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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

R E P O R T

of the Secretariat of UNIDROIT
on the fourth session of the Committee
held in Rome from 23 to 31 October 1978

Rome, November 1978

The fourth session of UNIDROIT's Committee of Governmental Experts for the examination of the preliminary draft Convention on the hotelkeeper's contract was held in Rome at the headquarters of the Institute from 23 to 31 October 1978.

The session was opened at 10.15 a.m. by the Secretary General of UNIDROIT, Mr. Riccardo MONACO, who extended a warm welcome to the participants representing 16 member States of the Institute, 2 non-member States, the Council of Europe and various Organisations concerned with the interests of the hotel-keeping profession and of travel agents (see ANNEX I).

On a proposal by the Chairman, Mr. J.P. PLANTARD (France), the Committee adopted the draft agenda reproduced in ANNEX II hereto.

Item 2 on the agenda - Report on the meeting of the Working Party set up to examine the relationship between the CCV and the future Convention on the hotelkeeper's contract.

In introducing this item on the agenda, the Chairman of the Committee recalled in the first place that the decision to establish the working party had been taken by the Committee of Governmental Experts at its third session in April 1978 on a proposal by the United States delegation. The working party had met in Rome on 19 and 20 October 1978 and in the course of an exchange of views a consensus had emerged that although there was no legal incompatibility between the CCV and the present draft on the hotelkeeper's contract, it would still be desirable to contemplate revising the CCV. Hitherto a mere seven States, of which only Argentina, Belgium and Italy could at present be considered to be important tourist nations, had ratified the Convention and a meeting of experts from the member States of the Council of Europe as well as informal contacts with other States had indicated that there was scant possibility of any substantial increase in the number of ratifications. One of the principal reasons for the evident reluctance of States to adopt the CCV had been considered to be the complexity and indeed the obscurity of the provisions dealing with the liability of the travel organiser (especially Article 15). The members of the working party had however been unanimous in stressing the importance which their authorities attached to the establishment of satisfactory rules governing international travel contracts and while they could not of course predict whether their Governments would be prepared to accept any revised version of the CCV, they nevertheless considered that in view of the fact that in some States moves were underway to introduce national legislation governing

travel contracts it would be appropriate for UNIDROIT to take an early initiative in convening a Committee of Governmental Experts to examine the question of a revision of the CCV. It was felt that two or three meetings of such a Committee should be sufficient to carry out such an exercise and since it was necessary for the competent organs of UNIDROIT to approve the modification to the Institute's Work Programme which the setting up of such a Committee would entail, it was anticipated that the Committee could hold its first meeting at the latest early in 1980. Its work could thus be terminated, if not in 1980, then in the first half of 1981, at which time it would be possible for the Belgian Government to propose the convening of a Diplomatic Conference for the revision of the CCV in accordance with the provisions of Article 42 thereof. While submitting this timetable for consideration by the plenary Committee of Governmental Experts, the working party had however emphasized that the proposed initiative for revising the CCV ought in no way to delay the speedy conclusion of the Convention on the hotelkeeper's contract which could stand quite independently of any instrument on the travel contract.

The Chairman noted that on the more general question of the relations between the CCV and the future Convention on the hotelkeeper's contract (CCH) the working party had, after seeing no difficulties in the coexistence of the two instruments, as already mentioned above, nevertheless recognised that the extent to which a person might recover compensation for damage suffered by him could in certain circumstances be different according to whether he sued the travel organiser under the CCV or the hotelkeeper under the CCH. Moreover, the working party had noted that the drafting of Article 15 of the CCV was such that it might not always be clear whether the liability of the travel organiser to the traveller would fall to be determined by the CCH, but in any event such considerations were irrelevant to the question of the hotelkeeper's liability to which the CCH principally addressed itself.

The working party had therefore turned its attention to the problems already discussed on various occasions by the Committee of Governmental Experts itself, of the applicability of the provisions of the future CCH on the one hand to relations between the hotelkeeper and the guest arising under contracts concluded by the hotelkeeper with a person other than the guest and on the other to relations between the hotelkeeper and such persons, in particular travel organisers. Accordingly it had proceeded to an article by article examination of the text of the revised articles of the preliminary draft Convention on the hotelkeeper's contract as provisionally approved by the Committee at its first three sessions (Study XII - Doc. 40), the proposed redrafting by the United Kingdom delegation eliminating all reference to the contractual basis of the

hotelkeeper/guest relationship (Study XII - Doc. 41) and the alternative revised draft with commentary and general observations submitted by the Swiss delegation (Study XII - Doc. 46). While appreciating that its mandate was not to consider the substantive provisions of the future Convention, the working party had nevertheless found in the course of its consideration of the special problems arising out of organised travel contracts that certain provisions of the present draft might be interpreted in a manner contrary to the intentions of the Committee of Governmental Experts as hitherto manifested or produce results the implications of which had not previously been foreseen. To this extent the working party had made a number of drafting proposals to which he would draw attention as the articles concerned came up for discussion.

In conclusion, therefore, he asked the Committee whether it was prepared to endorse the views of the working party on the desirability of revising the CCV.

After a brief discussion on the matter, the members of the Committee agreed that, without prejudice to the position which their individual Governments might take on participation in a Committee of Governmental Experts convened by UNIDROIT for the purpose of considering the possible revision of the CCV, the Secretariat should, in the light of the findings of the working party, bring to the urgent attention of the competent organs of the Institute the question of whether such a Committee should be set up and solicit a decision thereon.

Item 3 on the agenda - Second reading of the preliminary draft Convention on the hotelkeeper's contract. (1)

The Committee resumed the second reading of the preliminary draft Convention which it had begun at its third session. It also decided, in accordance with the proposal of the Chairman, to follow an ever more common practice by dividing the future instrument into different chapters and, for this purpose, accepted the general outlines of a proposal submitted by one of the delegations.

- Minute of the discussions, the Secretariat
- (1) Rather than producing a lengthy minute of the discussions, the Secretariat has limited itself to indicating the points raised, views expressed and proposals for amendment to each article. The numbering of the articles follows that finally decided by the Committee at the close of its fourth session although, for the sake of the reader's convenience, the summary of the discussions on each article is preceded by the text of the corresponding provisions of the former draft as provisionally approved by the Committee at its first three sessions.

Article 1

Formerly Article 1, paragraph 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 regular business basis, to provide another person - the guest - with temporary accommodation and appropriate ancillary services in an establishment under his supervision."

In introducing this article, the Chairman announced that it had been the subject of lengthy discussion by the working party which had noted that the drafting of Article 1, paragraph 1 described the elements of a hotelkeeper's contract without specifying with whom the hotelkeeper would conclude the contract. To the extent that this situation could give rise to ambiguity it had been felt that Article 1 might be expanded, in the first place by expressly identifying the parties to the hotelkeeper's contract and secondly by making it clear that the Convention applied in principle only to relations between the hotelkeeper and the guest, irrespective of who was the party with whom the hotelkeeper concluded the contract. It went without saying, however, that derogations from this general rule could be contemplated, in the sense that the Convention might also regulate some relations between the hotelkeeper and the travel organiser, as already seemed to be implied by the drafting provisionally approved by the Committee of Article 7 (now renumbered Article 6) and Article 11 (now renumbered Article 9). The working party had therefore proposed that two new paragraphs be added to Article 1 which might be worded as follows :

"2. The hotelkeeper's contract may be concluded between the hotelkeeper and the guest or a person acting on his behalf or between the hotelkeeper and a party other than the guest.

"3. However, the provisions of this Convention shall apply only to relations between the hotelkeeper and the guest."

Finally, the working party had felt that if the proposed additions to Article 1 were to be adopted then it might be preferable to displace the former paragraph 2 of Article 1(1) elsewhere.

(1) This provision, now to be found in Article 20, provided that:
"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".

With the exception of one delegation in particular, which argued strongly in favour of providing in the future CCH a number of detailed rules governing relations between hotelkeepers and travel organisers, many of which would be of a supplementary character to the extent that the parties might agree by contract to regulate their relations otherwise, there was general acceptance of the philosophy underlying the proposed new paragraphs 2 and 3 of Article 1 although a number of drafting points were raised concerning them.

Turning first, however, to the text of paragraph 1 as provisionally approved by it, the Committee was seized of a number of proposals for its amendment.

The first of these proposals was for the deletion of the words "a person" preceding the words "the hotelkeeper", and of "another person" before "the guest", on the grounds that they were superfluous. While accepting the second limb of the amendment, the Committee was unable to accept the first, the reason being that certain delegations were of the opinion that the presence of the words "a person" provided an element of indirect definition of the term "the hotelkeeper". If the words "a person" were to be deleted, it would be open to a Contracting State to argue that the term "hotelkeeper" would fall to be defined by national law and that under such law a person providing accommodation in accordance with Article 1, paragraph 1 might not be regarded as a "hotelkeeper", so that there would be no hotelkeeper's contract for the purposes of the Convention.

The second proposal for amending paragraph 1 was that the words "and on a regular business basis" be amended to read "acting on a regular business basis", which phrase would then be transposed to follow the word "hotelkeeper". This would make it clear that the words applied to the latter's sphere of activity rather than to his undertakings under the hotelkeeper's contract. The Committee accepted this proposal.

A third proposed amendment to paragraph 1 was the deletion of the word "temporary", in particular on the grounds that such a concept was incompatible with the idea of a "contract for an indeterminate period". To this it was replied that it was quite possible for a judge in a given case to decide that a contract for an indeterminate period had lasted so long that it could no longer be deemed to be temporary and, as had been the case at the first session of the Committee, it was decided to retain the term in view of the insistence of some delegations that it would assist them in distinguishing a hotelkeeper's contract from other contracts under their national law.

A further amendment designed to replace the term "for reward" by the expression "for a charge including board and lodging" ("moyennant un prix de pension" in the French text) was rejected on the grounds that it might in certain countries introduce into the basic definition of a hotel-keeper's contract the requirement that food and drink must be provided and although this element seemed to be necessary for the definition of a hotel in one of the States represented at the session, there had been no consensus within the Committee that it should be an indispensable element of the hotel-keeper's contract as defined for the purposes of the future CCH.

The last point of discussion concerning paragraph 1 centred around the term "appropriate ancillary services" ("certains services et prestations accessoires" in the French text). In this connection it was recalled that this wording, which had been chosen by the Working Committee which had prepared the first draft of the preliminary draft CCH, had been intended to cover the provision of those basic items such as light, water and linen without which it would be impossible to contemplate a hotelkeeper's contract in the generally accepted sense of the term. In these circumstances the Committee decided to delete, in the English text, the word "appropriate" the connotation of which could vary from one establishment to another, and in the French text the word "certains", which had been introduced only to permit some sort of parallelism with the English text. It was further decided that the idea of indicating those services indispensable for the performance of a hotelkeeper's contract would be better achieved in French by the replacement of the word "accessoires" by "complémentaires".

With respect to the new paragraph 2, only one change of substance was proposed, namely the deletion of the words "or a person acting on his behalf", the inclusion of which had represented a feeling within the working party that even the statement of principle embodied in the provision could leave open the question, on which agreement had been reached in the Committee itself, of whether a contract concluded between a travel agent on behalf of a guest and a hotelkeeper should be considered to be a contract concluded with the guest. Without in any way modifying the position which it had consistently adopted throughout its consideration of this matter, the Committee was of the opinion that the words in question could give rise to confusion, especially in cases where a travel agent was acting as an agent of the hotelkeeper or even on behalf of both hotelkeeper and guest. Apart from the deletion of the words "or a person acting on his behalf", the Committee made only a few minor amendments of a purely drafting character to the text of paragraph 2 proposed by the working party.

The wording of paragraph 3, however, gave rise to more difficulty. In particular, the view was advanced that to the extent that saving clauses might be necessary to permit the application of certain provisions of the future Convention to relations between hotelkeepers and parties to the hotel-keeper's contract other than the guest, it would be preferable to make a general saving provision in Article 1, paragraph 3 rather than in the context of the specific articles concerned. Once agreement had been reached on this point, the question arose of how Article 1, paragraph 3 might be suitably amended and one suggestion was that a reference should be made in that provision to the specific articles to be covered. Of these, an express derogation was made only in the renumbered Article 6, paragraph 6 (formerly Article 7, paragraph 6) but one delegation indicated that there were other provisions, Article 3 (which combined the former Articles 3 and 4) and Article 4 (formerly Article 5) which might also be of relevance to relations between hotelkeepers and parties to the contract other than the guest, so that it would be inappropriate to formulate Article 1, paragraph 3, as had been suggested, so as to read "Except when this Convention expressly provides otherwise, it shall apply only to relations between the hotelkeeper and the guest." Other delegations, however, considered that it was difficult to see the circumstances in which paragraphs 2 and 3 of the renumbered Article 4, dealing with contracts for a period of time defined approximately and with contracts for an indeterminate period, could apply to the relations between a hotelkeeper and a travel organiser. Further, it was argued by some delegations that in any event the new Articles 3 and 4 were concerned with the conclusion of the hotelkeeper's contract and with the establishment of its duration in cases of contracts other than those for a determined period and that any restriction imposed by the wording of Article 1, paragraph 3 would not apply to these articles. After further discussion, in the course of which one delegation argued in favour of the non-applicability of the new Article 3 to contracts between hotelkeepers and travel organisers, the Committee decided to formulate that provision as follows "Except when this Convention provides otherwise, it shall apply only to relations between the hotelkeeper and the guest".

Article 2

Formerly 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."

Without in any way altering the substance of this provision, the Committee amended it with a view to simplifying the drafting.

Article 3

Formerly Article 3

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

and 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."

On a proposal by one delegation it was agreed that Articles 3 and 4 should be combined in a single article and their order reversed. As regards the new paragraph 1 of Article 3 (formerly Article 4), the Chairman recalled that the working party had pointed out that the words "to furnish the guest" might imply that the article was addressed only to contracts between the hotelkeeper and the guest but that this problem would be solved by the new paragraph 2 of Article 1 proposed by the working party.

A number of delegations called for the deletion in the new Article 3, paragraph 1 of the reference to the "ancillary services requested" since in their view this provision was concerned only with defining the time at which the hotelkeeper's contract is concluded, the reference to the ancillary services being irrelevant in this context and of importance rather in Article 1, paragraph 1 where the hotelkeeper's contract is defined. It was therefore agreed to delete the phrase although a suggestion that the whole of the former Article 4 be deleted on the grounds that it stated the obvious was rejected. After some further discussion the Committee agreed to a redraft which would at the same time indicate that the provision was intended to apply to all hotelkeeper's contracts and that such contracts could not be regarded as having been concluded by the tacit acceptance of one of the parties. The new formulation reads as follows: "A hotelkeeper's contract is concluded when one party expressly accepts the offer made by the other".

As to the former Article 3, now paragraph 2 of the new Article 3, only drafting amendments were made, in particular the deletion of the word "other" in the English text which was considered to be superfluous.

Article 4

Formerly 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."

and Article 8, paragraph 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."

There was no substantive discussion of paragraph 1 of the renumbered Article 4, which was adopted as it stood, subject to minor drafting changes to the French text.

In connection with paragraph 2, the Chairman recalled that the working party had seen some difficulties in its present wording. The provision was intended to establish the perhaps self-evident proposition that a guest occupying accommodation under a contract for a determined period cannot continue to occupy it beyond that period except on the basis of a new contract and indeed a proposal had been made by one delegation to clarify this reading by saying that "the guest may only continue to occupy the accommodation on the basis of a new contract."

Such a rewording would not however overcome the difficulty inherent in the use of the term "hotelkeeper's contract" in paragraph 2. Precisely stated, the fear of the working party was that in the case of a contract between a hotelkeeper and a travel organiser, say for a series of group bookings lasting for four months, a guest occupying accommodation in the hotel in the context of the first two-week package tour might seek to insist on remaining in the hotel for the whole of the four-month period by claiming that the "hotelkeeper's contract" had been concluded for a determined period of four months.

With a view to eliminating this somewhat unlikely eventuality, the working party had sought to reformulate paragraph 2 without in any way changing its substance, and in the course of this exercise it had come to the conclusion that the best place for it would be at the end of the article, since under paragraphs 3 and 4 all hotelkeeper's contracts sooner or later become contracts for a determined period. Moreover, to avoid merely stating the obvious, it felt that the reworded paragraph 2 might be combined with Article 8, paragraph 2 as a new paragraph 4 which would read as follows:

"Unless the hotelkeeper agrees that the guest may continue to occupy the accommodation on the basis of a new contract, the guest may be required to vacate the accommodation on the agreed day at such reasonable time as has been agreed by the parties or as is provided for by the regulations of the hotel. If no such time is specified, the guest may occupy the accommodation up to 2 p.m."

Some delegations favoured the retention of paragraph 2, one in particular considering that it was not self-evident that the guest must vacate the accommodation at the end of the hotelkeeper's contract and a representative of that delegation stated that in his country it had often proved difficult for the hotelkeeper to remove a guest in such circumstances. Another delegation argued in favour of the retention of the paragraph provided that it was reworded by adding the word "only" after the words "the guest may", while yet another suggested that the idea of renewal of the contract on the same terms should be introduced. To this it was objected that there might well be cases in which the status of the guest would change, for example a guest under a travel contract deciding to remain in the hotel in an individual capacity, and here the terms of the contract might very well be altered. In addition his position would alter radically since, for example, the hotelkeeper would now be able to exercise a right of retention over the guest's property which he would not normally be able to do when the guest formed part of a group under a travel contract. It would, therefore, be essential to avoid any implication of there being a presumption of the renewal of the initial contract.

After further discussion, in the course of which a number of delegations expressed doubts as to the practical value of paragraph 2, it was decided to delete the provision. The Committee, however, supported the proposal of the working party that the former Article 8, paragraph 2 be introduced as a new paragraph 4, subject only to very minor drafting amendments.

In connection with the former Article 5, paragraph 2, the representative of one delegation expressed some doubts about the policy underlying the provision to the extent that the rules laid down to determine the length of contracts concluded for a period of time defined approximately might run counter to the interests of consumer protection. A guest booking accommodation for seven to ten days would, under the draft Convention, have a contract for only seven days and the hotelkeeper might give him notice to leave on that day. He therefore proposed that there should be an obligation on the hotelkeeper to give notice to the guest of the existence of the rule contained in the paragraph, for in most cases the guest would not be aware of the existence of the provision.

This proposal received some support and another delegation, also sensitive to the requirements of consumer protection, suggested that the rule laid down might be reversed so that it would be the latest date or the longest period mentioned in the period defined which would be used to establish the length of the contract. Such a solution, it was further argued, would avoid the interpretation which might be given to the rule as hitherto formulated that once the shortest period had elapsed, the old contract would cease to exist and a new contract for an indeterminate period begin to run.

Other delegations, however, saw some difficulties in the proposal of requiring the hotelkeeper to give notice of the rule to the guest. In the first place it was pointed out that a rule was being suggested which was accompanied by no sanction although it might be implicit that if the hotelkeeper were to fail to give notice, then the guest would be entitled to retain the accommodation for the remaining period of the contract whose length had been approximately defined. Another objection was that it was unusual to oblige a person to give notice of a legal provision to another while it was also suggested that the proposal would cover only situations which arise but rarely in practice. As to the reversal of the rule so that the longest period of time would be used to calculate the length of the contract, it was also indicated that the effect might be contrary to the interests of the guest to the extent that the former Article 7 (now renumbered Article 6) were to apply.

In these circumstances, and in view of the considerable difficulties experienced in finding an appropriate and simple form of words to cover the requirement of notice, the Committee decided not to insert a provision on the matter in the draft Convention, without prejudice however to giving further consideration to the idea prior to the Diplomatic Conference to be convened for the adoption of the Convention. Subject to minor drafting amendments, the text of the paragraph remained substantially that which the Committee had provisionally adopted at its first session.

No important questions of substance were raised in respect of the former Article 5, paragraph 3 although the provision was slightly modified to make it clear that a contract for an indeterminate period is concluded on a day-to-day basis. It was further noted that nothing in the article would prevent such a contract becoming a contract for a determined period, as for example when a guest occupying accommodation on a day-to-day basis obtains on a Monday the agreement of the hotelkeeper to his remaining in the hotel until the following Friday.

Article 5

Formerly 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."

In introducing the discussion, the Chairman stated that with regard to paragraph 1, the working party had noted that the second sentence did not specify to whom the hotelkeeper is liable for failure to provide the accommodation requested. The original intention of the Committee had been to ensure that the guest would always have a remedy against the hotelkeeper in such cases, irrespective of whether or not the guest had concluded the contract himself, but as worded the provision also seemed to give a right of action to a travel organiser against the hotelkeeper. If this had not been the intention of the Committee, then the second section of paragraph 1 might be amended so as to read "to the extent that he fails to do so he shall be liable to the guest for the damage actually suffered". If, however, the Committee were of the opinion that a remedy against the hotelkeeper should be available under the Convention to

parties other than the guest who had concluded the hotelkeeper's contract, such as a travel organiser or an embassy reserving accommodation for a delegation, then the present wording of the paragraph 1, paragraph 3 were to be accepted. A problem would however arise if the new Article 1, paragraph 3 were to be accepted and in those circumstances a saving provision would have to be included in the present provision extending its application beyond the relations between guests and hotelkeepers.

While only one delegation argued in favour of the application of the provision to relations between hotelkeepers and parties to the hotelkeeper's contract other than the guest in the absence of agreement to the contrary by them, there was a more clear division of opinion on the question of whether the guest should by virtue of paragraph 1 be given a direct action against the hotelkeeper in those cases where he was not a party to the hotelkeeper's contract. The arguments against the availability of such an action were based partly on purely conceptual legal considerations, partly on the fact that the guest would already have a remedy against the travel organiser in the case of an organised travel contract and partly on the absence of a corresponding right of the hotelkeeper to claim compensation from the guest in the event of the travel organiser's failing to pay the hotelkeeper for the services provided to the guest under the travel contract. Moreover, it was feared that in some cases the hotelkeeper might be held liable for failure to provide services or accommodation of a certain type which a travel organiser had undertaken to procure for a guest but which had not been specifically agreed upon between the hotelkeeper and the travel organiser. The hotelkeeper was, in fact, being called upon to act as an insurer of the travel organiser.

A number of counter-arguments were however raised against this line of reasoning. In the first place it was pointed out that a direct action (action directe) was available in many jurisdictions outside the specific areas of products liability and insurance, often on the basis of the concept of stipulations in favour of third parties. As to the possibility of an action being brought by the guest against the travel organiser, this might in fact be non-existent in cases where the latter was insolvent or to the extent that the CCV was applicable or the travel organiser had sought to limit his liability to the guest by contract; nor did there seem to be any reason in equity why the guest who had already paid the travel organiser for his vacation should then be called upon to pay a second time to the hotelkeeper. Furthermore it was suggested that the substitution of the words "agreed under the hotelkeeper's contract" for "requested" in the first sentence of paragraph 1 would make it clear that the hotelkeeper would not be liable to a guest in cases where, for example, a travel organiser brought to the hotel a larger number of guests than had been agreed.

or where a travel organiser held out in his prospectus that the hotel offered services or amenities which the hotelkeeper had never undertaken to provide. Finally, in answer to the objection that the provision would expose the hotelkeeper to the possibility of two actions being brought against him, one by the guest and one by the travel organiser, it was replied that to the extent that a hotelkeeper might already have compensated the guest for damage suffered by him, the travel organiser would only be able to recover damages from the hotelkeeper for damage suffered by other guests or by him personally, for example in respect of the injury caused to his professional reputation.

After weighing up the various arguments advanced, the Committee finally decided to retain the possibility for the guest to bring an action directly against the hotelkeeper even when he is not himself a party to the hotelkeeper's contract, subject however to the replacing of the word "requested" by the term "agreed under the hotelkeeper's contract" to which reference has already been made in the preceding paragraph of this report.

Paragraph 2 of the article was also the subject of lengthy discussion. As it stood, it permitted the hotelkeeper to relieve himself of liability by enabling the guest to conclude another contract on terms equivalent to those included in the original one, subject to the hotelkeeper's meeting the reasonable expenses entailed for the guest by such substitution. One delegation in particular considered this solution to be totally inadequate. The single most frequent cause of damage being suffered by a guest was that of his arriving in a hotel and finding that the accommodation reserved for him was not available. In such cases it was extremely difficult for the guest to prove actual financial loss, since the damage suffered by him could as a rule be measured more in terms of inconvenience. The consequences of this state of affairs had been a tendency in North America for hotelkeepers to offer by way of liquidated damages a free night's accommodation in another establishment and to the extent that such a solution might reasonably be expected to spread to other continents in the near future it was considered that it would be desirable to include provision in the future ECH for such an on-the-spot remedy.

While recognising the interest of this proposal and perhaps the possibility of making provision for it's being contained in a reservation clause, the Committee was not prepared to include the principle in the body of the draft Convention itself. On the other hand it agreed that there was justification for tightening up the obligation placed on the hotelkeeper under paragraph 2 of the article and to this end it decided to modify the provision in certain respects. In the first place it considered that it was not enough for the hotelkeeper "to ensure that the guest is enabled to conclude [another] contract". He must, therefore, actually procure for the guest equivalent accommodation and services

and this "in the same locality", so that it is not sufficient for a hotel-keeper who has agreed to provide accommodation in a city centre to obtain alternative accommodation for the guest in a distant residential suburb. Moreover, the new text makes it abundantly clear that the guest remains free to accept the alternative accommodation and, to the extent that it really is "equivalent", thereby renounce his right to damages under paragraph 1, or alternatively to refuse the hotelkeeper's offer and to bring an action in damages, it being open to the judge to determine how far such a refusal might be a ground for relieving the hotelkeeper of his liability. In addition, the Committee recognised that the most common expenses which any substitution of accommodation would entail for the guest would be the cost of transport and it was therefore considered desirable to make a specific reference to it in the second sentence of paragraph 2. Finally, the Committee insisted that paragraph 2 of the article would cover not only cases of failure by the hotelkeeper to provide any accommodation at all but also those where the hotelkeeper fails to provide the type of accommodation actually agreed upon, for example offering to the guest a room over a noisy street instead of the quiet room overlooking the sea which he has agreed to provide.

In conclusion, the Committee noted the objections of one delegation to the new formulation of paragraph 2 which, in the opinion of that delegation, could result in the guest's being bound contemporaneously by two different hotelkeeper's contracts, a criticism which had been levelled against the original wording of the provision adopted by the Working Committee. In this connection, the view was also expressed that to the extent that the equivalent accommodation was accepted by the guest a new hotelkeeper's contract would be concluded and the former contract terminated so that there was in substance no difference on this point between the new text and that provisionally adopted by the Committee at its first session.

Article 6

Formerly 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."

The Chairman stated that the working party had concentrated particular attention on this article in the light of the complex relationship of guest hotelkeeper and travel organiser or other party (such as an embassy or private company booking accommodation) who might conclude a contract with a hotelkeeper. Taking the present drafting of paragraph 1 of the article, the working party had considered that it might be interpreted as permitting the hotelkeeper to obtain compensation from a guest who did not occupy accommodation arranged for him by a travel organiser and to whom the guest had paid the full amount due under a travel contract, even though the guest's failure to occupy the accommodation could be attributed to an act or omission of the travel organiser, for example failure by him to provide the necessary transportation. If this had been the intention of the Committee then paragraph 1 could be left unchanged but if this were not the case then the working party had suggested that the difficulty might be met by adding the following introductory phrase to paragraph 1:

"In cases where the hotelkeeper's contract is concluded between the hotelkeeper and the guest, the hotelkeeper" (the rest unchanged).

Another problem might however arise to the extent that the Committee accepted the new paragraph 3 of Article 1 limiting the applicability of the Convention to relations between the hotelkeeper and the guest so that the article under consideration would not apply to relations between the hotelkeeper and a party other than the guest with whom the hotelkeeper's contract had been concluded. This was, of course, a possible solution but since the present drafting of the article and the reference in other paragraphs thereof to "agreement to the contrary" indicated a desire to regulate relations between hotelkeepers and, inter alia, travel organisers, the adoption of the new paragraph 3 of Article 1 would necessitate a saving provision in the article. One solution envisaged by the working party was the introduction of a new paragraph 6 which might be drafted as follows:

"Notwithstanding the provisions of Article 1, paragraph 3 of this Convention, the present article shall apply to relations between a hotelkeeper and a party to the hotelkeeper's contract other than the guest, unless the parties to that contract have otherwise agreed."

In the light of this information, the Committee proceeded to a paragraph by paragraph examination of the article. In connection with paragraph 1, the Committee agreed that it should be made clear that the provisions of the article were in principle directed to contracts concluded between hotelkeepers and guests. It was, however, considered unnecessary to begin the article with the form of words proposed by the working party to the extent that a new paragraph 6, worded along the lines suggested by the working party, would be inserted in the article to deal with contracts concluded between hotelkeepers and parties to the hotelkeeper's contract other than the guest. Also in connection with paragraph 1, one delegation feared that the existing wording might perhaps give the impression that some new type of liability was being established whereas what the article sought to do was to limit the compensation payable by the guest in cases where he would, in theory at least, be liable to the hotelkeeper under the normal principles of the law of contract. With a view to removing this difficulty, the Committee recast the form of paragraph 1 without however changing in any way its substance.

Only minor drafting amendments were made to paragraph 2.

The bulk of the discussion on this article centred around the limits placed on the compensation payable by the guest to the hotelkeeper. Although the members of the Committee were generally speaking in favour of the principle of limitation, one delegation wondered whether there might not be a case for

deleting paragraphs 3 and 4 altogether. On the one hand, that delegation saw no reason why the guest should not be liable in full for damage suffered by the hotelkeeper, as there was no corresponding limitation on the latter's liability under the renumbered Article 5, while on the other the penalties laid down in paragraphs 3 and 4 were considerably stiffer than those usually applied in its own country and might stimulate proprietors of commercial hotels who in practice rarely claimed compensation for no-show, to adopt a more severe position vis-à-vis the guest. This delegation also shared the misgivings expressed by a number of representatives concerning the possible impact of the provisions of paragraphs 3 and 4 on establishments catering for the tourist industry, especially small seasonal hotels, which could suffer very considerable loss as a result of limits placed on the compensation payable to them in the event of no-show by a guest.

While the Committee as a whole shared this concern, a number of representatives feared that it would be difficult to introduce into the body of the future Convention a distinction between commercial hotels and tourist orientated hotels since this would pose very serious problems of definition and demarcation on account of the different laws and practices of the various countries. For these reasons a proposal to make provision for higher limits on compensation for the latter category of establishment or indeed to maintain the words "in the absence of agreement to the contrary" in respect of them was rejected although it was conceded that one might envisage some sort of reservation clause on the matter being introduced at the future Diplomatic Conference for the adoption of the draft. It was, in addition, pointed out that to the extent that the new paragraph 6 would leave unaffected the freedom of hotelkeepers and parties to hotelkeeper's contracts other than the guest to derogate from the provisions of Article 7, this would considerably attenuate the difficulties which might be encountered by seasonal hotels through the application of the provisions of the article.

With regard to the precise figures and time-limits laid down in paragraphs 3 and 4, a series of proposals by the International Hotel Association to increase the percentages and the number of days in respect of which the guest should be liable to pay compensation were rejected. In connection with paragraph 4, a suggestion that the word "midday" be replaced by "the day before" in sub-paragraph (a) was likewise rejected although the Committee, bearing in mind in particular the special position of seasonal hotels, agreed to amend sub-paragraph (c) so as to require the guest to give seven days notice, instead of three, in respect of stays of seven days or more, the point being made that in most cases such stays would be in what might be termed tourist, as opposed to commercial, hotels.

In connection with paragraph 5, a number of delegations found the wording somewhat obscure and it was in consequence decided to spell out more clearly its meaning by seeking an exact parallelism with paragraph 4, without however inserting it after paragraph 2 as proposed by one delegation.

In view of its decision that no derogations from the provisions of the article should be permitted in contracts between hotelkeepers and guests, principally so as to avoid the guest finding himself faced with contracts of adhesion imposed upon him by a professional, but also, as one delegation indicated, to permit the guest to know in advance his liability in the event of no-show and to take out appropriate insurance cover, the Committee accepted the proposal of the working party to the effect that a new paragraph 6 be introduced making the article in principle applicable to relations between hotelkeepers and parties to the hotelkeeper's contract other than the guest but leaving it open to the parties, as they almost invariably do in practice, to make alternative arrangements.

Finally, in connection with this article, one delegation referred to the possibility of introducing a provision to the effect that the hotelkeeper should keep the accommodation at the disposal of the guest for one day, or for a stay of one night up to a certain hour on the day of arrival, in the event of the latter's failure to notify the hotelkeeper of his late arrival. It was recognised that such a rule coincided with the practice followed by many hotelkeepers but in view of the fact that its introduction in the Convention would entail the revision, at this late stage of the Committee's work, of the mechanism for compensation provided for elsewhere in the article, it was decided to request the Secretariat to mention the matter in the explanatory report on the future Convention so that it would not be lost sight of in the period elapsing between this last session of the Committee and the Diplomatic Conference for adoption.

Article 7

Formerly Article 8, paragraph 1 (1)

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

In the course of the discussion of this provision, a number of delegations from civil law countries expressed doubts as to whether it was necessary to retain the word "reasonable", which they considered to be implicit in the rule. To the extent, however, that certain delegations from Common law

(1) The former paragraph 2 of this article has been incorporated in the new Article 4 as paragraph 4. See above, p. 11.

Article 9

Formerly 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."

In introducing the discussion on this article, the Chairman recalled that in its examination of the provision, the working party had noted that it was linked very closely to the former Article 7 (now Article 6). In particular the point had been made that the present drafting might permit a guest occupying accommodation under a travel contract concluded by a travel organiser arbitrarily to give notice to the hotelkeeper of his intention to leave the hotel before the expiry of the contract and then claim restitution from the hotelkeeper of the sum corresponding to the charge for the accommodation and ancillary services which the guest did not in fact enjoy. The working party did not consider this to have been the intention of the plenary Committee and to overcome the problem it had proposed that the second sentence of the article read as follows: "The hotelkeeper shall /in the absence of agreement to the contrary/ return it to the party who paid it to the extent that it exceeds the amount due to him under the terms of the present Convention". The working party had also noted that the effect of the proposed new Article 1, paragraph 3 would be to exclude the application of the Convention to relations between the hotelkeeper and parties to the contract other than the guest, in which case it would be unnecessary to amend the second sentence of the article and sufficient to add the words "from the guest" after the word "advance" in the first sentence.

If, however, the Committee were to confirm the present tenor of the new Article 9 so that the travel organiser would also be permitted to avail himself of the provisions of the article then in view of the adoption of the new Article 1, paragraph 3, it would, in addition to the above-mentioned modification of the second sentence of the new Article 9, also be necessary to introduce a new paragraph to the article which might be couched in the following terms:

"Notwithstanding the provisions of Article 1, paragraph 3 of this Convention, the present article shall apply to relations between the hotelkeeper and a party to the hotelkeeper's contract other than the guest, unless the parties to that contract have otherwise agreed."

The Committee noted the proposals of the working party and decided that in view of the fact that contracts between hotelkeepers and travel organisers almost invariably contain provisions regulating the case contemplated by this article, it was unnecessary to make provision for them therein. It also decided that since it was intended that it should not be possible to derogate from the provisions of the article, for example by considering the advance payment to be a forfeitable deposit, the words "in the absence of agreement to the contrary" should be deleted. Finally, the Committee decided to add the words "from the guest" after the word "receives" so as to make it perfectly clear that the provision was not intended to cover those situations where the advance payment had been made by a party to the hotelkeeper's contract other than the guest and thus to avoid the abusive interpretation which might have been put upon the text as formerly drafted.

Article 10

Formerly Article 19

"1. Except in cases where the sum payable to the hotelkeeper is due from a person other than the guest, the hotelkeeper shall, as a guarantee for payment of the charge for the accommodation and for any other ancillary services supplied by him, have the right to detain any property of commercial value brought to the premises of the hotel by a guest.

2. The hotelkeeper shall not, however, be entitled to detain such property if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution.

3. The hotelkeeper may, after giving adequate and timely notice, cause to be sold the property detained by him up to the amount necessary to satisfy his claim. The conditions and procedures of the sale shall be governed by the law of the place in which the hotel is situated.

4. The provisions of this article shall not affect the rights of which any third party might avail himself over the property brought to the premises of the hotel by the guest, or over the proceeds of the sale thereof.

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 rights of detention and sale and on the proceeds of such sale."

In connection with paragraph 1 of this article, the Committee decided that while the provision should not apply to extracontractual claims which the hotelkeeper might have against the guest, for instance where the guest had damaged hotel property, and in respect of which the hotelkeeper would have an action for damages under national law, and possibly under Article 7 of the draft Convention itself, it should nevertheless apply to cases where a guest, occupying accommodation for example under an organised travel contract, refused to pay for services or goods supplied to him by the hotelkeeper in addition to those provided for under that contract. One representative, however, pointed out that in his country the right of detention and sale of property brought to the premises of the hotel by a guest was not available to the hotelkeeper, while two others indicated that under the law of their countries the right of detention could not be exercised over property brought to the hotel by the guest, if the hotelkeeper had notice that the property belonged to a third party.

Another delegation requested that the categories of property exempted from the right of detention should be enlarged to cover, for instance, property indispensable to the guest for the exercise of his professional activities. This suggestion was not, however, adopted by the Committee which recalled that the present drafting was aimed at preventing the physical detention of the guest himself by detaining certain objects such as a passport or an airline ticket and it was for this reason that a reference was made to "property of commercial value". It was, moreover, pointed out that the weapon available to the hotelkeeper was essentially one enabling him to exert pressure on a recalcitrant guest and that in practice the right of detention was but rarely exercised.

Lastly, in connection with the article, the Committee considered whether paragraph 4 should be retained and, if so, in which of the alternative versions. Some delegations noted that this was the only provision in the draft Convention purporting to lay down a conflicts of law rule and to the extent that such a rule had, in their view, no place in the instrument, they called for the deletion of paragraph 4. Other delegations, however, supported its retention, arguing that if it were to be deleted it might seem that the hotelkeeper was being accorded an absolute right of detention and sale irrespective of the existence of third party rights over the property. In these circumstances the Committee agreed to retain paragraph 4 and a majority declared itself in favour of the second alternative, one reason being that it would avoid the danger of continual references back and forth between the law of different jurisdictions which might exist under the first alternative. It was also noted that the reference in the second alternative to the "effects" of third party rights on the hotelkeeper's rights of detention and sale had the result of limiting the application of the law of the place where the hotel is situated to determining those effects, principally

the rules governing priorities between competing claims, while leaving the determination of the existence of third party rights to the free play of the rules of private international law. As to the use of the term "internal law", one delegation had misgivings as to whether this might not be taken as covering the conflicts rules of the law of the place where the hotel is situated but the Committee felt that this would not be the normal interpretation and it was recalled that the formula had been used in a number of international private law Conventions.

Article 11

Formerly 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."

and Article 14

"For the purposes of the application of Article 13 :

(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."

A large number of points were made in connection with this article. In the first place, the question was raised as to whether the phrase in square brackets, which had been introduced by the Secretariat in accordance with the instructions of the Committee and which sought to maintain a certain parallelism with the former Article 15 (now Article 12), should be retained. Four objections were levelled against it. The first was that it was extremely vague, the second that it might have the effect of modifying existing civil liability régimes in various countries and the third that it was unnecessary to refer to the period preceding the time when the guest has the accommodation at his disposal since the hotelkeeper would be liable to the guest for physical injuries or death occurring on the premises of the hotel as from the time the guest entered them under the contract already concluded with the hotelkeeper either by him or by a third party. Fourthly, the wording of the phrase did not cover cases where the guest entered the hotel to take up the accommodation with which the hotelkeeper had agreed to provide him but the accommodation was never in fact placed at his disposal. In these circumstances the Committee decided to delete the phrase in square brackets entirely, thus leaving it to the judge to determine, whenever the damage was suffered after the accommodation had been vacated by the guest, whether it would be reasonable for the provisions of Article 13 (now Article 11) to be applied.

The Committee then considered a proposal by one delegation that the words "or in any other place under the supervision of the hotelkeeper" be added after the word "hotel" so as to cover cases where certain services to be supplied to the guest under the contract were to be performed outside the premises of the hotel but in a place under the hotelkeeper's supervision, for example a private beach. Although one delegation was opposed to this extension of the hotelkeeper's liability under the article, the majority of the Committee favoured it while insisting, however, that it was not meant to encompass those situations in which the hotelkeeper provided transport facilities to the guest as the liability for any damage caused in the course of such transport operations would be regulated by the appropriate national law governing the carriage of passengers.

A further point raised was whether the provision should apply only when the guest is injured on premises or in a place to which the hotelkeeper has authorised him to have access. After some discussion of this proposal, the Committee came to the conclusion that the existing text was adequate to deal with the problem for the hotelkeeper might be able to plead that he had exercised the care called for under paragraph 1 and/or that the guest had been at fault in placing himself in the situation in which the damage occurred so that there could a reduction or disallowance of compensation to the guest in accordance with the provisions of the former Article 14 (a) (now Article 11, paragraph 3).

Moreover, one could also envisage situations in which the guest, through no fault of his own, for example the defective functioning of a lift, might find himself in a place on the premises where he had no right to be and in which he suffered injury. The test applicable in such cases would therefore be that of reasonableness and the national judge would consider all the relevant facts in reaching his decision.

A number of delegations from Common Law countries stressed the importance to them of introducing into the English text of the second sentence of paragraph 1 of the former Article 13 the concept of "reasonable care" and to take account of this concern the Committee decided to amend the provision so as to speak of the hotelkeeper's exercising "the care which the circumstances called for" ("la diligence commandée par les circonstances" in the French text).

Also in connection with the second sentence of paragraph 1 of the former Article 13, a representative of the International Hotel Association proposed a modification to its wording the purpose of which was to place on the guest the burden of proving that the hotelkeeper had not exercised the care which the circumstances called for. He pointed out that such a solution would represent the existing legal situation in his own country and that it would be very difficult to envisage any modification of the law. This proposal was supported by one delegation. In reply, the Chairman recalled that the matter had been discussed at considerable length by the Committee at its second session and that the result had been a compromise the effect of which was to leave a certain ambiguity in the text so as to permit each national legal system to determine for itself the rules regarding the burden of proof which it would apply in this connection and he was personally hesitant to see the compromise solution brought into question.

The Committee shared the view expressed by the Chairmen while noting a suggestion by the Secretariat that a provision might be introduced in the final clauses of the draft Convention on the occasion of its adoption by the Diplomatic Conference to the effect that the Contracting Parties might at the time of signature, ratification or accession make a declaration indicating the interpretation to be given to the provision in question by their courts.

One final question concerning the first paragraph of the former Article 13 was raised by one delegation which wondered to what extent the hotelkeeper would be liable thereunder for injury suffered by a guest as a result, for instance, of a defective component of a lift giving way thus projecting the occupants to the bottom of the lift shaft. The hotelkeeper might have taken all necessary steps to ensure that the lift was in good working order and could not possibly have known of the defect in manufacture. Was the hotelkeeper, that

delegation asked, liable in such cases, as he would normally be under the law of its own country in application of the rules regarding non-delegable duties? In this regard, the Committee considered that it was necessary to have recourse to the former Article 20 (c) (now Article 19), concerning the liability of the hotelkeeper for acts and omissions of his servants and agents and recalled that it had agreed at its second session that this article also covered independent contractors so that in principle the hotelkeeper could be held liable in the type of case mentioned. In addition it was noted that the hotelkeeper would of course, have a recourse action against his supplier while the guest himself would be entitled to proceed directly against such a person instead of, or together with, the hotelkeeper.

Turning to paragraph 2 of the former Article 13, the Committee recalled that it had been its intention in this provision to place a strict liability upon the hotelkeeper as regards the provision of food and drink and one delegation in particular feared that the addition of the last two lines, which had been introduced to cover the so-called "allergy cases" and formulated in such a way as to follow to a large extent the wording of the Council of Europe Convention on Products Liability might have the effect of watering down the hotelkeeper's liability. Another delegation, however, called for an amendment of the provision so as to cast upon the guest the burden of proving that the food was not fit for human consumption.

In considering these observations, the Committee noted in the first place that although the provision cast a heavy burden on the hotelkeeper, it would be even more difficult for a guest, who had little or no knowledge of the arrangements made by the hotelkeeper in procuring or preparing food, to discharge the burden of proving that the food in question was unfit for human consumption; moreover the guest had already to establish that the consumption of the food was the cause of his illness and this might itself prove to be a difficult undertaking.

As to the maintenance in the provision of the words following the word "consumption", the Committee agreed that there might possibly be some difficulty of interpretation. What was intended was to relieve the hotelkeeper of liability when he provided normal wholesome food or drink to a guest who, owing to some peculiarity of which the hotelkeeper could not have known, fell ill as a consequence of consuming such food or drink or if the guest suffered damage as a result of uncontrolled over-indulgence in consuming certain food or drink. If, on the other hand, the guest informed the hotelkeeper of his allergy or particular susceptibility to certain food or drink and notwithstanding this fact he was provided with it by the hotelkeeper then the latter would be liable in any event under the provisions of paragraph 1 of the article. In these circumstances the Committee decided to delete the words at the end of paragraph 2 following the word "consumption".

In the course of its examination of the former Article 14, the Committee decided that since it was principally concerned with the defences available to the hotelkeeper in cases of his being liable under the former Article 13, it would be preferable to combine the two articles in a single provision, this article now being renumbered Article 11.

With respect to paragraph (a) of the former Article 14, the Committee considered in the first place a problem which had been mentioned at its second session by one delegation, namely the possibility of including a reservation clause to the effect that in cases where the death of, or personal injury to, a guest resulted wholly or in part from his wrongful act or neglect, without however it being possible to characterise such neglect as gross negligence, a Contracting State would be free not to allow any reduction of the damages to be awarded against the hotelkeeper. Broadly speaking, the Committee was sympathetic to this approach but a number of delegations expressed doubts as to the desirability of adding yet another reservation to the already long list. In these circumstances it was agreed that the wording of paragraph (a) be amended in such a way as to leave it open to national courts to decide whether or not to permit a reduction of damages in cases where the damage suffered by the guest had been due to his own conduct or neglect. In consequence, the new paragraph 3 of Article 11, which replaces the former Article 14, paragraph (a), reads as follows: "In cases where the hotelkeeper is liable under the provisions of this article, the compensation due to the guest may be reduced to the extent that the loss or damage has been caused by the fault of the guest", it being understood that the use of the term "reduced" would also permit the court to award no damages at all in appropriate cases.

The latter part of this provision was also substantially modified by the Committee, in particular as regards the English text. The origins of this modification lay in a lengthy discussion of whether it was desirable to restrict the situations in which the compensation payable to the guest could be reduced to cases where he had himself in some way been at fault or whether one might not also envisage such a reduction when it would not strictly speaking be correct to regard him as having been at fault. To the extent that the latter solution was to be adopted, some delegations proposed to speak in the French text of the "fait du client" rather than the "faute du client". A number of delegations, however, expressed strong opposition to this idea. In the first place it was argued that from a legal standpoint only children and the insane are not capable of committing faults. As to the former case, it was suggested that in many cases where children were injured the hotelkeeper could claim that this was partly or wholly due to the absence of supervision by their parents and that as far as insane persons were concerned it could be argued that to the extent that a hotelkeeper could show that he had exercised the care required by the circumstances

and that he could not have avoided the event causing the damage or have prevented its consequences, he would not in any event be liable under paragraph 1 so that the new paragraph 3 of Article 11 would be irrelevant. In addition, some delegations were apprehensive about the abandonment of the idea of the "fault" of the victim as this would leave the question of exoneration from liability to be determined solely by reference to the principles of causation which was an approach normally alien to Common Law legal thinking.

In these circumstances the Committee decided to retain in the French text the reference to the "faute du client" but agreed to amend the English text so as to speak of the "fault" of the guest, which was considered to be a more general term than "the negligence or wilful act or omission" of the guest which in many Common Law jurisdictions has a precise legal connotation in the context of civil liability.

Always in the context of this provision, the Committee also gave consideration to a matter briefly discussed at its second session, namely the problem of guests injured in the course of rescuing fellow guests or hotel employees, for example in the event of a fire. It was considered unnecessary to include any specific provision on the matter as the general feeling was that in most cases one could not reasonably regard the guest as having committed a "fault" when acting on the basis of humanitarian concern for the safety of others.

One delegation then raised the question of whether there might not be a case for amending the provision regarding the effect on the liability of the hotelkeeper of the fault of the guest by extending its application to cases where the fault could be attributed in part to a person accompanying him or in his employment. The Committee considered this proposal but the majority felt that it would apply in very rare cases and felt that it was not unreasonable in such cases to treat such a person as a third party so that the rules set out in the new Article 11, paragraph 4 (formerly Article 14 (c)), would be applicable.

The Committee then turned its attention to the former Article 14, paragraphs (b) and (c) dealing respectively with cases where the damage to the guest resulted wholly or partially from the negligence or from a wilful act or omission of a third party. As regards the former situation, the Committee decided that the provision was at the least superfluous and at the most dangerous. It was superfluous to the extent that in cases where the loss or damage could be wholly attributed to the fault of a third party, the hotelkeeper would by definition in no way have been at fault himself so that he would not be liable at all under paragraph 1 of the new Article 11. In the special case of the provision of food and drink he would still be liable to the guest even though he was

in no way at fault, for example when his supplier provided him with food which the hotelkeeper could not have known to be contaminated, or even when a guest surreptitiously slipped poison into the food or drink of a fellow guest, and the present wording of paragraph (b) was positively misleading in this respect. Although one delegation had misgivings about holding the hotelkeeper liable in the last mentioned case it was considered difficult, if not impossible, to find a simple form of words to make provision for such cases and in consequence the Committee decided to delete paragraph (b) in toto, it being understood that the persons for whom the hotelkeeper is liable under the former Article 20 (c) (now Article 19), could not be considered as third parties.

As to cases where the hotelkeeper was liable under the new Article 11, but the damage was caused partly by the fault of a third party, the situation contemplated by the former Article 14, paragraph (c), the Committee adhered to its view that the hotelkeeper should be liable to compensate the guest in full in such circumstances and this principle was retained in the new Article 11, paragraph 4.

The Committee also decided that the part of the former paragraph (c) leaving open the possibility for the hotelkeeper to bring a recourse action against a third party who was in part responsible for the damage suffered by the guest should be extended to cover cases where, under paragraph 2 of the new Article 11, the hotelkeeper was liable for damage suffered by the guest in the absence of any fault on his part and in consequence a paragraph 5 was added to Article 11 making no distinction based on whether the damage was caused wholly or partly by a third party.

After a brief discussion as to whether force majeure or a similar formula should be adopted as a defence for the hotelkeeper under the new Article 11, it was noted that such a defence was unnecessary as regards the cases contemplated by paragraph 1 as it would already be encompassed by the wording of the second sentence of that provision and contrary to the intention of the authors of the draft in respect of paragraph 2.

Finally, in connection with the single article now dealing with the liability of the hotelkeeper for the death of, or personal injury to, a guest the Secretariat informed the Committee that the Canadian delegation, which unfortunately had not been able to attend the session, had intimated certain difficulties which might arise for it in view of the specific liability régime contained in the former Articles 13 and 14 in the context of the pending reform of internal Canadian legislation regulating occupier's liability. In these circumstances that delegation had raised the possibility of deleting the provisions or of at least introducing a reservation clause permitting Contracting States not to apply the provisions of the Convention in question.

Some delegations, while indicating that they were opposed to deleting the provisions in the draft Convention concerning death and personal injury and that they foresaw no similar problems arising under their own national law, nevertheless expressed sympathy for the difficulties encountered by the Canadian delegation and declared that while their Governments would probably not avail themselves of such a reservation clause, they were not in principle opposed to the Canadian proposal if this would facilitate acceptance by Canada of the future Convention.

The Chairman considered that it was difficult to debate the matter at length in the absence of the Canadian delegation and he consequently proposed a solution, which the Committee accepted, whereby the question would be mentioned both in the report of the session and in the Explanatory Report which would accompany the final draft, so that the matter would not be overlooked if any Government wished to make a similar proposal at a later stage preceding, or on the occasion of, the convening of the Diplomatic Conference for the adoption of the future instrument.

Article 12

Formerly Article 15, paragraph 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."

Two drafting points were raised in connection with this provision. In the first place it was suggested that the words "property brought to the premises of the hotel" might leave the door open to abuse. A guest might bring property to the hotel, then remove it and perhaps lose it somewhere outside the hotel, for example in a large department store. As the text stood, it might be argued that the guest need do no more than prove that he had brought the property to the hotel. For this reason it was proposed that the words "property brought to" be replaced by "property on". At first sight the Committee found this suggestion to be attractive although it felt that there was little danger of any court giving such an abusive interpretation to the provision. Subsequently, however, it was realised that the new formulation might itself give rise to peculiar results for property "on the premises of the hotel" might be property owned by the hotelkeeper himself. In these circumstances the Committee reverted to the original language of the provision which, it was moreover noted, corresponded to that employed in the Council of Europe Convention on the liability of hotelkeepers concerning the property of their guests which had not given rise to any difficulties of interpretation in the six States which had ratified it.

Secondly, one delegation pointed out a slight defect in the wording of the final phrase of the provision. Although the objections which had led to the deletion of the corresponding phrase in the former Article 13, paragraph 1 were not applicable here, the present drafting still did not cover the case of a guest to whom the hotelkeeper had agreed to provide accommodation, whether by contract with the guest himself or with a third party, but where no accommodation was in fact provided. In consequence the words "has the accommodation at his disposal" were replaced by "is entitled to accommodation".

Article 13

Formerly 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."

The discussion of this provision saw one of the most important changes to the text of the draft Convention as provisionally approved by the Committee at its first three sessions, namely the introduction of a new paragraph 3 in the article making provision for the introduction of a limit on the hotelkeeper's liability in respect of damage, destruction or loss of property received by the hotelkeeper for safe custody. This amendment had its origins in the proposal of one delegation that if the former rule providing for unlimited liability in such cases were to be retained then a reservation clause (formerly Article 25, Paragraph 1 (f)), should be inserted in the draft Convention. As some support for the notion of limiting the hotelkeeper's liability in respect of property deposited with him for safe custody became apparent, a new trend emerged in the discussions, to the effect that the substance of the reservation clause should itself become the rule to be embodied in the draft Convention, and the principle of unlimited liability transferred to the article on reservations.

The principal arguments adduced in favour of the retention of the latter rule were on the one hand the fact that it was already part of the law of many countries, especially those which had ratified the European Convention on the liability of hotelkeepers concerning the property of their guests and,

on the other, that it was difficult to see why there was a need, based on insurance considerations, for a limit on the hotelkeeper's liability in respect of property deposited with him for safe custody when his liability was already unlimited in respect of personal injuries suffered by the guest.

To this latter observation, it was pointed out that there were considerable differences in premiums regarding personal injury and damage to, or loss of, property. The latter was a far more likely occurrence in a hotel and moreover it should not be forgotten that different liability régimes applied under the Convention; while the liability attaching to personal injury was, apart from the case of damage suffered as a result of consuming food or drink, based on fault, the hotelkeeper's liability as regards property was a strict liability and this difference would be reflected in the different insurance premiums. It was further observed that while it might be true that a number of States recognised the unlimited liability of the hotelkeeper for property deposited with him, many others did not. There might therefore be considerable difficulties in overcoming opposition from the hotelkeeping profession to ratification of the future instrument if the principle of unlimited liability remained. In addition, it was recalled that while it was true that the Council of Europe Convention made provision for unlimited liability in respect of property deposited with the hotelkeeper, it had also contained a rule, absent in the present draft Convention, permitting the hotelkeeper to refuse to accept property of excessive value, and although it might be true that large luxury hotels would never refuse property for deposit on those grounds, it was a very valuable safeguard for small establishments which could not offer sophisticated equipment for the safekeeping of goods.

Finally, it was argued that one of the principal aims of the proposed change was to strike a more equitable balance between the interests of the guest and the hotelkeeper while at the same time the placing of an obligation on the guest to deposit valuable property with the hotelkeeper would have the effect of ensuring that guests themselves would take greater care of their property.

The supporters of the principle of limited liability also stressed that there were a number of exceptions and attenuations to this principle which might go some way to reassuring its opponents. In the first place, the hotelkeeper's liability would remain unlimited if the loss of, or damage to, the property was in any way to be attributed to fault or his part as defined in the former Article 15 bis. Secondly, the limit would only apply if appropriate notice were given to the guest of the limits of liability before the deposit was made and thirdly the limit would be set at a sufficiently high figure to cover almost all cases which would arise in practice. Finally, the hotelkeeper would have an option not to limit his liability and in those luxury hotels where it was more likely that the guest would have extremely valuable property with him, the hotelkeeper might indeed not insist on applying the limit.

In the light of these arguments the Committee agreed to introduce a new paragraph 3 into the former Article 16 (now Article 13) which is worded in the following manner: "When the hotelkeeper receives property for safe custody he may limit his liability, in respect of any single event, to a sum equal to /500/1000/ times the charge for the accommodation, on condition that the guest has been duly notified thereof prior to the deposit."

The alternative figures in square brackets indicate what the Committee thought to be the lower and upper limits which might be taken as a basis for fixing the final limitation figure. In this connection a representative of the International Hotel Association pointed out that the figure of 500 times the charge for the accommodation corresponded to what could be envisaged in a normal insurance policy but that any higher multiple would necessitate the taking out of supplementary insurance which could be very costly for the hotelkeeper. The Committee noted this intervention but decided that in view of the fact that the delegations had had no instructions on the subject prior to the session it would be desirable to leave the question open for the time being so that definite positions could be established at a later date with a view to the taking of a final decision at the Diplomatic Conference for the adoption of the draft Convention. As to the reference to "any single event", this phrase was included at the request of one delegation in the new Article 14, formerly Article 15, paragraph 2 (see below, p.37) and was introduced into this provision to maintain a parallelism between the two articles.

It was, in addition, agreed that it would be necessary to modify the former Article 25, paragraph 1 (c) (now Article 24, paragraph 1 (c)) so as to make provision for States to enter a reservation allowing for unlimited liability in respect of property deposited with the hotelkeeper.

Finally, in connection with the new paragraph 2, the Committee considered a proposal by one delegation that provision might be made for the guest to be required to make a declaration of value of the property tendered for safe-keeping and that such a declaration should constitute a limit on the hotelkeeper's liability if such property were to be lost or damaged after deposit. This delegation considered that such a rule would be equitable since the guest would usually have a better idea of the value of the property than the hotelkeeper and the point was also made that it would permit the hotelkeeper to take especially stringent security measures in respect of property of very great value.

There was, however, considerable opposition to the proposal. On the one hand it was argued that the guest might have very little idea of the value of the property and that if he did, he might be reluctant to publicise its great value. Secondly, it was suggested that such a rule might be of value to the extent that the hotelkeeper's liability was unlimited for property deposited with him,

but that since a limit was now provided by the Convention, it lost much of its interest. Thirdly, one delegation feared that the introduction of a rule permitting the hotelkeeper to insist on a declaration of value might give rise to abuse. The hotelkeeper might insist on a formal expertise being undertaken to determine the value of the property tendered for safe custody and insofar as the guest might decide not to insist on the deposit in such cases or that such an expertise could not be carried out during the course of a short stay in the hotel, the hotelkeeper, without actually refusing to accept the property and thereby incurring unlimited liability, would in effect be able to reduce his liability to the lowest level provided for in the new Article 14.

In these circumstances the Committee was unable to accept the proposal and as its author saw no interest in making provision for a non-binding declaration of value, he withdrew his proposal altogether.

With respect to the remaining paragraphs of the former Article 16, the Committee made no substantial changes. As regards paragraph 1, the English text was modified so as to replace the term "other valuables" by "valuable articles" with a view to avoiding the possible application of the iusdem generis rule.

The former paragraph 3 of the article was retained unchanged and placed after paragraph 1 although only after a certain amount of discussion. In the first place the Committee considered whether the requirement that property accepted for deposit be placed in a fastened or sealed container implied that such a container be supplied by the hotelkeeper. While recognising that the hotelkeeper could not be expected to provide a special container for all types of property tendered to him for safe custody, for example technical equipment of irregular dimensions, the Committee thought that in normal cases such a container would be available, most commonly an envelope in which money might be placed. If, however, the guest were himself to provide a fastened jewelry case, the requirement would in any event be met and in these circumstances the Committee saw no need to amend the provision.

The second point made concerned the hotelkeeper's right to examine property tendered to him for safe custody, one delegation fearing that this could give rise to difficulties when, for instance, a guest handed over for deposit confidential documents. The Committee acknowledged this problem but on the other hand did not see how it could be resolved to the extent that the hotelkeeper must retain the right to examine the property to ensure that it is not dangerous or illegal, for example prohibited drugs. It decided therefore that the provision should not be amended, trusting to the hotelkeeping profession to exercise the right of examination in a reasonable manner and with the necessary discretion.

Finally, the Committee placed in paragraph 4 of the new Article 13, the rule that when the hotelkeeper refuses property which he is bound to accept for safe custody, his liability remains unlimited.

Article 14

Formerly Article 15, paragraph 2, first sentence

"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."

As a result of its decision to place the article dealing with property tendered to the hotelkeeper for safe custody immediately after the general statement of the hotelkeeper's liability now appearing in the new Article 13 the Committee found it necessary to modify the provision regarding the limitation on his liability for other property and accordingly reformulated the new Article 14 as follows: "The liability of the hotelkeeper for property other than that received by him for safe custody shall not exceed, in respect of any single event, one hundred times the charge for the accommodation".

Here again a number of points were raised. In the first place, it was indicated by one delegation that a particularly unfortunate guest might find himself deprived of his property on more than one occasion during his stay at the hotel and so as to meet this eventuality the Committee agreed to add the words "in respect of any single event", thereby making it clear that the limitation amount cannot be invoked by the hotelkeeper to cover more than one incident causing damage to the guest.

Secondly, the Committee was called upon to decide which multiple of the charge for the accommodation should be adopted as the limit on the hotelkeeper's liability. After lengthy discussion, in the course of which various suggestions were advanced, in particular a multiple of fifty, or indeed no limitation at all, the Committee decided to adopt the figure of one hundred which, it was felt, corresponded to present-day realities and which also had the merit of being the same as that to be found in the Council of Europe Convention. The Committee also followed the latter instrument in two other respects. First, it made no provision for the loss of the right to limit liability in the event of the hotelkeeper's failing to bring to the attention of the guest the existence of such a limit and secondly it rejected the idea that the hotelkeeper should, in the absence of fault on his part or that of his agents or servants, be relieved of liability if the guest failed to deposit valuable property with him for safe custody. One additional reason for not adopting this latter suggestion was

Only drafting changes have been made to this provision. In the first place the formula in paragraph (b) has been amended to correspond to that adopted in connection with the new Article 8, paragraph 1 while in the introduction to the article a reference has been made to the new Article 12, which lays down the general principle of the hotelkeeper's strict liability in respect of all property, whether or not accepted by him for safe custody.

Article 18

Formerly 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."

The Committee considered the wording of this provision to be particularly unwieldy and obscure. Its intention throughout had been to make it clear that failure by the guest to inform the hotelkeeper in good time of any damage to, or loss of, property, would not deprive him of a remedy against the hotelkeeper but merely convert the hotelkeeper's limited but strict liability as affirmed in the new Article 12 into a fault liability potentially unlimited, so that the guest, in order to recover, would have to prove that the damage suffered by him was caused by the negligence or by a wilful act or omission of the hotelkeeper or by a person for whom he is responsible. So as to make this perfectly clear, the Committee reformulated Article 18 to read as follows: "The guest shall inform the hotelkeeper as soon as is reasonably possible of any damage suffered by him as a result of damage to, or destruction or loss of, property. If he fails to do so, the guest shall be entitled to compensation only if such damage, destruction or loss was caused by the negligence or by the wilful act or omission of the hotelkeeper or by that of any person for whom he is responsible."

Article 19

Formerly Article 20, paragraph (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."

Although one delegation argued in favour of deleting this provision on the grounds that it might be interpreted very differently in various jurisdictions, especially in view of the hesitations already voiced by some representatives in the course of the first reading as to the precise meaning of the phrase in square brackets, a number of delegations spoke in favour of maintaining it. In their view the provision was a useful one, formulated in a way similar to that of corresponding provisions in a series of international Conventions dealing with private law questions. The principal difficulty seemed to derive from the words in square brackets but an interpretation of them to the effect that a chambermaid stealing property in a hotel room while cleaning it was not acting within the scope of her employment as she was, at the moment of the theft, engaged in the act of stealing, with the consequence that the hotelkeeper would not be liable, could only be regarded as far-fetched to say the very least. If, however, any delegations felt that such a danger really did exist, it was proposed that the words "within the scope of their employment" be replaced by the term "in the course of their duty".

On a second question raised in connection with the provision, namely whether a hotelkeeper would be liable in respect of a servant who entered the hotel when off-duty and stole property from a guest's room, there was a general feeling that the hotelkeeper would in any event be liable in such cases because he had not ensured adequate supervision of the premises, the point of the provision being to exclude his liability in cases where it was quite coincidental that the person causing damage to the guest was a servant or agent of the hotelkeeper. An instance of such a situation would be that of a guest being knocked down in the centre of a town by a car driven by a hall porter of the hotel in which he was staying.

Finally, the Committee considered that since the provision related to an important substantive question regarding the liability of the hotelkeeper, it was inappropriate for it to be placed in an article, the former Article 20, which was concerned principally with questions of definition. In consequence the provision was detached from that article so as to form a new Article 19.

Article 20

Formerly Article 1, paragraph 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."

and 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) "(1)

As already mentioned above (see p. 4), the Committee considered that, in view of its decision to modify substantially Article 1 of the draft Convention, it would be opportune to transfer paragraph 2 of the article elsewhere. After a brief discussion it was decided that the appropriate place would be Article 20 and, given the need for some slight drafting amendments necessitated by this change, the Committee adopted a new paragraph (a) of Article 20 which reads as follows:

"the expression "accommodation" shall not include accommodation provided on a vehicle being operated as such in any mode of transport;".

The Committee then turned its attention to the former paragraph (a) of Article 20, which had been placed in square brackets in view of the hesitation felt by some delegations about its retention. Some delegations expressed support for the idea underlying the provision which, it was pointed out, was of relevance only to the new Articles 11 to 18 dealing with various aspects of the hotelkeeper's liability. They saw no valid reason for distinguishing in this connection between a person to whom accommodation had been provided on the premises of the hotel and one entering the hotel with a view to seeking accommodation and who might, within minutes thereof, begin to enjoy the status of a guest for the purposes of the Convention. By way of analogy, it was pointed out by a representative of one delegation that the caselaw of his country had established the principle that a person entering a department store but who bought no goods there was in the same position as a purchaser as regards the liability of the store for damage caused "du fait des choses". Another delegation expressed sympathy with the provision while considering the element of intention to be too subjective. It therefore proposed that the scope of the former paragraph (a) be extended to cover all persons on the premises of the hotel such as would-be guests, visitors or servants of guests and the servants, agents or suppliers of the hotelkeeper.

(1) Now the new Article 19.

There was, however, considerable opposition to the former paragraph (a). In the first place it was agreed that the element of intention was too subjective as to be of any real value and in the event of a person being killed on the premises of the hotel it might prove impossible to establish what intention he might have had. Secondly, the extension of the scope of the provision to cover invitees of the guest or suppliers of the hotel-keeper would, as far as actions for personal injuries were concerned, mean a considerable invasion of the general field of law governing occupier's liability and would give rise to substantial changes in the law governing civil liability in some States. Moreover, to the extent that the basis for calculating the limit of the hotelkeeper's liability in respect of loss of, or damage to, property could be adapted so that in respect of a would-be guest one might refer to the charge for "average" accommodation in the absence of any other criterion, any such calculation would be totally unrealistic in respect of a servant or supplier of the hotelkeeper. It was further argued that in those situations where the damage was caused by the fault of the hotelkeeper, an action based on the normal principles of extra-contractual liability would in any event be available to any person other than a guest, suffering injury, and that while, as regards damage to property, such a person would have the benefit under the Convention of not having to prove fault, he would on the other hand be in a less favourable position under the Convention than otherwise inasmuch as the hotelkeeper could limit his liability under the new Article 14. In addition, it was pointed out that any wide extension of the categories of person to which the former Article 20, paragraph (a) would apply would have the effect of making the hotelkeeper strictly liable under the new Article 11, paragraph 2 for the consumption of food or drink by any person in a hotel restaurant, thus putting such establishments under a different liability régime from other restaurants.

In the light of these various arguments, the Committee finally decided to delete the former paragraph (a).

As regards paragraph (b), the representative of one delegation stated that in his country live animals were not excluded from the application of the Council of Europe Convention. He wondered therefore whether the provisions of the new Articles 12 to 18 of the draft Convention should not apply to live animals to the extent that the hotelkeeper accepted them on the premises of the hotel. In reply to this question it was suggested on the one hand that the hotelkeeper could always extend his liability under Article 21, paragraph 1 (formerly Article 24, paragraph 1) and on the other that since the effect of paragraph (b) of Article 20 was to leave the question of the hotelkeeper's liability for live animals to be regulated by national law, each State could legislate on the subject in whatever way it chose, for instance by applying to live animals identical provisions to those contained in the draft Convention itself. In these circumstances the Committee decided to maintain paragraph (b) although the drafting of the provision was simplified by deleting the words "brought to the premises of the hotel" which were considered to be superfluous.

Article 21

Formerly Article 20

"1. Any agreement to which the guest is a party shall be void to the extent that it derogates from the provisions of this Convention in a manner detrimental to the guest.

2. The hotelkeeper may, in his relations with parties other than the guest, agree to derogate from the provisions of this Convention provided that his liability towards the guest is not affected thereby.

3. No stipulation in an agreement between the hotelkeeper and the guest concluded before the dispute arose which confers jurisdiction on a court or provides for recourse to arbitration shall be accorded effect."

No amendments were made to this article although a number of questions were raised concerning it. As regards paragraph 1, a representative of the International Hotel Association stated that the provision was unfair in that it permitted derogations from the provisions of the Convention in favour of the guest but not to the advantage of the hotelkeeper. To this it was replied that such a distinction was not uncommon in international private law Conventions regulating relations between professionals and consumers. The hotelkeeper might wish to enhance his competitive position by offering special concessions to the guest which would in effect place the latter in a more advantageous position than would the Convention but it would be difficult to imagine individual guests being able to impose such conditions on a hotelkeeper. On the other hand, the hotelkeeper could well render the guarantees provided to the guest by the Convention illusory if he were to be permitted by contract to reduce his obligations thereunder. In addition it was suggested that too much importance should not be attached to the word "detrimental" for a judge might take a very different view from a guest as to the meaning of the term.

With respect to paragraph 3 of the article, it was recalled that this was the only one of a series of procedural provisions contained in the text of the original preliminary draft Convention prepared by the Working Committee, to be retained by the Committee of Governmental Experts. The provision was designed to prevent the hotelkeeper excluding the application of the future Convention, when it would otherwise be applicable either because the law of the forum was that of a State which had adopted the Convention or because the law of the forum indicated, as the applicable law, the law of a State which had adopted it, by conferring jurisdiction on a court which might not apply the provisions of the Convention or by providing for an arbitration procedure which, once again, might involve the non-application of the provisions of the Convention. Nothing, however, would prevent such agreements being stipulated after the occurrence of the event giving rise to the dispute.

The question was, however, raised as to the effect of the provisions of paragraphs 2 and 3 of the article on arbitration agreements concluded between hotelkeepers and travel organisers, the Hotel Convention between the International Hotel Association and the Universal Federation of Travel Agents Associations making provision for such agreements. In reply, it was pointed out that paragraph 3 of the article would not affect them as it was applicable only to contracts between guests and hotelkeepers. To the extent, however, that the decision of an arbitral tribunal on a dispute between a hotelkeeper and a travel organiser might have the effect of prejudicing the rights of a guest under the Convention, it was suggested that such a decision could not, under the general principles of law, be invoked by a hotelkeeper against a guest as *res judicata*, although the same solution might also be reached by a broad interpretation of paragraph 2 of the article.

Other questions regarding the substantive provisions of the draft Convention (1)

In the course of its second reading of the preliminary draft Convention, the Committee decided on the deletion in toto of only one article. This was the former Article 21, which read as follows: "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."

Serious reservations had already been expressed in connection with this article by a number of delegations on the occasion of the first reading of the preliminary draft Convention and for that reason the revised version of the text initially adopted by the UNIDROIT Working Committee had been placed in square brackets. Since no delegation spoke in favour of its retention on second reading, the Committee decided to delete the provision.

Lastly, a representative of the International Hotel Association alluded to the difficulties which sometimes arise in connection with the export of capital from certain countries with a view to paying compensation to the injured party. In such cases it was always possible for the sum concerned to be held in the country of the party liable in damages for use by the injured party in that country but this was not always an adequate solution.

(1) As a result of the Committee's decision to include the reservation article in the final clauses, the discussion on the former Article 25, now Article 24, is reflected below, see p.48.

The Chairman recognised the seriousness of the practical problem raised although this was a difficulty which existed in respect of the implementation of many commercial and transport law Conventions and hitherto no satisfactory solution had been found. He was, therefore, not very optimistic about the possibility of settling the problem in the future CCH and confined himself to hoping that the Contracting States would permit the transfer of funds payable as compensation under the CCH in observance of the international obligations assumed by them in accepting the Convention.

Item 4 on the agenda - Examination of the draft final clauses prepared by the Secretariat

At the invitation of the Chairman, a representative of the Secretariat introduced a draft preamble (1) and a set of draft final clauses elaborated by the Secretariat of UNIDROIT and contained in Study XII - Doc. 42, which could be submitted to the Diplomatic Conference for the adoption of the future Convention as a basis for discussion. He indicated that in preparing the provisions, the Secretariat had paid particular regard to those contained in previous Conventions elaborated within the framework of UNIDROIT and especially the 1973 Washington Convention providing a Uniform Law on the Form of an International Will, as well as the final clauses of the most recent United Nations Convention dealing with private law questions, namely the 1978 Hamburg Convention on the Carriage of Goods by Sea. Finally, he stressed that the provisions, one of which had already been rendered redundant by the decision of the Committee not to make provision for a fixed-sum limitation of the hotelkeeper's liability under the new Articles 13 and 14, were not being offered for a final decision by the Committee but simply for comment so that any observations which might be made regarding them could be taken into account in the drawing up of the explanatory report which would accompany the draft Convention. (2)

In the light of these introductory remarks, the Committee then proceeded to a brief examination of the draft final clauses which have been renumbered by the Secretariat.

(1) The draft preamble reads as follows:

"The States Parties to the present Convention,

Believing it expedient to harmonise certain rules relating to the hotelkeeper's contract, in view especially of the ever-increasing development of tourism and its economic and social role,

Have agreed as follows:"

(2) This remark does not of course concern the new Article 24, the final text of which was adopted by the Committee at the conclusion of its second reading of the former Article 25.

Article 22

Formerly Article I of the draft final clauses

"1. The present Convention shall be open to signature /by all States/ at from 19.. to 19..

2. The Convention shall be subject to ratification, acceptance or approval by the signatory States.

3. After 19.., this Convention shall be open indefinitely for accession by /all/ States which are not signatory States.

4. Instruments of ratification, acceptance, approval and accession shall be deposited with the Government of, which shall be the Depositary Government."

In connection with this provision, one delegation noted the explanation which had been given by the Secretariat regarding the considerations of a purely political character which had led it to place the words "by all States" in paragraph 1 and "all" in paragraph 3 in square brackets and that delegation indicated that its Government might wish to comment on this question at a later stage.

Article 23

Formerly Article II of the draft final clauses

"1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the Depositary Government.

2. For each State which becomes a Contracting State to this Convention after the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force six months after the deposit of the appropriate instrument on behalf of that State."

With regard to this provision the Secretariat noted that in proposing the figure of five instruments of ratification, acceptance, approval or accession for the entry into force of the future Convention, it was following the practice hitherto adopted in UNIDROIT Conventions which had been opened to signature at Diplomatic Conferences convened by member States of the Institute.

Article 24

Formerly Article 25 of the preliminary draft 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 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 or

/ (iii) an establishment which is not open to all-comers;/

(b) this Convention shall apply only to relations between a hotel-keeper 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;

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

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

/ (e) 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;/

/ (f) 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. Any State may, at the time of making its notification under paragraph 1(a) of this article, specify those types of establishment which it considers as falling within the different sub-paragraphs of the said paragraph 1(a).

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

Although the Committee had no observation to offer on paragraphs 2 and 3 of this article, a number of remarks were made in connection with the various sub-paragraphs of paragraph 1. One delegation expressed some hesitations as the possibility of reservations being made under sub-paragraph (a) to the principle that the future Convention should apply to all hotels open to all-comers and stated that to the extent that such reservations were to be permitted, it's Government would not avail itself of them.

The discussion however centred principally around sub-paragraph (a) (iii), in respect of which doubts had already been voiced at the third session of the Committee and which had in consequence been placed in square brackets. Some delegations maintained their view that the provision was open to abuse and one in particular pointed out that by permitting restriction of the application of the future Convention to establishments open to all-comers, the situation could arise whereby a State which availed itself of the reservation could exclude the application of the Convention to those hotels, many of which are extremely important from the standpoint of international tourism, which only accept parties of guests under advance bookings. It could be argued that such hotels were not open to all-comers and that they would therefore be caught by the wording of sub-paragraph (a) (iii).

Three delegations, however, urged that the provision be maintained. The representative of one of these delegations in particular indicated that in his country the requirement that a hotel be open to all-comers had for many years been an integral element of the legal definition of "hotel" and that such an element had also been present in the residual Common Law definition. The Council of Europe Convention on the liability of hotelkeepers concerning the property of their guests contained no definition of a hotel and when his State had ratified that Convention there had been no reason for it to alter the existing national definition. It would be unrealistic to expect that his authorities would be prepared to alter the definition under national law, all the more so as if his Government were to accept the new Convention, it would probably apply to internal as well as to international hotelkeeper's contracts. In reply to a suggestion that the new Convention should not affect national definitions of a hotel insofar as Article 1 was concerned only with the definition of hotelkeepers' contracts, the representative stated that he might perhaps be inclined to agree with this reading if Article 1 stood by itself. His problems derived from the presence of sub-paragraph (a) (i) and (ii) of the article under consideration, the presence of which implied that establishments not open to all-comers might be hotels. If these provisions were to be deleted and the problem of excluding certain types of establishments dealt with in Article 1 it might be possible to find a satisfactory solution but to the extent that only sub-paragraph (a) (iii) were to be deleted he stated that this could create serious difficulties which he considered it his duty to bring to the attention of the Committee.

A number of delegations, however, considered that sub-paragraph (a) (iii) was superfluous, given that most, if not all, the cases contemplated by it were already covered by sub-paragraph (a) (i) or (ii) and in consequence the Committee decided to delete the provision.

Turning to sub-paragraph (b) of paragraph 1, some delegations favoured its removal as it militated against the interests of unification and would create two different categories of guest in the States which availed themselves of the reservation, namely those whose relations with the hotelkeeper were governed by the future Convention and those whose position was governed by national law. The same situation could arise with regard to guests staying in a hotel under an organised travel contract and for these reasons it was suggested that the provision be deleted.

A number of delegations, however, urged that the provision be retained. One of them pointed out that its country was not a unitary State and that from a political standpoint it might be preferable for it to accept the Convention subject to the reservation clause in sub-paragraph (b) with a view to progressive unification subsequently which would then permit the withdrawal of the reservation. Another delegation indicated that it was not unprecedented for apparently similar categories of persons to be treated differently and by way of example he recalled that it was perfectly possible for travellers in the same train in Europe to be subjected to three different régimes. In addition he stated that in his country different tariffs were applied in hotels as between nationals and foreigners.

After noting that certain States attached particular importance to sub-paragraph (b) and that those States which wished to have a unified system of rules governing the hotelkeeper's contract could achieve this result simply by not availing themselves of the provision in question the Committee decided to maintain it. Two drafting changes were however made. In the first place the reference to the principal place of business of the guest was deleted as being inappropriate in a Convention of this nature dealing with private law relations which, as regards the hotelkeeper and the guest, were not the same as those arising under, for instance, a contract of sale. The second change was introduced in the light of an observation made by the working party to the effect that the words "this Convention shall apply only to relations between a hotelkeeper and a guest" might be interpreted as preventing any application of the Convention to relations between hotelkeepers and parties to the hotelkeeper's contract other than the guest, whereas the intention of the Committee had only been to introduce a reservation clause regarding the geographical origin of the guest. The Committee agreed with the substance of this observation and accordingly redrafted the sub-paragraph to read as follows: "this Convention shall only apply when the hotel is situated on the territory of a State other than that in which the guest has his habitual residence;".

In connection with sub-paragraph (c), the Committee noted that the introduction of a limit on the hotelkeeper's liability for damage to, or loss of, property accepted by him for safe keeping would entail the need for a reservation to be allowed to States which wished to retain or introduce a system of unlimited liability in such cases and to cover this point, as well as to make it clear that also in respect of property other than that deposited for safe custody a State may impose no limit at all on the hotelkeeper's liability. The provision was amended to read in the following manner: "it will set the limits of liability at higher levels than those referred to in Articles 13 and 14 or will set no limits".

As regards sub-paragraph (d), one delegation pointed out that under its national law the hotelkeeper was held liable for damage to vehicles or to property left with them only if their presence at the hotel had been brought to the attention of the hotelkeeper. He wondered therefore whether it might not be possible to amend the sub-paragraph in such a way as to permit a partial derogation only from the rules laid down in the new Articles 12 to 18 of the draft Convention. The Committee expressed sympathy with this position and accordingly amended sub-paragraph (d) to read as follows: "it will not apply the provisions of Articles 12 to 18 to vehicles or any property left with a vehicle or attach conditions to such application".

In view of the modifications which had been made to the chapter regarding the hotelkeeper's liability for damage to, or loss of, property, the delegation which had proposed the addition of sub-paragraphs (e) and (f) no longer insisted on their retention and the Committee consequently deleted them.

Article 25

Formerly Article IV of the draft final clauses

"1. If a State has two or more territorial units in which different systems of law apply to matters respecting the hotelkeeper's contract, it may at the time of signature, ratification, acceptance, approval 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. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies."

and

Article 26

Formerly Article V of the draft final clauses

"If a Contracting State has two or more territorial units in which different systems of law apply in relation to matters regarding the hotel-keeper's contract, any reference to the law of the place where the hotel is situated shall be construed in accordance with the constitutional system of the State concerned."

In reply to one delegation which questioned the need for these provisions, the Chairman recalled that they were ones to which States with a federal or confederal constitutional system attached considerable importance and that wording along the lines of that contained in Articles 25 and 26 had been included at the specific request of the Canadian delegation.

Article 27

Formerly Article VI of the draft final clauses

"1. At the request of not less than one-third of the Contracting States to the present Convention, the Depositary Government shall convene a Conference for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, shall be deemed to apply to the Convention as amended."

One delegation pointed out that this article did not provide any detailed mechanism for the convening of a Conference for revising or amending the future Convention and it suggested that some form of words might also be desirable to avoid the difficulties which could arise in practice from the co-existence of the revised and of the unrevised Convention. To this end, it proposed that Article 27 be amended to read as follows:

"1. Delegates of the Contracting States shall meet to revise the Convention not later than 5 years after the entry into force of this Convention and shall be summoned for that purpose by the Depositary Government./

2. At the request of not less than one-third of the Contracting States to the present Convention, the Depositary Government shall convene before that time a Conference for revising or amending it.

3. With the agreement of the majority of the Contracting States, the Depositary Government may also invite non-Contracting States and representatives of intergovernmental and international non-governmental organisations dealing with hotelkeeper's problems or tourism to attend.

4. On the entry into force of a new Convention resulting from a Revision Conference, the previous Convention shall be abrogated even in respect of Contracting States which do not ratify the new Convention."⁽¹⁾

The Committee took note of this suggestion but in view of the limited time at its disposal it felt that it could do no more at this stage than request the Secretariat to record the proposal in the report on the session and in the Explanatory Report on the future Convention. The mover of the proposal agreed to this procedure.

Article 28

Formerly Article VIII of the draft final clauses

"1. Any Contracting State may denounce the present Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification."

No observations were made on this provision.

Article 29

Formerly Article IX of the draft final clauses

"1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of, which shall transmit certified copies thereof to each of the signatory and Contracting States and to the International Institute for the Unification of Private Law.

(1) In the event of this proposed wording of Article 27 being adopted, it would be necessary to amend Article 29, paragraph 2 (f) as follows:
"the date of the convening of the Revision Conference in accordance with Article 27, paragraph 1 or any request for the revision or amendment of this Convention and the date of the convening of a Conference for such revision or amendment in accordance with Article 27, paragraph 2."

2. The Depositary Government shall give notice to the signatory and Contracting States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance, approval or accession;
- (c) any date on which this Convention enters into force in accordance with Article 23;
- (d) any declaration received in accordance with Article 24;
- (e) any declaration received in accordance with Article 25, paragraph 2, and the date on which the declaration takes effect;
- (f) any request for the revision or amendment of this Convention and the convening of a Conference for such revision or amendment in accordance with Article 27, paragraph 1;
- (g) any denunciation received in accordance with Article 28, paragraph 1, and the date on which the denunciation takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorised to that effect, have signed the present Convention.

DONE at, this day of one thousand nine hundred and, in the English, French, Russian and Spanish languages, each text being equally authentic. The original of this Final Act shall be deposited with the Government of"

No observations were made on this article, save for the possibility of amending paragraph 2 (f) in the event of Article 27 being modified along the lines suggested at p. 53 above.

Item 5 on the agenda - Other business

At the request of the Chairman, a representative of the Secretariat outlined the programme which might be envisaged for bringing the draft Convention on the Hotelkeeper's Contract to a Diplomatic Conference for adoption. Following the distribution of the report on this last session of the Committee before the end of November, the Secretariat would prepare an entirely revised version of the Explanatory Report which would be circulated to Governments together with the

final text of the draft Convention early in 1979. Governments would be sounded as to their interest in participating in a Diplomatic Conference for the adoption of the draft and the results of this procedure brought to the attention of the Governing Council at its next session in September 1979. On the basis of the replies of Governments and their evaluation by the Governing Council, the Secretariat would then establish contact with the authorities of one of the member States of the Institute which had indicated that it might be prepared to consider hosting the Diplomatic Conference and if these negotiations were to prove successful, one could perhaps contemplate the convening of the Conference in the first half of 1981. The representative of the Secretariat stressed however that these arrangements were of a tentative character and that all would depend on the reactions of Governments to the draft worked out by the Committee.

The Committee took note of the timetable outlined by the Secretariat and no other matters being raised under Item 5 on the agenda, the Chairman declared the session closed at 5.30 p.m. on 31 October 1978.

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M. Martin STANFORD,	Chargé de Recherches/Research Officer
Me. Marie-Christine RAULT,	Chargé de Recherches/Research Officer.

A G E N D A

1. Approval of the draft agenda.
2. Report on the meeting of the Working Party set up to examine the relationship between the CCV and the future Convention on the hotelkeeper's contract.
3. Second reading of the preliminary draft Convention on the hotelkeeper's contract.
4. Examination of the draft final clauses prepared by the Secretariat.
5. Other business.

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DRAFT CONVENTION ON THE HOTELKEEPER'S CONTRACT

The States Parties to the present Convention,

Believing it expedient to harmonise certain rules relating to the hotelkeeper's contract, in view especially of the ever-increasing development of tourism and its economic and social rôle,

Have agreed as follows:

Chapter I

DEFINITION AND SCOPE OF APPLICATION

Article 1

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

2. The hotelkeeper's contract may be concluded between the hotelkeeper and the guest or between the hotelkeeper and a party other than the guest.

3. Except when this Convention provides otherwise, it shall apply only to relations between the hotelkeeper and the guest.

Article 2

This Convention shall apply where the premises in which the accommodation is to be provided are situated within the territory of a Contracting State.

Chapter II

CONCLUSION AND PERFORMANCE OF THE CONTRACT

Article 3

1. A hotelkeeper's contract is concluded when one party expressly accepts the offer made by the other.

2. Such a contract need not be evidenced by writing and shall not be subject to any requirements as to form.

Article 4

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

2. A hotelkeeper's 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 established by reference to the earliest date or shortest time mentioned in the period defined. For the purposes of this provision references to a week are to be taken as seven days and to a month as twenty-eight days.

3. A hotelkeeper's contract concluded for an indeterminate period shall be deemed to be concluded on a day-to-day basis. 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 regulations of the hotel.

4. 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 the 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 5

1. The hotelkeeper shall be liable to the guest for the damage actually suffered by him to the extent that he fails to provide the accommodation and services agreed under the hotelkeeper's contract.

2. He shall nevertheless be relieved of liability to the extent that, with the consent of the guest, he procures for him, equivalent accommodation and services in the same locality. The hotelkeeper shall also meet the reasonable expenses, including the cost of transport, which such substitution entails.

Article 6

1. A guest who, for the whole or any part of the period stipulated, fails to occupy the accommodation agreed under the hotelkeeper's contract, shall be liable for any damage actually suffered as a consequence thereof by the hotelkeeper.

2. The hotelkeeper shall take all reasonable steps to mitigate his damage.

3. The amount of damages payable to the hotelkeeper under this article shall not exceed :

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

(b) in respect of the following five days, 40 percent of the price of the accommodation and ancillary services provided for in the contract. No damages shall be payable in respect of any subsequent days.

4. No damages shall be payable if the hotelkeeper has been informed of the cancellation of the reservation not later than:

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

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

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

5. No damages shall be payable by a guest relinquishing the accommodation before the termination of the contract if the hotelkeeper has been informed of the guest's intention to relinquish the accommodation not later than:

(a) midday on the day of departure for a contract which has no more than two days to run;

(b) two days before the date of departure for a contract which has from three to seven days to run;

(c) seven days before the date of departure for a contract which has more than seven days to run.

6. The present article shall apply to relations between a hotelkeeper and a party to the hotelkeeper's contract other than the guest, unless the parties to the contract have otherwise agreed.

Article 7

1. The hotelkeeper and the guest shall behave in a manner and show the consideration which the other could reasonably expect. The guest shall, in particular, observe such regulations of the hotel as are reasonable and as are duly brought to his notice having regard to all the circumstances and to the usual practice.

2. In the event of either party being seriously or persistently in breach of his obligations under this article, the other shall be entitled, subject to the provisions of Article 4, paragraph 4, to terminate the contract concluded between them.

3. A party who has suffered damage arising out of a breach of the obligations under paragraph 1 shall retain any right to compensation which he might have against the other party.

Article 8

1. The hotelkeeper's contract shall be terminated before or during the occupation of the accommodation by the guest and without payment of damages when, as a consequence of an unavoidable and irresistible event which cannot be imputed to the party who invokes it, it is impossible for the hotelkeeper to provide, or for the guest to occupy, the said accommodation.

2. A party invoking paragraph 1 shall be liable under this Convention for any damage caused to the other by his failure to take all reasonable steps to notify that party of the termination of the contract.

Article 9

If the hotelkeeper receives from the guest a sum of money in advance, it shall be considered to be an advance payment towards the price of the accommodation and additional services to be provided. The hotelkeeper shall return it to the extent that it exceeds the amount due to him under the terms of this Convention.

Article 10

1. Except in cases where the sum payable to the hotelkeeper is due from a party other than the guest, the hotelkeeper shall, as a guarantee for payment of the charge for the accommodation and services actually provided by him, have the right to detain any property of commercial value brought to the premises of the hotel by a guest.

2. The hotelkeeper shall not, however, be entitled to detain such property if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution.

3. The hotelkeeper may, after giving adequate and timely notice, cause to be sold the property detained by him up to the amount necessary to satisfy his claim. The conditions and procedures of the sale shall be governed by the law of the place in which the hotel is situated.

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 rights of detention and sale and on the proceeds of such sale.

Chapter III

LIABILITY OF THE HOTELKEEPER FOR DEATH AND PERSONAL INJURIES

Article 11

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 supervision of the hotelkeeper. However, he shall not be liable when the loss or damage was caused by an event which a hotelkeeper, exercising the care which the circumstances called for, could not have avoided and the consequences of which he could not have prevented.

2. The hotelkeeper shall be liable for any loss or damage resulting from death or any personal injuries caused by the consumption of food or drink provided to the guest, unless he establishes that such food or drink was fit for human consumption.

3. In cases where the hotelkeeper is liable under the provisions of this article, the compensation due to the guest may be reduced to the extent that the loss or damage has been caused by the fault of the guest.

4. In cases where the hotelkeeper is liable under the provisions of this article and the loss or damage results in part from the fault of a party other than the guest, the hotelkeeper shall nevertheless be required to compensate the guest in full.

5. The provisions of this article shall be without prejudice to any right of recourse the hotelkeeper may have against a party other than the guest.

Chapter IV
LIABILITY OF THE HOTELKEEPER
FOR DAMAGE TO PROPERTY

Article 12

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 is entitled to accommodation.

Article 13

1. The hotelkeeper shall be bound to receive securities, money and valuable articles for safe custody; he may refuse them only if they are dangerous or cumbersome.

2. 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.

3. When the hotelkeeper receives property for safe custody he may limit his liability, in respect of any single event, to a sum equal to 500/1000 times the charge for the accommodation, on condition that the guest has been duly notified thereof prior to the deposit.

4. The liability of the hotelkeeper shall be unlimited in cases where he has refused property which he is bound to receive for safe custody.

Article 14

The liability of the hotelkeeper for property other than that received by him for safe custody shall not exceed, in respect of any single event, one hundred times the charge for the accommodation.

Article 15

For the purposes of Articles 13 and 14, the expression "charge for the accommodation" shall mean the highest 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 16

The hotelkeeper cannot avail himself of the limitations of liability provided for in Articles 13 and 14 of this Convention where the damage, destruction or loss is caused by his negligence or by his wilful act or omission or by that of any person for whom he is responsible.

Article 17

The hotelkeeper shall not be liable under Article 12 to the extent that damage, destruction or loss is due:

- (a) to the negligence or to the wilful act or omission of the guest, of any person accompanying him or in his employment or of any person visiting him;
- (b) to an unavoidable and irresistible event which cannot be imputed to him;
- (c) to the nature of the property.

Article 18

The guest shall inform the hotelkeeper as soon as is reasonably possible of any damage suffered by him as a result of damage to, or destruction or loss of, property. If he fails to do so, the guest shall be entitled to compensation only if such damage, destruction or loss was caused by the negligence or by the wilful act or omission of the hotelkeeper or by that of any person for whom he is responsible.

Chapter V

MISCELLANEOUS PROVISIONS

Article 19

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 in the course of their duty, as if such acts or omissions were his own.

Article 20

For the application of this Convention:

- (a) the expression "accommodation" shall not include accommodation provided on a vehicle being operated as such in any mode of transport;
- (b) the expression "property" shall not include live animals.

Article 21

1. Any agreement to which the guest is a party shall be void to the extent that it derogates from the provisions of this Convention in a manner detrimental to the guest.
2. The hotelkeeper may, in his relations with parties other than the guest, agree to derogate from the provisions of this Convention provided that his liability towards the guest is not affected thereby.
3. No stipulation in an agreement between the hotelkeeper and the guest concluded before the dispute arose which confers jurisdiction on a court or provides for recourse to arbitration shall be accorded effect.

Chapter VI

FINAL CLAUSES

Article 22

1. The present Convention shall be open to signature /by all States/ at from 19.. to 19.. .
2. The Convention shall be subject to ratification, acceptance or approval by the signatory States.
3. After 19.. , this Convention shall be open indefinitely for accession by /all/ States which are not signatory States.
4. Instruments of ratification, acceptance, approval and accession shall be deposited with the Government of , which shall be the Depositary Government.

Article 23

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the Depositary Government.

2. For each State which becomes a Contracting State to this Convention after the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force six months after the deposit of the appropriate instrument on behalf of that State.

Article 24

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

(a) 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) this Convention shall only apply when the hotel is situated on the territory of a State other than that in which the guest has his habitual residence;

(c) it will set the limits of liability at higher levels than those referred to in Articles 13 and 14 or will set no limits;

(d) it will not apply the provisions of Articles 12 to 18 to vehicles or any property left with a vehicle or attach conditions to such application.

2. Any State may, at the time of making its notification under paragraph 1 (a), specify those types of establishment which it considers as falling within the different sub-paragraphs of the said paragraph 1 (a).

3. The declarations referred to in paragraph 1 may be amended or withdrawn at any time by notification addressed to

Article 25

1. If a State has two or more territorial units in which different systems of law apply to matters respecting the hotelkeeper's contract, it may at the time of signature, ratification, acceptance, approval 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. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article 26

If a Contracting State has two or more territorial units in which different systems of law apply in relation to matters regarding the hotelkeeper's contract, any reference to the law of the place where the hotel is situated shall be construed in accordance with the constitutional system of the State concerned.

Article 27

1. At the request of not less than one-third of the Contracting States to the present Convention, the Depositary Government shall convene a Conference for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, shall be deemed to apply to the Convention as amended.

Article 28

1. Any Contracting State may denounce the present Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification.

Article 29

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of, which shall transmit certified copies thereof to each of the signatory and Contracting States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and Contracting States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance, approval or accession;
- (c) any date on which this Convention enters into force in accordance with Article 23;
- (d) any declaration received in accordance with Article 24;
- (e) any declaration received in accordance with Article 25, paragraph 2, and the date on which the declaration takes effect;
- (f) any request for the revision or amendment of this Convention and the convening of a Conference for such revision or amendment in accordance with Article 27, paragraph 1;
- (g) any denunciation received in accordance with Article 28, paragraph 1, and the date on which the denunciation takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorised to that effect, have signed the present Convention.

DONE at, thisday of one thousand nine hundred and, in the English, French, Russian and Spanish languages, each text being equally authentic. The original of this Final Act shall be deposited with the Government of