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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

Alternative revised draft with commentary

and

General observations

submitted by the Swiss delegation
for the 4th session of the Committee of Experts

Rome, September 1978

First Part: ALTERNATIVE DRAFT

PRELIMINARY REMARKS

The Swiss alternative draft in no way seeks to put in question either the fundamental lines of the original preliminary draft or the outcome of the first reading of the Committee of Experts.

Its essential aim is threefold:

1. Structure

The underlying structure of the draft could be made clearer by a regrouping of its provisions in 4 separate chapters:

- Definition and field of application (Chapter I)
- Conclusion and performance of the contract (Chapter II)
- Liability of the hotelkeeper (Chapter III)
- Final provisions (Chapter IV)

This structural division implies in particular a regrouping of the rules concerning the right of detention (at present isolated in Article 19) with those governing the performance of the contract and especially the obligation of the guest to pay the charge for board and lodging. Other amendments (such as the insertion of the rule on advance payments in the general provision regarding the payment of the charge for board and lodging) are also motivated by a desire to make the draft more coherent from a structural standpoint: the system chosen for Chapter II is based largely on that usually found in civil codes for the regulation of the various types of contract and more particularly that of the contract for the lease of premises (the one which is most similar to the hotelkeeper's contract).

2. Application of the Convention to hotelkeepers' contracts to which the individual guest is not himself a party

On this point the conclusions of the Report on the 3rd session (Doc. 34, page 2 et seq.) correspond neither to the notes nor to the recollections of the Swiss delegation which was of the view that the principle of the application of the Convention to contracts concluded by travel organisers

in their own name (and on behalf of individual guests) had been approved. The Swiss delegation remains of the opinion that an instrument which overlooked these "collective" contracts (the practical importance of which is not questioned) and which failed to provide even minimal and supplementary rules for them, would lose much of its interest.

Our proposals as set out in the alternative draft are intended to show how one might take account of the special problems posed by these mass contracts, especially in connection with the cancellation of reservations and compensation for "no show". They are, moreover, largely based on the rules contained in the "Hotel Convention".

3. Supplementary provisions

With a view to achieving the aims set out above, it would seem necessary to provide for a number of supplementary rules.

In consequence the provision of a coherent structure in the chapter dealing with the rights and obligations of the parties in the performance of the contract would call for a mention of the principal duties of the guest (obligation to pay the charge for board and lodging, duty to exercise care during the occupation of the accommodation).

On the other hand, and unlike the United Kingdom delegation, we are not of the view that it is sufficient to eliminate any reference to the contract in order to cover automatically "collective" contracts. Conversely, we believe that it is necessary to lay down specific rules in those cases where such contracts create specific problems calling for an adequate solution (see below, Second Part, Chapter II, page 34).

(Certain problems of a more general character will be dealt with in the second part of these observations)

ALTERNATIVE DRAFT CONVENTION ON THE HOTELKEEPER'S CONTRACT

Chapter 1

DEFINITION AND SCOPE OF APPLICATION

Article 1

1. For the purposes of this Convention a "hotelkeeper's contract" means a contract by which the hotelkeeper ¹ undertakes, on a regular business basis ², to provide a /one or more/ guest/s/ ³ with /temporary/ ⁴ accommodation and appropriate /ancillary/ ⁵ services in an establishment under his supervision, for a charge including board and lodging ⁶.

2. (unchanged)

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- 1.1 It is superfluous to state that the hotelkeeper must be one person and the guest another; it is highly unlikely that the hotelkeeper will conclude a contract with himself.
- 1.2 For the reference to "reward", see note 1.6.
- 1.3 The "temporary" requirement should be omitted. It runs the risk of giving rise to different interpretations and adds nothing to the criterion of "supervision" exercised by the hotelkeeper, as regards the distinction from contracts for the lease of premises. There is, moreover, no reason to exclude from the scope of application hotelkeepers' contracts concluded for lengthy periods.
- 1.4 The reference to "one or more guests" may be of value as an allusion to "collective" contracts where the individual guest is not himself a contracting party.
- 1.5 The question may be posed as to whether the adjective "ancillary" is necessary and indeed whether it is not incorrect. In point of fact, these extra services constitute an essential element of the hotelkeeper's contract and in particular distinguish it from the contract for the lease of premises.
- 1.6 The use of the term "charge for board and lodging" would avoid the necessity of repeating each time the heavy circumlocution "cost of the accommodation and appropriate /ancillary/ services". Furthermore, it would seem desirable that the definition of the contract should also include the principal obligation of the person concluding the contract with the hotelkeeper (who may be a travel organiser).

Article 2

This Convention shall apply to any hotelkeeper's contract to be performed on premises situated on the territory of a Contracting State. ¹

Chapter II

CONCLUSION AND PERFORMANCE OF THE CONTRACT

Article 3 ¹

1. The contract shall be concluded² as from the time when the hotelkeeper expressly agrees to provide the guest with the accommodation and services ³ requested.

2. The validity of the contract shall not be subject to any requirements as to form.⁴

2.1 An amendment of a purely drafting character.

3.1 This article combines the present Articles 3 and 4 which govern the conclusion of the contract.

3.2 Observation regarding the French text only.

3.3 As regards the adjective "ancillary", see note 1.5.

3.4 Drafting amendment to the existing Article 3 with a view to greater clarity.

Article 4¹

1. The contract² may be concluded for a determined or an indeterminate period³.

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 that approximately defined⁴. For the purposes of this provision, an approximate reference to a week shall be equivalent to seven days and a reference to a month to twenty-eight days.⁵

3. If the contract is concluded for a determined period, the guest may only continue to occupy the accommodation on the basis of a new contract⁶ /; if, however, at the end of the agreed period, the guest continues to occupy the accommodation with the knowledge of, and without any opposition from, the hotelkeeper or if neither party has given the notice provided for the contract, shall be deemed to have been renewed for an indeterminate period.⁷

4. If the contract is concluded for an indeterminate period, the hotelkeeper or the guest may terminate it /from day to day/⁸ by expressing his intention in this regard to the other /party/ before midday, or such other reasonable hour as may be provided by the contract or the regulations of the hotel.⁹

5. The guest shall vacate the accommodation occupied by him on the day of the termination of the contract at such reasonable hour as is provided in the contract or in the regulations of the hotel. If no such hour is specified, he may occupy the accommodation up to 2 p.m.¹⁰

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- 4.1 This article corresponds to the present Article 5; it includes in addition the provision at present contained in Article 8, paragraph 2.
- 4.2 It is superfluous to repeat that this is a hotelkeeper's contract.
- 4.3 Observation regarding the French text only.
- 4.4 This provision corresponds to the present paragraph 3; since this constitutes an element of a definition; it would be preferable for it to follow paragraph 1. The amendment to the text is of a purely drafting character.
- 4.5 Drafting amendment.
- 4.6 An attempt to clarify the idea by way of a negative formulation.
- 4.7 This rule concerning the tacit renewal of the contract is not indispensable but might prove to be useful.
- 4.8 The insertion of the words "from day to day" would provide for clarification.
- 4.9 Observation regarding the French text only.
- 4.10 Structurally, this provision is better placed here than in the present Article 8; the amendments are of a drafting nature.

Article 5¹

1. The hotelkeeper shall provide the guest with the accommodation and services agreed between them or such as could legitimately be expected /, in the light of the circumstances and especially of the charge for the board and lodging/ ².

2. If the guest cannot obtain from the hotelkeeper performance of his obligations or if he can obtain it only in circumstances which considerably reduce their enjoyment, he may terminate the contract or require a proportional reduction in the charge for the board and lodging. ³

3. The hotelkeeper shall /in addition/ compensate the damage /actually/ suffered by the guest, unless he proves that performance of his obligations has been rendered impossible by an unforeseeable and unavoidable event; ⁵ the guest may however only recover damages to the extent that the hotelkeeper does not make arrangements for him equivalent to those provided for in the original contract and take upon himself any /reasonable/ additional expenditure entailed by the substitution. ⁶

4. In the absence of agreement to the contrary, the rules laid down in paragraphs 2 and 3 of this article shall apply by analogy to any hotelkeeper's contract concluded by a travel organiser in his own name. ⁷

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- 5.1 This article corresponds to the present Article 6, to which is added the rule contained in the present Article 9 insofar as the latter contemplates the impossibility of the hotelkeeper to perform his contractual obligations. Paragraph 4, a new provision, refers to the "collective" contract.
- 5.2 This provision, which lays down the principal obligation of the hotelkeeper, enlarges the judge's degree of discretion by a reference to the principle of "confidence", whereby regard may be had to what the client might legitimately consider to be essential conditions of the agreement.
- 5.3 In cases of non-performance or defective performance of his contractual obligations by the hotelkeeper, it is necessary to lay down the rights of the guest apart from that of compensation (which is dealt with in the following paragraph).

- 5.4 It goes without saying that the right of the guest to damages cannot go beyond the damage actually suffered by him. The clarification given by the adjective "effective" might give rise to doubts as to compensation for non-material damage, a question whose solution must be left to national law.
- 5.5 We have no preference for the use of the expression "force majeure" as against the term "unforeseeable and unavoidable event" or vice versa (Doc. 43, page 2, no. 9). With regard to the question of notification (Doc. 43, page 2, no. 10), we do not consider an express rule on the matter to be indispensable, since the hotelkeeper clearly has an interest to give notice to the guest in good time in order to avoid the risk of having to pay him compensation.
- 5.6 The present Article 6, paragraph 2 is imprecise to the extent that it speaks of the hotelkeeper's being "relieved" of his liability. This is, in fact, not a question of exoneration but rather one of the taking of steps to alleviate the damage and of a form of compensation in kind.
- 5.7 This new provision is one of the rules whose function is to stipulate that the Convention must in principle apply also to "collective contracts" concluded by a travel organiser in his own name. In such cases, it is however permissible for the parties to make alternative provision for the consequences of non-performance or defective performance of the contract by the hotelkeeper. It may be useful to state this even if a general reservation on the question is to be contemplated in the final clauses (at present Article 24, paragraph 2), the aim of such a reservation being above all to avoid such derogations prejudicing the rights of the individual guest in matters relating to the hotelkeeper's liability.

Article 6¹

1. A guest who, for the whole or any part of the agreed period, fails to occupy the accommodation requested and placed at his disposal in accordance with the contract, shall nevertheless pay the charge for the board and lodging unless he proves that such failure was due to an unforeseeable and unavoidable event.²

2. The hotelkeeper shall deduct from that charge 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

3. However, the compensation payable to the hotelkeeper under this article shall not exceed:⁴

(a) 75 per cent of the agreed charge for the board and lodging for the first two days /default/ and

(b) 40 per cent of the agreed charge for the board and lodging for the five following days, no compensation being payable for any further period /of default/.⁵

4. In the event of prior cancellation of the reservation, no compensation shall be payable to the hotelkeeper when he is informed of the cancellation at the latest:⁶

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

(b) for a stay of three to seven days:
two days before the date on which the accommodation was to be occupied;

(c) for a stay exceeding seven days:
three days before the date on which the accommodation was to be occupied.

5. In the event of the stay being prematurely interrupted, the periods of notice laid down in paragraph 4 of this article shall be determined according to the date on which the guest relinquishes the accommodation and in proportion to the period of the contract which has yet to run.⁷

6.1 This article corresponds exactly to be present Article 7, but in addition it incorporates the rule contained in the present Article 9 concerning the guest's impossibility to perform his contractual obligations.

- 6.2 As to the question of "force majeure", see note 5.5. Moreover, the proposed text makes it clear that the "compensation" due to the hotelkeeper by the guest who does not occupy the accommodation placed at his disposal in accordance with the contract, is not strictly speaking damages but rather the quid pro quo for the accommodation being placed at his disposal. If the guest is, for personal reasons, prevented from occupying the accommodation, this is really simply a case of the debtor's not having performed his obligation, which does not in principle affect the hotelkeeper's right to payment of the charge for board and lodging.
- 6.3 Paragraph 2 clarifies somewhat the rather vague obligation laid on the hotelkeeper in the present Article 7, paragraph 2 concerning mitigation of damage.
- 6.4 There is no reason to make a reservation regarding agreements to the contrary (Doc. 43, page 1, no. 4). The general rule laid down in the present Article 24, paragraph 1 is sufficient.
- 6.5 By eliminating the square brackets concerning the percentages and the time-limits laid down in this paragraph, we are indicating that we consider them to be satisfactory (Doc. 43, page 1, no. 5).
- 6.6 The same remark applies to the time-limits stipulated in paragraph 4 (Doc. 43, page 1, no. 6).
- 6.7 This provision clarifies the idea at present expressed in paragraph 5 of Article 7 by adding the phrase "and in proportion to the period of the contract which has yet to run".

Article 7¹

1. Subject to any agreement to the contrary,² the rules laid down in Article 6 shall also apply to any hotelkeeper's contract concluded by a travel organiser in his own name for from one to ten guests.³

2. When a hotelkeeper's contract is concluded by a travel organiser in his own name for a group of eleven guests or more, and subject to any agreement to the contrary,² the compensation /for default/ payable within the meaning of Article 6, paragraph 2 may not exceed:

- (a) 80 percent of the agreed charge for board and lodging for the first three days;
- (b) 60 percent of the agreed charge for board and lodging for the following four days and
- /(c) 40 percent of the agreed charge for board and lodging for three further days, no compensation being payable for any further period /of default/.⁴

3. In the circumstances described in paragraph 2 of this article, and subject to any agreement to the contrary,² the minimum time-limits within which prior cancellation may be made without compensation being payable are:

- (a) for a stay not exceeding seven days:
fourteen days before the date on which the accommodation was to be occupied when the cancellation concerns more than 50 percent of the group⁵, and ten days before that date when the cancellation concerns a lower number of guests;
- (b) for a stay of seven to fourteen days:
twenty-one days before the date on which the accommodation was to be occupied when the cancellation concerns more than 50 percent of the group, and fourteen days before that date when the cancellation concerns a lower number of guests;
- (c) for a stay exceeding fourteen days:
thirty days before the date on which the accommodation was to be occupied when the cancellation concerns more than 50 percent of the group, and twenty-one days before that date when the cancellation concerns a lower number of guests.⁶

7.1 This provision attempts to establish supplementary minimal rules on the cancellation of reservations in the case of "collective" contracts. These rules, which are based on those contained in the Hotel Convention, may provide guidelines or serve as a supplement for this type of contract.

- 7.2 See above, note 5.7.
- 7.3 The first paragraph states that in principle the rules contained in Article 6 governing cancellation or non-occupation in cases of directly-concluded individual contracts shall apply to contracts concluded on behalf of small groups of travellers. The limit of ten persons has been taken over from the Hotel Convention (Articles 31 and 37).
- 7.4 This paragraph which fixes the percentages and time-limits providing the basis for calculating compensation is modelled on paragraph 3 of Article 6. It takes account, however, of the special situation created by a collective contract concluded between professionals whose interests must be evaluated differently from the way in which they would be when the party contracting with the hotelkeeper is an individual consumer. The percentages and time-limits proposed seem to constitute a fair balance: moreover one should not lose sight of the fact that this is a simple ceiling ("may not exceed") and that the parties may agree otherwise.
- 7.5 The difference established between cancellations concerning more than 50 percent of a group (of eleven persons or more) and those affecting less than half of the participants corresponds to the rules contained in the Hotel Convention (Article 41).
- 7.6 The time-limits suggested are likewise taken over from the Hotel Convention (Article 41). We have however considered it to be desirable to establish rather more detailed rules.

Article 8¹

1. The guest shall use the accommodation and any other premises and facilities placed at his disposal with all the necessary care and shall show due consideration to the other guests and to the hotel staff²; he shall also observe such /reasonable/ regulations of the hotel as are duly brought to his notice.³

2. If the guest is persistently in breach of his obligations, notwithstanding the protests of the hotelkeeper, the latter shall be entitled to terminate immediately the contract concluded with the guest; if the guest in question is not himself a party to the contract, the hotelkeeper may nevertheless require that he leave the hotel⁴. /In such cases, the rule laid down in Article 4, paragraph 5 shall apply by analogy/.⁵

3. The guest shall compensate the hotelkeeper for any damage caused by behaviour on his part involving fault.⁶

4. The rules laid down in this article shall apply by analogy to any hotelkeeper's contract concluded by a travel organiser in his own name; furthermore, and subject to any agreement to the contrary, the travel organiser shall be jointly and severally liable towards the hotelkeeper for any damage suffered by him as a result of behaviour involving fault on the part of guests on whose behalf the organiser has concluded the contract.⁷

8.1 This provision, which is mainly a new one, fixes in a general way the duties of the guest towards the hotelkeeper, his staff and other guests staying at the hotel. As regards observance of the regulations of the hotel, the provision corresponds to the present Article 8, paragraph 1.

8.2 We are dealing here with general duties, similar to those of the tenant under a contract for the lease of premises. Although these duties derive from the general principles of the law of contract, it may be useful to specify them in the context of the hotelkeeper's contract and this especially with a view to establishing, in the text of the Convention, a fairer balance between the obligations of the hotelkeeper (upon whom the draft concentrates far more attention) and those of the guest.

- 8.3 In reply to the question posed in Doc. 43, page 2, nos. 7 and 8, we consider that the present drafting is satisfactory. In requiring that the regulations of the hotel be "duly" brought to the knowledge of the guest, it is implicit that this must be done in a language which he may be expected to understand. Likewise the phrase in square brackets does not seem to us to be indispensable; in law, at least in civil law, "reason" must be presumed to prevail.
- 8.4 This provision concerning the consequences of a persistent breach of his obligations by the guest is modelled on the corresponding rule regarding leases (Article 261, paragraph 2 of the Swiss Civil Code). It seems important to us to make provision for such a rule which would permit the solving of a problem which frequently arises in practice.
- 8.5 This rule concerns the hour at which the guest must vacate the accommodation on the day on which the contract expires. By applying it by analogy to the premature termination of the contract, one could avoid the eventuality of the hotelkeeper's ejecting the guest in the middle of the night.
- 8.6 The guest's liability likewise flows from the general principles of the law of contract. It should, however, be expressly mentioned, on the one hand with a view to preserving a balance (see note 8.2), and on the other to indicate more clearly the difference between the fault liability (although not limited) of the guest and the strict (and partially limited) liability of the hotelkeeper.
- 8.7 Paragraph 4 refers to "collective" contracts, stating that in principle the rules governing the duties of the guest and his liability in the case of individual contracts shall be applicable to them by analogy. Following the same line of reasoning, the travel organiser is held jointly and severally liable for damage caused to the hotelkeeper by his clients.

Article 9¹

1. The guest, or where appropriate the travel organiser who has concluded the contract in his own name, shall pay the charge for board and lodging at the time stipulated in the contract or in the regulations of the hotel.²

2. In the absence of such a provision, the charge for the board and lodging shall be payable at the end of each week if the stay exceeds seven days, and at the end of the stay, if it is shorter.³

3. If the hotelkeeper receives a sum of money in advance, it shall be considered to be an advance payment toward the agreed charge for the board and lodging. The hotelkeeper shall return it⁴ to the extent that it exceeds the amount due to him under the terms of this Convention.⁵

4. If the agreed charge for the board and lodging or for the advance payment is not paid within the time-limit stipulated by the contract, by the regulations of the hotel or by paragraph 2 of this article, the hotelkeeper shall be entitled to terminate the contract after giving the debtor a time-limit of at least one day within which to perform his obligations.⁶

5. When a hotelkeeper's contract has been concluded by a travel organiser in his own name and the hotelkeeper cannot obtain or can only partially obtain from him payment of the charge for the board and lodging, he shall be entitled to recover from each guest on whose behalf the contract has been concluded and who has actually occupied the accommodation, compensation amounting to 50 percent as a maximum of the charge for board and lodging corresponding to his individual share.⁷

9.1 This article deals with the obligation of the guest to pay the charge for board and lodging which in the present draft can only be implied from the definition of the contract (Article 1, paragraph 1: "for reward") and from the provision concerning advance payments (Article 11). This latter provision has been included here in a general provision which contains all the elements of this obligation.

- 9.2 The first paragraph enunciates the principle of the obligation to pay the price by referring, as to the time for such payment, to the provisions of the contract or the regulations of the hotel. One might even go so far as to combine this provision with paragraph 2 "In the absence of any provision in the contract ...etc.".
- 9.3 It goes without saying that the hotelkeeper may not insist on the application of this provision if he believes that he is running no risk as regards the guest in question.
- 9.4 The words "in the absence of agreement to the contrary" at present appearing in Article 11 in square brackets, can be deleted (Doc. 43, page 2, no. 11). In the context of "individual" contracts, there are no reasons for admitting derogations to the general rule; "collective" contracts for their part fall within the general reservation contained in Article 24, paragraph 2.
- 9.5 The remainder of this paragraph follows the present Article 11.
- 9.6 This rule is the equivalent to that which lays down the rights of the guest in the event of non-performance or defective performance of his contractual obligations by the hotelkeeper (See Article 5, paragraph 2 of this alternative draft, note 5.3).
- 9.7 We think it to be a fair solution in cases where the travel organiser becomes insolvent that the guest who has effectively enjoyed services provided by the hotelkeeper should assume part of the risk (proposal: 50%). There is moreover a certain parallelism between this rule and that which holds the travel organiser jointly liable for damage caused to the hotelkeeper by participants in an organised tour (cf. Article 8, paragraph 4 of this alternative draft, note 8.7).

Article 10 ¹

1. By way of a guarantee for payment of the charge for board and lodging due to him², the hotelkeeper is entitled to detain property brought to the hotel or its premises by the person in his debt³; such right of detention may not however be exercised as a guarantee for the compensation payable by the guest under Article 9, paragraph 5 of this Convention.^{4,5}

2. The hotelkeeper shall not, however, be entitled to detain such property⁶

3. The hotelkeeper may, after giving adequate and timely notice, realise⁷ the property detained by him up to the amount due to him. The conditions and procedures of such realisation shall be governed by the law of the place in which the hotel is situated.⁸

4. The internal law of the place where the hotel is situated shall determine the effects which third party rights may have on the hotelkeeper's right of detention and on the proceeds of the realisation of the goods detained.⁹

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- 10.1 This article corresponds to Article 19 of the present revised draft. From a structural standpoint, this provision should be incorporated in Chapter II (Conclusion and performance of the contract) and placed next to the article (in this alternative draft, Article 9) concerning the guest's obligation to pay the charge for board and lodging.
- 10.2 It should be made clear that in order for the right of detention to be exercised, the debt owing to the hotelkeeper must already have fallen due.
- 10.3 By speaking of the "property brought to the hotel by the person in his debt", one can avoid the somewhat heavy introductory phrase (Article 19, paragraph 1: "Except in cases where etc.") and at the same time allow the hotelkeeper also to detain property brought to the hotel by the travel organiser or his servants and agents.

- 10.4 If the principle of the partial joint liability of the guest for which provision is made in Article 9, paragraph 5 of this alternative draft is accepted, then it should be stated that the right of detention may not be exercised as a guarantee for the payment of such compensation.
- 10.5 The reply to the question posed in Doc. 43, page 4, no. 22 is "no", at least as regards any extra meals. The situation might perhaps be different when the debt in question is connected with other services more closely linked to the provision of accommodation. The problem should be discussed by the Committee of Experts.
- 10.6 Here the alternative draft follows word for word the present Article 19, paragraph 2.
- 10.7 We would prefer to speak of "realisation" rather than "sale" as, according to the procedure available under the law in question, there may be a form of liquidation other than a sale in the strict sense of the term.
- 10.8 The second sentence of the paragraph follows word for word the second sentence of the present Article 19, paragraph 3.
- 10.9 Paragraph 4, as proposed in this alternative draft, corresponds to the second alternative of paragraph 4 in Article 19 of the revised draft (Doc. 43, page 4, no. 23).

Chapter III

LIABILITY OF THE HOTELKEEPER

Article 11¹

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 or in any other place under the hotelkeeper's supervision² during and³ within a reasonable period before or after the time the guest has the accommodation at his disposal⁴, unless the 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.⁵

2. Notwithstanding the provisions of paragraph 1⁶

3. Subject to the provisions of Article 17 (c), the hotelkeeper shall be relieved of his liability when the damage results wholly from force majeure or from an act or omission of a third party⁷.

4. The hotelkeeper may be relieved in part of his liability when an act of God, an act or omission of the guest or of a third party who is not responsible has contributed to causing the damage or has increased it.⁸

5. When the damage is due in part to the act or omission of a third party /who is liable/, the hotelkeeper shall nevertheless fully compensate the guest but without prejudice to any right of recourse he may have against such third party.⁹

11.1 This article combines the present Articles 13 and 14, the separation of which does not seem to serve any purpose. As regards the doubts expressed by the Canadian delegation on the compatibility of a special liability of the hotelkeeper with the general occupier's liability, we are of the opinion that the Convention should not prevent the guest relying on any kind of extracontractual liability (instead of that provided for in the Convention, which in any case is not strictly contractual) if it is in his interest to do so. The matter would of course be ./.

more delicate if the occupier's liability were to be less severe in regard to the hotelkeeper. Even in cases such as these, however, a reservation clause should only be contemplated if it proves impossible to find a uniform solution satisfactory to all delegations (cf. below, Part Two, Chapter III, page 35 and Annex).

- 11.2 The "territorial" scope of application has been extended to cover "any other place under the hotelkeeper's supervision" (Doc. 29, page 5 et seq.).
- 11.3 We propose replacing the conjunction "or" by "and" so as to link more closely the "period before or after" with the time during which the guest has the accommodation at his disposal.
- 11.4 Apart from the observation made in the preceding note, the Swiss delegation finds the drafting of this sentence as proposed by the Secretariat to be satisfactory (Doc. 43, page 2, no. 12).
- 11.5 This paragraph corresponds exactly to the first paragraph of the present Article 13.
- 11.6 This paragraph shows no change from paragraph 2 of the present Article 13.
- 11.7 Although limited to cases of damage due exclusively to an external cause, this provision corresponds to the rule laid down in the present Article 14 (a) and (b). Moreover it adds to the acts or omissions of the guest or of a third party a third classic ground for exoneration from liability, namely force majeure. By speaking of "acts or omissions" ("fait") of the guest or of a third party, (rather than "negligence or wilful act or omission" ("faute")), we have replied to the question posed in Doc. 43, page 3, no. 14. As to the reservation clause mentioned in Doc. 43, page 2, no. 13, we consider that the hotelkeeper should be wholly exonerated from liability when the damage is due exclusively to an act or omission of the guest, independently of the degree of the gravity of his fault (c.f. below, however, note 11.8). Total exoneration would logically seem to be called for whenever the damage is due exclusively to a cause for which the hotelkeeper is not responsible. The hotelkeeper should not be liable when the damage results wholly from an act or omission of the guest, even if the latter - for want of capacity or understanding - could not have been guilty of "fault". The same goes for acts and omissions of third parties (cf. Doc. 43, page 3, no. 16).

11.8 Our paragraph 4 deals separately with the case of the partial exoneration of the hotelkeeper which may arise when an external factor has contributed to the event causing the damage or has increased it, without however being the sole cause. It is for that reason that we have spoken here of an act of God ("cas fortuit"), an event due to chance but of a lesser intensity than force majeure. As to the acts or omissions of third parties, these only concern us here when the third party is incapable of understanding; if he is capable, then paragraph 5 (below, note 11.9) applies. The provision is not formulated imperatively ("The hotelkeeper may be relieved") so as to leave the judge a certain amount of discretion. This solution should at the same time satisfy the wish of the Swedish delegation, which does not want to see any reduction in damages if the negligence of the victim has been slight (or not gross), without it being necessary to introduce a special reservation to this effect (Doc. 43, page 2, no. 13).

In conclusion, as regards the question posed in Doc. 43, page 3, no. 15 (liability of the hotelkeeper towards a guest injured in the course of effecting a rescue), we think that the solution of the problem ought to be left to national law. In Swiss law, such liability would be based on the notion of "management of affairs" ("gestion d'affaires").

11.9 This paragraph 5 corresponds to the present Article 14 (c), while at the same time it is made clear that it is not here a question of the liability or exoneration of the hotelkeeper, but simply of a joint and several obligation of several persons liable towards the injured party. The latter could, in fact, institute proceedings against the third party who would then have to bring a recourse action against the hotelkeeper.

Article 12¹

1. The hotelkeeper shall be liable for any damage²

2. The liability referred to in this article shall not exceed /, in respect of any single event causing damage, / one hundred times⁴ the daily charge for the accommodation as posted up or which is usually practised⁵, exclusive of taxes, service charges and additional services.⁶ If the accommodation is occupied by several persons⁷

12.1 This provision corresponds to that of the present Article 15.

12.2 The first paragraph is identical to that of the present Article 15.

12.3 We would have a preference for stating that the limit subsequently fixed should apply to any single event causing damage, so that a guest who, after a fire in his room causing damage in excess of the limit stipulated, were to have his gold watch stolen, could claim damages a second time for this further damage.

12.4 The figure of 100 as a multiple for calculating the limit of liability, seems to us to be one which gives satisfactory results. It has the added advantage of simplifying the calculation (cf. Doc. 43, page 3, no. 17). We also consider it preferable not to complicate the question by laying down a second limit for each object (cf. Doc. 43, page 3, no. 18).

12.5 Positive reply to the question posed in Doc. 43, page 3, no. 19.

12.6 On this point, we support the decision taken at the second session of the Committee of Experts (cf. Doc. 29, page 12).

12.7 The second sentence of this paragraph does not modify in any way the corresponding sentence in the present Article 15, paragraph 2.

Article 13¹

The liability of the hotelkeeper referred to in Article 12 shall be unlimited

Article 14¹

1. The hotelkeeper shall be bound to receive securities, money and other valuables for safe custody unless such articles are dangerous, cumbersome or unless their value is in excess of / times the limit of liability fixed in Article 12, paragraph 2.²

2.³ The hotelkeeper is entitled to examine the property which is tendered to him for safe custody /and may require that it shall be put in a fastened or sealed container/⁴; he may further require that the person depositing the property make a declaration of value.⁵

3. 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 custody⁶, his liability shall be unlimited; if a declaration of value has been made by the person depositing the property, the hotelkeeper's liability shall be limited to the amount declared⁷.

13.1 With the exception of the reference to Article 12 (instead of the present Article 15), this article reproduces the present Article 15 bis.

14.1 This article corresponds to the present Article 16 which, however, modifies it, in particular by introducing some ideas which are close to those put up for discussion by the United States delegation at the second session of the Committee of Experts (cf. Doc. 29, page 13 et seq. and the present Article 23, paragraph 1 (d), see Doc. 30, page 7, Article 25 (d) and (e)).

14.2 The phrase concerning property of excessive value, added here to to paragraph 1, is an attempt to take account of the anxiety mentioned in note 14.1 by introducing an objective criterion for determining what is of "excessive" value.

- 14.3 The order of paragraphs 2 and 3 of the present Article 16 has been reversed.
- 14.4 Since the possibility made available to the guest of depositing valuable property with the hotelkeeper, with the consequence that the liability of the latter is unlimited (or corresponds to the value declared; cf. note 14.5), is essentially in the interests of the guest, it seems desirable to allow the hotelkeeper to insist on a fastened or sealed container being provided. We are not, however, in principle opposed to the deletion of this requirement (cf. Doc. 29, page 15, and Doc. 43, page 4, no. 20).
- 14.5 We find it equitable that the hotelkeeper should be able to request the guest to declare the value of the property deposited with him. This is, moreover, a logical consequence of the rule laid down in paragraph 1 regarding the refusal of objects of excessive value (cf. above, note 14.2). Furthermore, we provide in paragraph 3 (below, note 14.7) that, when there has been a declaration of value, the hotelkeeper's liability shall be limited to the amount declared by the guest. In our view, this permits a perfect balance to be struck between the interests of the two.
- 14.6 This observation affects the French text only.
- 14.7 This innovation is intended to permit the hotelkeeper to calculate in advance the liability which he may incur with regard to property which he is bound to receive for safe custody. It is true that in consequence the principle of the hotelkeeper's unlimited liability will only apply when he has refused to receive an object which he was bound to accept, but we see no difficulty in this.

Article 15¹

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

(a) an act or omission² of the guest, or of any person accompanying him or in his employment, or any person visiting him;

(b) force majeure;³

(c) the nature of the property.

Article 16¹

In the event of damage to, or destruction or loss of, property for which the hotelkeeper is liable in accordance with the preceding articles², the guest shall lose his rights³ if he does not inform the hotelkeeper thereof as soon as is reasonably possible /, failing which he must prove that the damage is due to the personal fault of the hotelkeeper/⁴.

15.1 This provision corresponds to the present Article 17.

15.2 Cf. above, note 11.7 (Doc. 43, p. 4, no. 21).

15.3 Cf. above, note 5.5 (Doc. 43, p. 4, no. 21).

16.1 This provision corresponds to the present Article 18.

16.2 This wording avoids the repetition of the definition of the property referred to.

- 16.3 The present Article 18 simply lays an obligation upon the guest without indicating the sanction. It seems to us to be preferable to state clearly the consequences of failure to observe this obligation.
- 16.4 We are not convinced that this limitation on the obligation to give immediate notice of the damage is justified. In particular we fail to see what interest the guest could have in waiting to inform the hotelkeeper of the loss of the property. On the other hand, the hotelkeeper evidently does have an interest in being informed thereof as soon as possible, in particular when a member of his staff may be involved (which will often be the case). If there is support for this limitation, then we consider it to be justified only when the hotelkeeper is personally at fault, the burden of proving which should rest upon the guest.

Chapter IV

FINAL CLAUSES

Article 17¹

For the purposes of this Convention:

(a)² with regard to the liability of the hotelkeeper, any person who is on the premises of the hotel or in any other place under the supervision of the hotelkeeper³ otherwise than in the capacity of servant, agent or supplier of the hotelkeeper, shall be treated as a guest, the limit of liability provided for in Article 12, paragraph 2⁴ being calculated on the basis of the charge for accommodation in an establishment belonging to an average category⁵;

(b) the expression "property brought to the premises of the hotel, or of which he⁶ takes charge outside the premises of the hotel",⁷ 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,⁸ /who are acting within the scope of their employment,⁹ as if such acts or omissions were his own.

17.1 This article corresponds to the present Article 20.

17.2 We are in principle in favour of maintaining this sub-paragraph (Doc. 43, page 4, no. 24) for two reasons: first, it would be difficult to explain why the guest should be subject to a different régime governing the hotelkeeper's liability than other persons, whether they be potential guests or visitors. Secondly, we believe that the limit of liability provided for in Article 12, paragraph 2 should apply in the same way to all persons at the hotel, thus bringing about a situation which is clear also from the hotelkeeper's standpoint (Doc. 29, page 17 et seq.).

- 17.3 Reference should be made here to the "territorial" scope of application as defined in Article 11, paragraph 1 (cf. above, note 11.2).
- 17.4 In the present draft, Article 15.
- 17.5 This formula should avoid the difficulty mentioned in Doc. 29, page 18.
- 17.6 "he" refers to the hotelkeeper. One may wonder whether it would not be preferable to say so expressly (cf. the present Article 12/Article 15).
- 17.7 The whole of the corresponding phrase, as it appears in paragraph 1 of Article 12 (at present Article 15) should be repeated here.
- 17.8 The observation affects only the French text.
- 17.9 It would perhaps be preferable to delete the phrase in square brackets (cf. Doc. 43, page 4, no. 25) since this notion is open to widely different interpretations in the caselaw of different countries (cf. Doc. 29, page 18).

Article 18¹

When the damage dealt with by this Convention may give rise to a claim based on another ground of action, the hotelkeeper may avail himself of the limitation of liability provided for in Article 12, paragraph 2² of this Convention³.

Article 19¹

1. Any agreement to which the guest is a party²

2. The hotelkeeper may, in a contract concluded with a travel organiser acting in his own name³, agree to derogate from the provisions of this Convention, provided that his direct^{x)} liability towards the individual⁴ guest is not affected thereby.

3. No stipulation in an agreement⁵

x) Chapter III

18.1 This article corresponds to the present Article 21.

18.2 In the present draft, Article 15, paragraph 2.

18.3 In the light of the discussions concerning this article at the second session of the Committee of Experts (cf. Doc. 29, p. 19), we propose reducing its scope to cover the question of the limit of liability for damage caused to property (Article 12; cf. Doc. 43, page 4, no.26).

19.1 This article corresponds to the present Article 24.

19.2 This alternative draft reproduces the first paragraph of the present Article 24 without any amendment. We see no need for introducing an (exhaustive) list of mandatory provisions (cf. Doc. 43, page 4, no. 27).

19.3 This clarification is the logical consequence of the idea followed throughout this alternative draft which seeks to provide specific supplementary rules for "collective" contracts.

19.4 The term "liability", without any qualification, seems to us to be too vague; it would also cover the purely contractual liability dealt with in Chapter II.

19.5 No modification to the present paragraph 3 of Article 24.

Article 20 ¹

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

(a)² this Convention shall not apply when the accommodation is furnished to the guest by

(i) a non-profit making establishment;

(ii) an establishment whose primary aim is not the provision of accommodation;

/(b) it will set the amount of the limit of liability referred to in paragraph 2 of Article 12 at a higher sum than one hundred times the daily charge for the accommodation;/ ³

/(c) articles 12 to 15⁴ shall not apply to vehicles or any property left with a vehicle/ ⁵.

2. Any State may, at the time of making its notification ⁶

3. The declarations referred to ⁷

20.1 This article corresponds to the present Article 25. We would propose, however, the deletion of the reservations contained in paragraph 1 (b) (cf. Doc. 43, page 5, no. 29), (e) and (f) (cf. Doc. 43, page 5, nos. 31/32, and also note 14.1 above).

20.2 Sub-paragraph (a) (iii) should be deleted (cf. Doc. 43, page 5, no. 28).

20.3 We would prefer to see no reservations regarding the limit of liability and this in the interests of unification. If it is, however, to be retained, then we would establish the limit in conformity with Article 12, paragraph 2 (at present Article 15, paragraph 2)-(cf. Doc. 43, page 5, no. 30).

20.4 At present Articles 15 to 18.

20.5 Here again, we would prefer a uniform solution.

20.6 No change to the present Article 25, paragraph 2.

20.7 No change to the present Article 25, paragraph 3.

Second Part : GENERAL OBSERVATIONS

1. RELATIONS BETWEEN THE CCV AND THE CONVENTION ON THE
HOTELKEEPER'S CONTRACT

Since the Swiss delegation is unfortunately unable to attend the meeting of the working party to be held on 19 and 20 October 1978, it would submit the following considerations for the attention of that group:

1. General remarks

To a large extent we share the view expressed by the Secretariat of UNIDROIT in Doc. 33 to the effect that the coexistence of a future Convention on the hotelkeeper's contract (CCH) and of the International Convention of 1970 on the Travel Contract (CCV) should not give rise to any serious difficulties. We consider this to be the case independently of the decision to be taken on the philosophy underlying the CCH, that is to say independently of the extension or otherwise of the scope of application of that instrument to cover "collective" hotelkeepers' contracts. Since the CCV only governs relations between a travel organiser and an individual traveller/guest (we can leave aside simple intermediary travel contracts in this context), while the future CCH would only regulate relations between a hotelkeeper and a guest and in addition, perhaps, a travel organiser operating in his own name, fears would seem groundless of there being any direct incompatibility, there being at most a certain lack of conformity.

On the question of whether one should contemplate a revision of the CCV with a view to obtaining greater concordance with the CCH (in particular as regards liability, or rather the limitation of liability), we are of the belief that such an exercise should in no case delay the working out and implementation of the instrument on the hotelkeeper's contract. Given the limited degree of success with which the CCV has hitherto met, one might even wonder whether the game is worth the candle. However, it would not seem to be inconceivable that if one were to reexamine the whole of the CCV with a view to making it more acceptable to the many States which at present consider it to be inadequate, then one could take the opportunity of adapting it to meet the standard laid down in the CCH and to coordinate the solutions to certain complex problems.

We have attempted to illustrate the question by analysing a number of situations where the problem of the coexistence of the CCV and the CCH could arise:

2. Performance of the hotelkeeper's contract

a) Non-performance or defective performance of the contract by the hotelkeeper (Article 5 of the alternative draft)

In such cases the interests of the guest will be safeguarded by the travel organiser (Articles 3 and 15 of the CCV) if the guest is not himself a party to the contract. For his part, and in the absence of any stipulation to the contrary in the "collective" contract concluded with the hotelkeeper, the travel organiser may, as against the hotelkeeper, avail himself of the rights conferred on him by the CCH (cf. Article 5, paragraph 4 of the alternative draft).

According to the first sentence of Article 15, paragraph 1 of the CCV, the liability of the travel organiser for total or partial failure to perform certain services the provision of which he entrusts to third parties (in this case, the hotelkeeper), is to be determined by the specific rules governing such services; the CCH would therefore be applicable. However, Article 15, paragraph 2 of the CCV provides that when the rules governing the services in question do not lay down any limit on compensation, the travel organiser shall be able to invoke the limits fixed by Article 13, paragraph 2 of the CCV. The guest's possibility of recovery would therefore be limited to a maximum of 5.000 gold francs because, in the situations contemplated in Article 5 of the alternative draft (corresponding to the present Article 6), this would be a case of "other damage" within the meaning of Article 13, paragraph 2 of the CCV, and the CCH lays down no limit for such compensation. One might go so far as to invoke Article 19, paragraph 1 of the CCH (in the version contained in the alternative draft, which corresponds to the present Article 24, paragraph 1) and maintain that this provision also prevents any derogation from the principle of the unlimited liability of the hotelkeeper in the event of failure to perform his obligations under a travel contract. However, it is obvious that this interpretation is somewhat forced and that a clear solution of the problem would necessitate an amendment of the CCV (cf. Doc. 33, page 6).

b) Default by the guest in connection with the occupation of the accommodation (Articles 6 and 7 of the alternative draft)

If the guest is not himself a party to the hotelkeeper's contract, he is liable only to the travel organiser (Articles 9 and 16 of the CCV) for no-show, for late cancellation of the reservation or for prematurely cutting

short his stay. The liability of the travel organiser towards the hotelkeeper will be determined by the hotelkeeper's contract concluded between them (Article 19, paragraph 2 of the alternative draft, corresponding to the present Article 24, paragraph 2) or, in the absence of such agreement, on the basis of Article 7 of the CCH (in the alternative draft).

- c) Breach by the guest of his obligations relating to the use of the accommodation etc. (Article 8 of the alternative draft)

In these cases also, the hotelkeeper must in principle bring proceedings against the travel organiser when the guest is not himself a party to the hotelkeeper's contract. Article 8, paragraph 2 of the CCH (in the alternative draft) however permits the hotelkeeper to require that a refractory guest leave the hotel. In order to do so, he must in principle first address himself to the travel organiser, which latter must then sort out matters with the guest on the basis of the travel contract and of the CCV.

If such a guest causes the hotelkeeper direct damage (that is to say damage for which he is liable independently of any contractual relation), then Article 8, paragraph 4 of the CCH (in the alternative draft) provides for the joint and several liability of the travel organiser for the misbehaviour of "his" client. It goes without saying that a travel organiser who is obliged to compensate the hotelkeeper in accordance with this provision may then bring an action against the guest, basing it in particular on Article 16 of the CCV.

- d) Default of the travel organiser in paying the charge for the board and lodging (Article 9 of the alternative draft)

The case of default by the individual guest in the payment of the charge for board and lodging is of no interest as regards the relation between the CCH and the CCV. If the guest is not himself a party to the hotelkeeper's contract it is the travel organiser who is in principle the only person liable for performance of this obligation. However, in Article 9, paragraph 5 of the alternative draft, we have made provision for a subsidiary and limited liability of the guest in the event of the insolvency of the travel organiser. It may therefore seem shocking that by a strict application of the CCV (Article 13), the organiser may avail himself of a limitation of liability (unless Article 27 of the CCV comes into play). However we are of the view that as there is a

right of recourse for the guest, which is not necessarily based on Article 13 of the CCV but rather on a subrogation to the rights of the hotelkeeper, the limitation of liability could be overcome. Even on this line of reasoning, it is however true that the guest's right to be reimbursed will usually be somewhat problematical, given the insolvency of the travel organiser.

3. Liability of the hotelkeeper

(a) In the event of personal injury (Article 11 of the alternative draft)

In principle, the coexistence of the CCH and the CCV has the effect of improving the position of a guest who has been injured by offering him the possibility of bringing concurrent actions against the hotelkeeper and the travel organiser. To the extent that the latter is also liable, the guest would therefore have the advantage of being able to invoke their joint and several liability. As regards the travel organiser, however, there are a number of restrictions on his liability in different respects. On the one hand, it is limited as regards the amount of compensation by the interplay of Articles 15, paragraph 2, and 13, paragraph 2 of the CCV. On the other, if the guest suffers damage not by reason of the hotelkeeper's failure to perform his obligations but only on the occasion of the performance of those services, the travel organiser will be relieved of liability if he can prove that he acted diligently in his choice of hotelkeeper (second sentence of Article 15, paragraph 1 of the CCV). The protection afforded to the guest is not therefore the same when he brings an action against the travel organiser (which he may be led to do principally to avoid the trouble of having to begin proceedings abroad) as when he does against the hotelkeeper. This distinction may be deemed regrettable, but it is improbable that it could be completely eliminated, even if there were to be a revision of the CCV.

As to the relations between a travel organiser who has fully or partially compensated a guest who has been the victim of an accident at the hotel, and a hotelkeeper who is primarily liable, these are governed by Article 15, paragraph 3 of the CCV which makes express provision for the subrogation of the travel organiser in any rights and actions which the traveller may have against a third party responsible for the loss or damage.

(b) In the event of damage to property (Articles 12 to 16 of the alternative draft)

In principle, the question is posed in the same terms as when there is personal injury, with the difference that the liability of the hotelkeeper and that of the travel organiser may in these circumstances be congruent. This will be the case when Article 12, paragraph 2 of the CCH (in the alternative draft) applies, for by virtue of Article 15, paragraph 2 of the CCV, the limit of liability provided for in respect of the hotelkeeper's contract will likewise be applicable to the liability of the travel organiser.

The case of the deposit of valuable property should however be considered separately (Article 14 of the alternative draft, corresponding to the present Article 16). As the contract for the deposit of the property is in principle concluded directly between the hotelkeeper and the guest, even when the latter is not himself a party to the hotelkeeper's contract, the relations between the CCH and the CCV do not enter into consideration. The liability of the travel organiser under Article 15 of the CCV would not need to be considered unless the hotelkeeper were to refuse to receive for safe custody property which he is bound to accept and if this property were subsequently to be damaged, destroyed or lost.

II. NEW DRAFTING PROPOSED BY THE UNITED KINGDOM DELEGATION, ELIMINATING ALL REFERENCE TO THE CONTRACTUAL BASIS OF THE HOTELKEEPER/GUEST RELATIONSHIP (Doc. 41)

We cannot help feeling that the British proposal is little more than an exercise in terminology, which fails to resolve the specific problems posed by hotelkeepers' contracts concluded by travel organisers. Even if one could accept the changes in terminology (although they lead to rather strange results, at least from the continental standpoint *), one would still have serious doubts as to whether Article 6, for example, relating to the liability of the hotelkeeper for non-performance of his contractual obligations (or rather "relationship obligations") could apply without more to the "inexistent" relations between a hotelkeeper and a guest who is not himself a party to the hotelkeeper's contract. The same is true, although in the converse sense, of the

*) What is meant by "the creation of the relationship between a hotelkeeper and a guest need not be evidenced by writing and shall not be subject to any other requirements as to form" (Article 3 in the British version) ? It can only be a contract !

situation contemplated in Article 7 (default of the guest). Moreover, the British proposal does not permit the draft Convention to be completed by specific rules which in a subsidiary way would govern the relations between hotelkeepers and travel organisers which, in our view, would constitute a serious lacuna (cf. Part One, Preliminary remarks, above, pages 1 and 2).

III. PROPOSAL OF THE CANADIAN DELEGATION SEEKING TO INTRODUCE A
RESERVATION CONCERNING THE LIABILITY OF THE HOTELKEEPER IN
THE EVENT OF THE DEATH OF, OR PERSONAL INJURY TO, THE GUEST
(Letter from Mr. Low, dated 24 July 1978, addressed to the
Deputy Secretary General and to various experts)

We would refer to our reply addressed to Mr. Low on 29 August 1978 and which is reproduced as an annex hereto (cf. also above, Part One, Alternative draft, note 11.1)

IV. FINAL CLAUSES (Doc. 42)

For the time being, we have no observations to make on the final clauses prepared by the Secretariat. In connection with Article III of these clauses, we would refer to our remarks on Article 20 of the alternative draft (corresponding to the present Article 25), above, page 29.

Berne, 6 September 1978

Letter of Mr. Widmer, dated 29 August 1978 to Mr. Low
(Translation from the French)

"I have received your letter of 25 July 1978. I would like to thank you for it and have read with interest the considerations set out in your letter to Mr. Evans.

As to the substance of your remarks, I find myself in some difficulty in replying to them. On the one hand, I fully appreciate that the problem of a specific hotelkeeper's liability causes you some concern. In fact, from the standpoint of the law of torts, it may seem strange to subject the hotelkeeper to a special régime and we might, indeed, experience similar difficulties in Swiss law. On the other hand, we must not forget that our principal task in the UNIDROIT Committee of Experts is precisely to work out rules on the specific relations between hotelkeepers and their guests and that these rules should moreover permit the greatest possible degree of unification to be obtained. Now traditionally, the provisions governing the hotelkeeper's liability constitute the essential and central feature of any rules on the subject. In consequence, as you yourself concede, a decision not to include uniform rules on this question would have the effect of reducing considerably the interest of the Convention. The same goes for a possible reservation clause which would perpetuate the different solutions at present existing under the various national laws.

In principle, I am of the opinion that the desire to elaborate international rules of a uniform law character should prevail over other considerations deriving from the different national systems. If it were otherwise, UNIDROIT and the many international organisations pursuing similar aims would lose their *raison d'être*. For this reason I would prefer to adopt a pragmatic approach to the problem which would lie in asking to what extent the solution contemplated would in practice lead to results different from those at present obtained by the courts in applying internal law. If it were to be the case that there would be changes to the existing régime, then I think that a second question should be posed, namely whether the new solution (that proposed by the draft Convention) would be of such a character as to strike a fairer balance between the interests involved or to ensure more adequate protection of those interests which, hitherto, have not been sufficiently protected.

I am well aware that my reply may not perhaps fully satisfy your Canadian colleagues but I think that before resigning ourselves to new reservation clauses, we should make one more effort to find a common denominator."