Study XII - Doc. 27
UNIDROIT 1977
(Or. English)

U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

COMMITTEE OF GOVERNMENTAL EXPERTS

FOR THE EXAMINATION OF THE PRELIMINARY DRAFT CONVENTION

ON THE HOTELKEEPER'S CONTRACT

O B S E R V A T I O N S

of the

GOVERNMENT OF THE UNITED STATES OF AMERICA

on

the preliminary draft Convention

Rome, December 1977

The Government of the United States has reviewed with considerable interest the Preliminary Draft Convention on the Hotelkeeper's Contract, as well as the results of the meeting of governmental experts held at UNIDROIT from March 28 to April 1, 1977. In general, it is the view of the United States that the formulation of a uniform set of rules to govern the most important aspects of the relationships between the "international traveler" and the hotelkeeper would be an advantageous development. It is essential, of course, that such a convention embody proposals which will result in an equitable distribution of rights and obligations as between the guest and the hotelkeeper.

The problem of limitation of the hotelkeeper's or the guest's liability arises in various sections of the Draft Convention. The fixing of reasonable limitations is a difficult aspect of the work and certainly an area in which the interests of the guest and hotelkeeper require the most delicate balancing. It is the view of the United States Government that developments respecting the Convention have not sufficiently advanced to permit any decisions upon amounts of limitation at this stage. There is one aspect of the problem, however, that might be reviewed at the December meeting of governmental experts. The proposals contained in the Draft base the limitation amount on either a percentage or a multiple of the price of the accommodation. While this method is one way of meeting problems occasioned by the general monetary inflation, some study of the use of special drawing rights would also merit consideration, particularly in view of the fact that there appears to be a trend toward the use of such rights in connection with limitation clauses in various transport contracts.

An issue of major interest to the United States, and which was the subject of limited discussion at the UNIDROIT meeting in March, is whether third parties who participate in the formation of the hotelkeeper-guest relationship, such as travel agents and tour operators, be given rights under or have duties imposed upon them by the Convention. Implicit in the issue are numerous problems of definition. For example, what is a tour operator, a tour organizer, a travel agent? Coupled with problems of definition are difficulties implicit in shifting relationships, for example, the movement of a travel agent to the category of tour organizer in dealing with successive clients. Also complex are the positions of a travel wholesaler or that of transportation companies (airlines) that own or control hotels. The Government of the United States is concerned whether an attempt to deal with the rights and obligations arising out of the interrelationships of guest-travel agent- travel wholesaler-tour organizer-transportation companies-hotels is not so complicated that the exercise would raise so many problems that it might result in frustrating the efforts to properly establish the relationship between a guest and a hotelkeeper. A major problem is the lack of uniformity of legal rules as applied to these relationships by national laws. It is the position of the Government of the United States that the current Convention be limited to relationships between the guest and the hotelkeeper, with references being made to intermediaries whenever necessary to clarify that interposition of an intermediary does not affect the basic relationship.

However, the issues relating to third-party participation do not dissipate by excluding them from the current Convention. Extensive work has already been accomplished by UNIDROIT in the tour operator and travel agency area by the 1970 Convention on the Travel Agency Contract. In recent years there have been new trends and developments in the international travel business which obviously have a direct impact on matters relating to the hotel-guest relationship. Therefore, the Government of the United States recommends that UNIDROIT consider, after the hotelkeeper's contract has been brought to some acceptable form, a review of the Travel Agent's Convention, in light of the relationships which it would have with the Hotelkeepers Convention.

The Government of the United States has the following comments regarding articles of the revised Draft Convention (those set forth by the Committee of Governmental Experts), as well as those articles of the Draft Convention not addressed at the Committee's first meeting in March.

Article 1

There has been much support in the United States that Article 1, or some other article, should set forth the definitions of "hotelkeeper", "hotel", "guest", and "ancillary services". The United States supports any attempt to clarify such terms, while recognizing that many civil law countries may find too-detailed definitions unacceptable. In addition to supporting clarification of certain key terms, the Government of the United States would support a definition of "hotel" or "establishment" that would permit exclusion of minor seasonal operations, small lodging houses, establishments which provide accommodations on a non-profit basis; and establishments such as clubs which limit accommodations to their members.

Article 4

This article does not adequately address the situation where a travel agent is acting as an agent of the traveler. (Information received from the United States hotel industry suggests that travel agents act as agents for hotels only in rare instances and that they were not normally authorized to bind the hotel unless specifically empowered by the hotelkeeper, or, if the travel agent was part of the organization that controlled or operated the hotel). It is the position of the United States that the Convention should explicitly apply to all hotel guests, even those who did not contract directly with the hotelkeeper. Accordingly, Article 4 should be amended to provide that a contract was concluded once there was agreement by, or on behalf of, the guest and the hotelkeeper. Such an amendment would, for example, protect those who entered into an arrangement through a tour organizer and would allow the individual tour member to seek protection and make claims under the Convention (and, vice versa, bind the tour member to those obligations and duties owed the hotelkeeper).

Article 5

Paragraph 2 of revised Draft Article 5 should be amended to read:

"If a hotelkeeper's contract is concluded for a determined period, the guest may continue to occupy the accommodation only on the basis of a new contract with the hotelkeeper or his representative."

Such a change makes clear that the consent of the hotelkeeper is required for continued accommodation after expiration of the original agreement.

In paragraph 4 of revised Draft Article 5 it is suggested that the phrase "on the day of termination" be included after "before midday" to avoid ambiguity.

Article 6

The Government of the United States has examined closely the revised Draft Article 6 and applauds the Committee's attempt to synthesize various recovery provisions (originally in Article 7 and 8) into a single article. However, it is believed that the right of the guest against the hotelkeeper who fails to supply a promised accommodation should be addressed by an optional recovery provision which would be simple and provide a large measure of automacity in operation. To many guests such a provision would be preferable to the situation where the guest might enjoy the possibility of a larger measure of damages but face the requirement of formally initiating a law suit to establish the question of damage. Specifically, the Government of the United States would recommend a solution whereby the Convention would retain the principle in Article 6 of payment of actual damage suffered by the guest unless the hotelkeeper arranges for alternate accommodation that is equivalent or better than that contracted for. Under this approach the guest, if he or she were to accept the alternate accommodation, would be entitled to the first (two) night's lodging free. The hotelkeeper would, in addition, be required to pay any additional expenses incurred by the guest, such as for transportation and higher charges for the alternate accommodation. Any such approach should attempt to encourage remedies contemporaneous to the time of damage and increase the likelihood of avoiding lawsuits. In the event that a guest does not accept equivalent or better accommodations that have been arranged for him by a hotelkeeper who does not provide lodging originally contracted for, the guest should be under an obligation to mitigate the damages that arise.

The Government of the United States also realizes that in certain cases the hotelkeeper's ability to provide the contracted-for accommodations is frustrated by guests who overstay. Therefore, it is suggested that the hotelkeeper have a right of recourse against certain guests who are in overstay situations (which directly cause an overbooking situation) and refuse to give up their rooms at the end of the stay. Revised Draft Article 6 could be amended to provide that a hotelkeeper has a right to recover from the overstay guest any damages which the hotelkeeper has to pay to the guest who was denied the room in question.

Article 8

The Government of the United States recommends that hotel regulations should be duly brought to the notice of the guest by posting all relevant regulations prominently in the guest's room and in the public rooms throughout the hotel. To assure that the regulations are duly brought to the attention of the guests, the hotel regulations should, at minimum, be published in both French and English in addition to any local language.

Article 9

The Government of the United States has re-examined its previous position with respect to defining the term "force majeure", previously found in original Article 6. Revised Draft Article 9 should be amended to read as follows:

> "The contract may be cancelled by the hotelkeeper or the guest before or during the occupation of the accommodation by the guest and without payment of damages when, as a consequence of force majeure, it is impossible for the hotelkeeper to provide, or for the guest to occupy, said accommodation."

Etude XII - Doc. 27
UNIDROIT 1977
(Original : anglais)

Unidroit

INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

COMITE D'EXPERTS GOUVERNEMENTAUX

POUR L'EXAMEN DE L'AVANT-PROJET DE CONVENTION SUR

LE CONTRAT D'HOTELLERIE

OBSERVATIONS

DU GOUVERNEMENT DES ETATS-UNIS D'AMERIQUE

sur

l'avant-projet de Convention

Rome, décembre 1977