

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

Text of the revised articles

of the Preliminary Draft Convention

provisionally approved by the Committee at its first two sessions

and the Swiss Alternative Draft for Articles 1 to 9

INTRODUCTION

This document reproduces the texts of the articles of the preliminary draft Convention on the Hotelkeeper's Contract as provisionally approved by the Committee of Governmental Experts during the first reading of the draft at its first and second sessions held in Rome from 28 March to 1 April and from 12 to 16 December 1977. So as to avoid confusion, the Secretariat has left unchanged the numbering of the articles until the completion of the first reading.

The Secretariat has also included as an annex to this document the alternative draft of the revised Articles 1 to 9 submitted by the Swiss delegation to the second session of the Committee of Governmental Experts.

REVISED DRAFT ARTICLES

Article 1

1. For the purposes of this Convention a "hotelkeeper's contract" means a contract by which a person - the hotelkeeper - undertakes, for reward and on a professional basis, to provide another person - the guest - with temporary accommodation and appropriate ancillary services in an establishment under his supervision.

2. This Convention shall not apply to any contract by which accommodation is provided on a vehicle being operated as such in any mode of transport.

Article 2

This Convention shall apply to any hotelkeeper's contract, where the premises in which the accommodation is to be provided are situated on the territory of a Contracting State.

Article 3

A hotelkeeper's contract need not be evidenced by writing and shall not be subject to any other requirements as to form.

Article 4

A hotelkeeper's contract is concluded as from the time when the hotelkeeper expressly agrees to furnish the guest with the accommodation and ancillary services requested.

Article 5

1. A hotelkeeper's contract may be concluded for a determined or an indeterminate period.

2. If a hotelkeeper's contract is concluded for a determined period, the guest may continue to occupy the accommodation on the basis of a new contract.

3. A contract concluded for a period of time defined approximately shall be deemed to be concluded for a determined period. The termination date of such a contract shall be determined by reference to the earliest date or shortest time mentioned in the period defined. For the purpose of this provision approximate references to a week are to be taken as seven days and to a month as twenty-eight days.

4. If a hotelkeeper's contract is concluded for an indeterminate period, the hotelkeeper or the guest may terminate it by expressing his intention in this regard to the other before midday, or such other reasonable time as may be provided by the hotelkeeper's contract or the internal regulations of the hotel.

Article 6

1. The hotelkeeper shall provide the guest with the accommodation and ancillary services requested; to the extent that he fails to do so, he shall be liable for the damage actually suffered by the guest.

2. He shall however be relieved of liability to the extent that he ensures that the guest is enabled to conclude a contract on terms equivalent to those included in the original contract. The reasonable expense which this substitution entails for the guest shall be met by the hotelkeeper.

Article 7

1. The hotelkeeper shall be entitled to compensation for any damage actually suffered by him on account of the guest's failure to occupy the accommodation requested for the whole or any part of the period stipulated.

2. The hotelkeeper shall take reasonable steps to mitigate the damage suffered by him.

3. In the absence of agreement to the contrary, compensation payable to the hotelkeeper under this article shall not exceed:

(a) [75] percent of the price of the accommodation and the ancillary services provided for in the contract in respect of the first [two days], and

(b) [40] percent of the price of the accommodation and the ancillary services provided for in the contract in respect of the following [five days], no compensation being payable in respect of any subsequent days.

4. In the absence of agreement to the contrary, no compensation shall be payable if the hotelkeeper has been informed of the cancellation of the reservation:

(a) for a stay not exceeding two days, not later than midday on the day on which the accommodation was to be occupied;

(b) for a stay of from three to seven days, not later than two days before the date on which the accommodation was to be occupied;

(c) for a stay exceeding seven days, not later than three days before the date on which the accommodation was to be occupied.

5. In the application of the provisions of this article to cases in which the guest relinquishes the accommodation before the termination date of the contract, the requirement of notice under paragraph 4 shall be determined by reference to the date on which the guest relinquishes the accommodation.

Article 8

1. The guest shall observe such reasonable regulations of the hotel as are duly brought to his notice.

2. The guest may be required to vacate the accommodation occupied by him on the day of the termination of the hotelkeeper's contract at such reasonable time as is provided by that contract or by the regulations of the hotel. If no such time is specified, the guest may occupy the accommodation up to 2 p.m.

Article 9

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

Article 11

If the hotelkeeper receives a sum of money in advance, it shall be considered to be an advance payment toward the price of the accommodation and ancillary services to be provided under the contract. The hotelkeeper shall in the absence of agreement to the contrary/ return it to the extent that it exceeds the amount due to him under the terms of the present Convention.

Article 13

1. The hotelkeeper shall be liable for loss or damage resulting from the death of, or any personal injuries to, a guest caused by an event occurring on the premises of the hotel during or within a reasonable period before or after the time when the guest has the accommodation at his disposal, unless that event was caused by circumstances which a hotelkeeper, exercising the diligence which the particular facts of the case called for, could not have avoided and the consequences of which he was unable to prevent.

2. Notwithstanding the provisions of paragraph 1, when food or drink is provided, the hotelkeeper shall be liable for loss or damage resulting from the death of, or any personal injuries to, the guest caused by its consumption unless the hotelkeeper establishes that the food or drink was fit for human consumption and provided the safety which a guest was reasonably entitled to expect, having regard to its description and presentation.

Article 14

For the purposes of the application of Article 13^(oo):

(a) the hotelkeeper shall be relieved wholly or in part of liability where the loss or damage results wholly or in part from the negligence or from a wilful act or omission of the guest;

(b) subject to the provisions of Article 20 (c), the hotelkeeper shall be relieved of liability where loss or damage results wholly from the negligence or from a wilful act or omission of a third party;

(c) the hotelkeeper shall be liable where the loss or damage results in part from the negligence or from a wilful act or omission of a third party, but without prejudice to any right of recourse he may have against such third party.

(°) The words in square brackets have been added by the Secretariat at the request of the Committee although the latter has yet to pronounce upon the precise drafting.

(oo) This introductory phrase has been added by the Secretariat to meet the wish of the Committee that it be clearly understood that the provisions of Article 14 apply only to the liability for death or personal injuries dealt with in Article 13.

Article 15

1. The hotelkeeper shall be liable for any damage to, or destruction or loss of, property brought to the premises of the hotel, or of which he takes charge outside the premises of the hotel, during and for a reasonable period before and after the time when the guest has the accommodation at his disposal.

2. The liability referred to in the present article shall not exceed / / times the daily charge for the accommodation, exclusive of taxes, service charges and additional services. If the accommodation is occupied by several persons, the calculation shall be made by taking account of the total charge for the accommodation and by considering all the occupants as a single guest.

Article 15^{bis}

The liability referred to in Article 15 shall be unlimited where the damage, destruction or loss is caused by the negligence or by a wilful act or omission of the hotelkeeper or of any person for whom he is responsible.

Article 16

1. The hotelkeeper shall be bound to receive securities, money and other valuables for safe custody; he may refuse such property only if it is dangerous or cumbersome.

2. In cases where the property has been deposited with the hotelkeeper or where he has refused to receive property which he is bound to receive for safe custody, his liability shall be unlimited.

3. The hotelkeeper shall be entitled to examine the property which is tendered to him for safe custody and to require that it shall be put in a fastened or sealed container.

Article 17

The hotelkeeper shall not be liable to the extent that damage, destruction or loss is due:

(a) to the negligence or to a wilful act or omission of the guest, or of any person accompanying him or in his employment, or any person visiting him;

- (b) to an unforeseeable and irresistible event (°);
- (c) to the nature of the property.

Article 18

In the event of damage to, or destruction or loss of, property brought to the premises of the hotel or of which the hotelkeeper has taken charge, the guest shall inform the hotelkeeper thereof as soon as is reasonably possible, failing which he must base his action on the provisions of Article 15bis.

Article 20

For the application of the present Convention:

- (a) any person who enters a hotel with the intention of requesting accommodation shall be treated as a guest;
- (b) the expression "property brought to the premises of the hotel" shall not include live animals;
- (c) the hotelkeeper shall be responsible for the acts and omissions of his agents and servants and of all other persons of whose services he makes use for the performance of his obligations when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

Article 21

Where the loss or damage caused by non-performance, in whole or in part, of an obligation under this Convention gives rise to a claim based on another ground of action, the hotelkeeper may avail himself of the provisions of this Convention which exclude his liability or which set or limit the compensation payable by him.

(°) It was decided temporarily to adopt the same phraseology in this provision as in the revised Article 9 although the delegation of the United States of America expressed the wish that after further discussion the term "force majeure" be employed.

Article 25

(to be inserted in the final clauses of the Convention)

1. Any State may, at the time of signature, ratification or accession to this Convention, declare by notification addressed to ... that:

(a) this Convention shall apply only to relations between a hotelkeeper and a guest whose principal place of business or habitual residence is not on the territory of the State where the accommodation and services are to be provided under the contract;

(b) it will set the amount of the limit of liability referred to in paragraph 2 of Article 15 at a higher sum than /;

(c) articles 15 to 18 shall not apply to vehicles or any property left with a vehicle;

 (d) the hotelkeeper shall not be liable for any damage to, or for the loss of, valuables which a guest has not deposited with the hotel for safe-keeping provided that a notice of the availability of the facilities and of the consequences of failure to deposit are displayed in a prominent position in the accommodation of the guest and in the public rooms of the hotel./ (°)

 (e) that the hotelkeeper may set a limit of times the daily charge for the accommodation, exclusive of taxes, service charges and additional services upon liability for damage to, or loss of, valuables deposited by the guest, provided that the existence and amount of such limitation are duly brought to the notice of the guest./ (°)

2. The declarations referred to in paragraph 1 of this article may be withdrawn at any time by notification addressed to

(°) Texts proposed by the delegation of the United States of America on the substance of which no final decisions have been taken by the Committee.



Alternative preliminary draft concerning Articles 1 to 12 as reproduced in Doc. 14, now Articles 1 to 9 as contained in Annex III to Doc. 21, submitted by the Swiss delegation as a basis for discussion.

Article 1 (Definition and substantive field of application)

1. Under the hotelkeeper's contract within the meaning of this Convention/ the hotelkeeper undertakes on a professional and temporary/ basis to provide the guest with accommodation and appropriate services on premises under his supervision, for a price including board and lodging/ which the guest agrees to pay him/.

2. This Convention shall not apply to any contract by which accommodation is provided on a vehicle being operated as such in any mode of transport.

Article 2 (Territorial field of application)

This Convention shall apply to any hotelkeeper's contract to be performed on premises situated on the territory of a Contracting State.

Article 3 (Formation of the contract)

1. The contract shall be concluded as from the time when the hotelkeeper expressly agrees to provide the guest with the accommodation and services requested.

2. The validity of the contract shall not be subject to any requirements as to form.

Article 4 (Duration of the contract)

1. The contract may be concluded for a determined or an indeterminate period.

2. A contract concluded for an approximate period of time shall be deemed to be concluded for a determined period corresponding to the shortest period within the period approximately defined. For the purpose of this provision, an approximate reference to a week shall be equivalent to seven days and such/ a reference to a month to twenty-eight days.

3. If the contract which is concluded for a determined period does not make provision for tacit renewal, the guest may only continue to occupy the accommodation beyond the term fixed on the basis of a new contract.

4. If the contract is concluded for an indeterminate period, the hotelkeeper or the guest may terminate it /each day/ by expressing his intention in this regard to the other /party/ before midday, or such other /reasonable/ time as may be provided by the contract or by the regulations of the hotel.

5. On the day of the termination of the contract, the guest may be required to vacate the accommodation at such reasonable time as may be provided by the contract or by the regulations of the hotel. If no such time is specified, he may occupy it up to 2 p.m.

Article 5 (Obligations of the hotelkeeper)

1. The hotelkeeper shall provide the guest with such accommodation and services as agreed between them and/or could legitimately be expected.

2. If the guest cannot obtain them or obtains them only in circumstances which considerably reduce their enjoyment, he may terminate the contract or require a proportional reduction in the price /of the board and lodging/.

3. The hotelkeeper shall compensate any damage /actually/ suffered by the guest, unless he proves that performance of his obligations has been rendered impossible by an unforeseeable and unavoidable event; the guest may however only recover damages to the extent that the hotelkeeper does not obtain for him accommodation equivalent to that provided for in the original contract, taking upon himself additional expenditure entailed by the substitution.

Article 6 (Position of the guest as debtor)

1. If the guest fails to occupy the accommodation requested and placed at his disposal for the whole or any of the period agreed, he shall nevertheless pay the price /of the board and lodging/ unless he proves that such failure was due to an unforeseeable and unavoidable event.

2. The hotelkeeper must deduct from the price /of the board and lodging/ such profit as he has acquired by another use of the accommodation or that which he has failed to acquire on account of his own negligence.

3. However, and in the absence of /express/ agreement to the contrary, the compensation payable to the hotelkeeper under this article shall not exceed :

- (a) / 75 / per cent of the price of the board and lodging provided for in the contract for the first /two/ days and
- (b) / 40 / per cent of the price of the board and lodging provided for in the contract for the /five/ following days, no compensation being payable for the following days.

4. In the absence of (express) agreement to the contrary, no compensation shall be payable if the hotelkeeper has been informed of the cancellation of the reservation :

(a) for a stay not exceeding two days, not later than midday on the day provided for the occupation of the accommodation;

(b) for a stay of from three to seven days, not later than two days before the date provided for the occupation;

(c) for a stay exceeding seven days, not later than three days before the date provided for the occupation.

5. When the guest relinquishes the accommodation before the termination date of the contract, the requirement of notice under paragraph 4 of this article shall be determined by reference to the date on which the guest relinquishes the accommodation.

Article 7 (Obligations of the guest)

1. The guest shall use the accommodation placed at his disposal with the necessary care and shall show due consideration to the other guests and to the staff; he shall also observe such reasonable regulations of the hotel as are duly brought to his notice.

2. If the guest is persistently in breach of his obligations, notwithstanding the protests of the hotelkeeper, the latter shall be entitled to terminate the contract immediately.

3. The guest shall compensate the hotelkeeper for any damage caused by behaviour on his part involving fault.

Article 8 (Payment of the price of the board and lodging)

1. The guest shall pay the price of the board and lodging provided by the contract or by the regulations of the hotel.

2. In the absence of such provision, the price of the board and lodging shall be payable at the end of each week if the stay exceeds one week, and at the end of the stay if it is shorter.

3. If the parties have agreed on the payment by the guest of a sum of money by way of deposit, this sum shall be deemed in the absence of agreement to the contrary to be an advance payment on the price of the board and lodging.

4. If the guest, after due notification, does not pay the price of the board and lodging within the time stipulated by the contract, by the regulations of the hotel or by paragraph 2 of this article, or if he does not pay the sum agreed upon by way of deposit, the hotelkeeper shall be entitled to terminate the contract immediately.

Article 9 (The hotelkeeper's right of retention)

- C.f. Article 19 of the preliminary draft contained in Doc. 14.