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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 THE GOVERNMENT OF SOUTH AFRICA

on the preliminary draft Convention

Rome, April 1978

#### Article 1

Please refer to South Africa's comments on the preliminary draft. We also support item 3 on the draft agenda that a reservation clause be inserted permitting member States to exclude certain categories, unless such reservation clause can be incorporated as stated in our comments on article 25.

#### Article 2

This article is acceptable.

#### Article 3

Please refer to South Africa's original comments. Our objection may be overcome if the Convention is acceptable to the relevant Government and both the hotelkeeper and guest concerned.

#### Article 4

The wording is acceptable. Once the basic common law requirements of offer and acceptance are concluded the contract comes into force.

#### Article 5

The principles incorporated in the article are supported.

#### Article 6

Please refer to South Africa's original comments. The words "as agreed" as suggested by the Swiss delegation can also be considered.

#### Article 7

In the phrase in brackets in paragraphs 3 and 4 is deleted the original comments of South Africa will fall away.

Although not unreasonable the percentages and days mentioned in the paragraphs seem to be arbitrary. We are of the opinion that notice by a guest half way through the same day on which he is obliged to take occupation is unreasonable. We recommend that one day's notice before occupation be given by a guest if he cannot take up the accommodation.

Article 8

Paragraph 1: Who is to decide the "reasonableness" of the regulations? After all, it is the hotelier who determines the domestic rules of his establishment and these should be observed by his guests. We, therefore, recommend that the word "reasonable" be deleted.

Paragraph 2: Please refer to South Africa's original comments. An alternative would be to delete the words "the day of" in the second line. In South Africa the general rule is, unless specified otherwise, that guests should check out by not later than 12 noon. The time limit of 2 p.m. is therefore not acceptable.

Article 9

It is recommended that the words "unforeseeable and irresistible event" be changed to "unforeseeable event or vis major".

Article 10

Please refer to South Africa's original comments.

Article 11

Any future Convention will negate the previous one. The formula should be spelled out clearly instead of referring to the terms of the present Convention. If the term "present Convention" means the draft under consideration the word "present" can be deleted.

Article 12

As a result of the wording of Article 8, paragraph 1, this article will most probably be deleted.

Article 13

Paragraph 1: The wording of the paragraph is acceptable if the phrase in brackets is deleted. This phrase seems superfluous if the causa causans stems from an event happening on the hotel premises.

Paragraph 2: The wording of this paragraph is acceptable.

Article 14

Paragraph (c): We recommend that the words "and in part from his own negligence or wilful act or omission" be added after the words "third party" in the second line.

### Article 15

Paragraph 1: The phrase "during and for a reasonable period before and after the time ..." can be deleted for the reason advanced in respect of paragraph 1 of Article 13.

Paragraph 2: There must be some ratio between the amount of the liability and the value of the article. In the event of any article being insured the guest may experience some difficulties in claiming a balance from an insurance company if the amount paid by the hotelkeeper is less than the insured value.

In South Africa "service charges", except for telephone service charges, have been abolished by the Hotels Act (Act No. 70 of 1965). The words "where applicable" should therefore be inserted after the words "service charges".

### Article 16

In the South African common law, as opposed to English law, a person selling accommodation is not compelled to receive securities, money or other valuables for safe custody.

Special provision has, however, been made for hotels selling liquor. These hotels comprise approximately 96,5% of all hotels registered with the South African Hotel Board. The relevant section in the Liquor Act (Act No. 30 of 1928 - to be replaced in the near future by a new act), provides as follows:

- "(1) No holder of an hotel liquor licence shall be liable to compensate any person, in respect of any loss of or injury to the property of such person, sustained while such person was a lodger in the licensed premises of such licence holder, in any greater amount than the sum of twenty pounds (now forty Rand) unless -
- (a) the property lost or injured was a live animal or any gear appertaining thereto; or
  - (b) the loss or injury is proved to have been caused by the wilful act, or as a result of the default or negligence of, the licensee or of any person in his employ; or
  - (c) the loss or injury was sustained while the property was deposited with the licensee or a person expressly or impliedly authorized by the licensee to receive such deposit; or

- (d) the licensee refused, save in the circumstances set forth in sub-section (2), to receive the property offered for deposit, or failed to make adequate provision whereby the property could be deposited with him; or
- (e) the licensee failed to comply with the requirement of sub-section (3).

- (2) The holder of an hotel liquor licence to whom any property is offered for deposit by any person lodging or about to lodge in his licensed premises may require that the property shall be contained in a suitable receptacle closed and sealed by the depositor, and any refusal by such licence holder to accept property for deposit based upon a failure of such person to comply with such requirement shall not deprive such licence holder of the benefits of the limitation of liability in respect of loss of or injury to such property conferred by sub-section (1).
- (3) The holder of an hotel liquor licence shall exhibit a copy of sub-sections (1) and (2) in the English and Dutch languages, in such manner and in such part of the hall or entrance of his licensed premises that it may readily be seen and easily read by any person proposing to lodge in such premises.
- (4) Nothing in this section contained shall be deemed to affect the operation of the common law in so far as the liability of the licensee up to the amount of twenty pounds is concerned."

The above provisions also apply to lodging-house keepers which represent a small portion of the accommodation market.

If an element of compulsion is incorporated in the Convention the word "valuable" should be clearly defined to avoid disputes between the hotel-keeper and guests on what is "valuable".

Paragraph 2: The liability of the hotelkeeper is unlimited. In practice the actual value of the article will place a limitation on his liability. If this is the case words to this effect may just as well be added to the paragraph. There is also no indication who will be responsible for the valuation of lost or damaged articles in the case of a dispute. How will sentimental value be assessed in terms of money?

Article 17

We recommend that the wording of paragraph (h) be amended to read: "to an unforeseeable event or vis major".

Article 18

The expression "as soon as reasonably possible" is vague. It is recommended that the guest should inform the hotelkeeper immediately on discovery of such damage, loss, etc.

Article 19

Paragraph 4: It is recommended that the third party acting on behalf of the guest be appointed by both the hotelkeeper and the guest or, as conduit between the parties, he should at least be acceptable to the hotelier.

Article 20

We recommend that the word "present" appearing before "convention" be deleted for the same reasons as stated in our comments on Article 11.

The reason for the present wording of paragraph (a) obviously is to protect persons who intend becoming bona fide guests but who have not yet completed the prescribed legal formalities. There seems to be no necessity to earmark these persons as guests already as the hotelkeeper is in any case liable for damage to or destruction or loss of property brought to the premises in terms of Article 15 whether the person is a potential or registered guest. As far as damage resulting from the death or personal injuries are concerned, the hotelkeeper will be liable (under the common law) for damage to potential guests as well, if such damage is caused by his negligent or wrongful acts. It therefore appears that the relevant paragraph can be deleted.

Article 21

It is difficult to assess the full consequences of this article. It may be used to curb other equitable remedies available to the parties (and even third parties) under the common law.

Article 22

South Africa supports the principle incorporated in this article.

Article 23

Please refer to South Africa's original comments.

Article 24

Please refer to South Africa's original comments.

Article 25

The general principle is supported. The clause should be extended to allow member States to exclude certain categories of accommodation establishments which are not hotels, as for instance in South Africa.

Any limitation of liability should be based on equity to avoid an undue hardship on any of the parties.