpiller un contrat.

**M. Nicholson:** Voulez-vous dire que l'usage ne serait pas réservé à une partie au contrat ou à une personne, mais serait connu un peu partout et de portée internationale?

**M. Rideout:** Si la portée en est internationale, cela ferait toute une différence.

**Le président:** Maintenant que nous avons bien écouté l'explication de M. Nicholson et de M<sup>me</sup> Christiane Verdon,