

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

OBSERVATIONS

of Governments on Articles 19 and 22 to 24
of the preliminary draft Convention

(Secretariat memorandum)

Rome, January 1978

INTRODUCTION

On the occasion of its 1st and 2nd sessions, held in Rome from 28 March to 1 April 1977 and from 12 to 16 December 1977 respectively, the Committee of Governmental Experts for the examination of the preliminary draft Convention on the Hotelkeeper's Contract proceeded to a first reading of Articles 1 to 18, 20, 21 and 25 of the draft. The text of the revised version of these articles is to be found in Study XII - Doc. 30.

With a view to facilitating the task of the Committee at its 3rd session when it will, inter alia, consider Articles 19 and 22 to 24 of the draft as reproduced in Study XII - Doc. 14, the Secretariat has prepared the present document which sets out the observations so far received of the various Governments on these articles.

The Secretariat has, in addition, included in this document a Canadian proposal made during the second session of the Committee for the wording of a "federal clause" to be included in the final clauses of the future Convention.

Article 19

SWITZERLAND

Re para. 3: "This provision does not seem to correspond to the explanation given under paragraph 115 of the Explanatory Report. Indeed, it categorically specifies that the rights of third parties may on no account be affected by the exercise of the right of detention by the hotelkeeper, whereas according to the Report it would merely appear to be a question of specifying that problems of this type shall be determined by the national law. It would therefore be preferable to express this idea directly and clearly rather than wrapping it up in the conditional by speaking of third party rights which "may" exist over the property in question.

Article 22

AUSTRIA

"Article 22, which is at present placed between square brackets, should be maintained."

IRAQ

"...powers of local laws and regulations, which determine the residence of both parties, should be observed in emerging complaints referred to in para. (b) of the above-mentioned article."

Article 23

IRAQ

"... we ask that the power of laws and regulations implemented in the place where the hotel is situated govern the dispute between the two contracting parties."

SOUTH AFRICA

The period of one year provided for in subparagraph (2) is far less than provided for by Section 11 (d) of the Prescription Act No. 68 of 1969.

Article 24

AUSTRIA

"In Article 24, paragraph 1 the phrase in square brackets should be maintained so as to permit stipulations which are more favourable to the guest."

SOUTH AFRICA

Any stipulation in the hotelkeeper's contract contrary to the Convention will be null and void if it is to the detriment of the guest only and not the hotelkeeper. We do not regard this as reasonable towards hotelkeepers (small groups or single owners) who may find themselves in a position of weakness vis-a-vis large travel groups.

Article []

CANADA

The following draft federal clause based on Article XIV of the Washington Convention of 1973 providing a Uniform Law on the Form of an International Will was submitted by the Canadian delegation at the second session of the Committee of Governmental Experts in December 1977.

"1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the relations between hotelkeeper and guest, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. Such a declaration shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies."