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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

DRAFT CONVENTION

ON THE HOTELKEEPER'S CONTRACT

drawn up by the UNIDROIT Committee of Governmental Experts
on the Hotelkeeper's Contract

with

EXPLANATORY REPORT

prepared by the Secretariat of UNIDROIT

Rome, January 1979

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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.

(1) Articles 1 to 21 and Article 24 were formally approved by the UNIDROIT Committee of Governmental Experts. The preamble, Articles 22, 23 and 25 to 29 were briefly considered by the Committee but responsibility for their wording, which is based on the pattern of other instruments, remains that of the Secretariat of UNIDROIT.

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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

EXPLANATORY REPORT

HISTORICAL INTRODUCTION

1. The origins of UNIDROIT's work on the hotelkeeper's contract go back to 1932, when it was requested by the International Hotel Alliance (IHA) to examine the possibility of working out draft uniform provisions concerning the liability of innkeepers for the loss of, or damage to, goods brought to inns by guests. The ensuing cooperation between the two Organisations led to the setting up of a Working Committee of the Institute which drew up a preliminary draft uniform law respecting the liability of innkeepers for goods brought to inns by guests⁽¹⁾. This preliminary draft was approved on 5 October 1934 by the Governing Council of UNIDROIT and published in 1935. The draft was transmitted to Governments through the League of Nations, of which the Institute was, at that time, one of the auxiliary organs. On the basis of the observations made by Governments, the Institute was preparing a revision of the preliminary draft in collaboration with the IHA when the second world war broke out and it became necessary to suspend the work of unification in this field. The draft was republished in 1948 in the first volume of UNIFICATION OF LAW (pp. 168-171).

2. In 1955 the Council of Europe requested UNIDROIT, within the framework of the cooperation which had been established between the two Organisations, to send to it, inter alia, the draft, in the hope that it might be possible to achieve unification in the field. The efforts of the Council of Europe ultimately led to the opening to signature in Paris on 17 December 1962 of the Convention on the Liability of Hotel-keepers concerning the Property of their Guests, hereinafter referred to as "the Council of Europe Convention"⁽²⁾. This Convention was based on the pre-war UNIDROIT preliminary draft, its subject matter and that of its Annex being the liability of the hotelkeeper for "any damage to or destruction or loss of property brought to the hotel by any guest who stays at the hotel and has sleeping accommodation put at his disposal" (Annex, Article I, paragraph I).

(1) S.d.N. - U.D.P. 1934 - Et. XII, Doc. 6

(2) Cf. UNIFICATION OF LAW, Yearbook 1962, pp. 96-105. The Convention entered into force on 15 February 1967 and has so far been ratified by Belgium, France, the Federal Republic of Germany, Ireland, Malta and the United Kingdom, and signed by Austria, Italy, Luxembourg, the Netherlands and Turkey.

3. In 1966, the Governing Council of UNIDROIT decided to begin work on the drawing up of uniform rules concerning travel organisers and travel intermediaries and entrusted a special Working Committee with the elaboration of rules on the travel contract. From the outset, the Working Committee noted that the travel contract necessarily covers a number of factors, including transportation, accommodation and other facilities inherent in the sojourn and the services relating thereto and its task was rendered even more delicate by the absence in most States of national rules concerning private law relations between the travel organiser or intermediary and his client⁽³⁾.

4. Since it appeared impossible to elaborate a draft Convention governing not only the travel contract itself but also the many separate services covered by it, the regulation of those services was left to the international conventions relating to them, if any, or to national law. This seemed to be a good solution for transportation services, most of which had been made the subject of international rules but, apart from the Council of Europe Convention, the scope of which is limited, accommodation was left to the national law which considered it only within the framework of the general law of contract with, as a final recourse, the decision of a judge, often to be found at the other end of the world.

5. The Working Committee of UNIDROIT realised therefore the inadvisability of leaving as a matter of principle to national laws, their uncertainty and often their silence, all that part of the travel contract which related to accommodation. An echo of the concern of the Committee was later heard at the Brussels Diplomatic Conference which adopted the International Convention on Travel Contracts (CCV) on 23 April 1970⁽⁴⁾ and, in its Final Act, the Conference made the following Recommendation:

"Recommendation No. 3

The Diplomatic Conference on the Travel Contract (CCV) meeting in Brussels in 1970,

Having noted that during the Convention drafting procedure, the insufficiency if not the total lack of uniform international rules governing the hotelkeeper's liability was stressed,

(3) See especially the documentation concerning the arrangements and agreements in question in Pierre COUV RAT, *Les agences de voyages en droit français*, Paris, 1967.

(4) Cf. The official publication by the Kingdom of Belgium, Ministry of Foreign Affairs and External Trade, *Diplomatic Conference on the Travel Contract (CCV) (in English and French)*, Brussels, April 1970, ed. Goemaere, Brussels, 1971.

Having taken into consideration the fact that the International Institute for the Unification of Private Law (UNIDROIT) had already elaborated a draft uniform law on hotelkeeper's liability, with respect to personal belongings brought by travellers, draft that was used as a basis for the European Convention in this field, and that the general elaboration of uniform provisions on the hotelkeeper's contract appears in the UNIDROIT work programme,

Expressed the wish that the International Institute for the Unification of Private Law (UNIDROIT), will undertake, as soon as possible, the elaboration of uniform provisions relative to hotelkeeper's contracts, to be subsequently submitted to the Governments for examination and eventual approval".

6. In conformity with the wish expressed by the Brussels Diplomatic Conference, the Governing Council and the General Assembly of UNIDROIT gave special priority to the question of the elaboration of general uniform rules on the hotelkeeper's contract and a decision was taken to set up a Working Committee to this end. This Committee, presided over by Mr. Roland LOEWE (Austria), member of the Governing Council of UNIDROIT, held two sessions at the headquarters of the Institute in Rome. At the first, held from 4 to 8 March 1974, the Committee examined a comparative law study on the hotelkeeper's contract, prepared by the Secretariat of UNIDROIT⁽⁵⁾. On the basis of the directives given by the Committee, the Secretariat drew up a set of draft articles on the hotelkeeper's contract, accompanied by an article-by-article commentary, and at its second session, held from 7 to 11 January 1975, the Working Committee examined the draft articles and approved the text of a preliminary draft Convention on the hotelkeeper's contract⁽⁶⁾ which was then transmitted to the Governing Council of UNIDROIT.

7. After proceeding at its 54th session in April 1975 to a preliminary examination of the text prepared by the Working Committee, the Governing Council decided, at its 55th session, held in September 1976, to set up a Committee of Governmental Experts for the examination of the preliminary draft Convention on the Hotelkeeper's Contract and also requested the Secretariat to bring to the attention of the Committee a number of observations on the draft which had been made by various members of the Council.

(5) Study XII - Doc. 9, UNIDROIT 1974. This study is reproduced in the Uniform Law Review, 1975, II, p. 143 et seq.

(6) Study XII - Doc. 14, UNIDROIT 1976. The text, together with an explanatory report prepared by the Secretariat of the Institute, is reproduced in the Uniform Law Review, 1976, II, p. 159 et seq.

8. The Committee of Governmental Experts held four sessions at the headquarters of the Institute between March 1977 and October 1978⁽⁷⁾, under the chairmanship of Mr. Jean-Pierre PLANTARD (France), member of the Governing Council of UNIDROIT, while a further meeting of a working party to examine the relationship between the CCV and the future Convention on the Hotelkeeper's contract took place immediately prior to the last session of the Committee of Governmental Experts. At this last session, the Committee approved the text of the draft Convention on the Hotelkeeper's Contract set out at pages 1 to 11 above.⁽⁸⁾

II

GENERAL CONSIDERATIONS

9. Like the Working Committee which had prepared the preliminary draft Convention on the Hotelkeeper's Contract, the Committee of Governmental Experts was conscious of the phenomenon, which has gathered force, in particular in recent years, of large movements of people for short periods, whether for tourism or for business journeys, which has itself been facilitated by the growth of communications and the striking advances made in transportation techniques. These factors had already led to the recognition of the need to regulate the travel contract not, as in the past, on the basis of fragmentary solutions for different legal or economic aspects of the problem, but rather as a single entity, the result of which had been the opening to signature in 1970 of the Brussels International Convention on the Travel Contract. The same factors were seen as militating in favour of seeking a harmonisation of existing rules governing various aspects of the relations between hotelkeepers and their guests and of incorporating those rules in a single legal text.

10. In elaborating the draft Convention, both the Working Committee and the Committee of Governmental Experts had particular regard to the rules of national law governing various aspects of the hotelkeeper/guest relationship. Indeed in the vast majority of States with a civil law tradition, it is normal to find provisions of the Civil Code or Code of Obligations dealing with the liability of the hotelkeeper for damage to, or loss of, his guests' property and, in many cases, also with the hotelkeeper's right to detain his guests' property in certain situations. Similarly, in a large number of Common Law jurisdictions, specific statutory provisions have been enacted either confirming or amending preexisting rules of Common Law concerning the hotelkeeper's lien and his liability for property brought to the hotel, while provisions are also to be found dealing with his duty as to the safety of his guests⁽⁹⁾. Moreover, even where the

(7) For the list of participants, see the Annex hereto.

(8) See p. 1, note 1 above.

(9) Ethiopia: Civil Code, Article 2658; Ireland: Hotel Proprietors Act, 1963, Section 4.

conceptual approach to a particular problem differs from one group of States to another, for example in the field of liability for property brought to a hotel, the differences in practice are not always as great as might at first sight appear and certainly they caused no serious hindrance to the preparation of the uniform law texts referred to above, namely the UNIDROIT draft Uniform Law Respecting the Liability of Innkeepers of 1934 and the Council of Europe Convention of 1962.

11. On the other hand, the almost complete lack of specific provisions concerning a number of fundamental issues such as the commencement and termination of the contract between the hotelkeeper and his guest and the legal significance to be attributed to the advance booking of accommodation leads to a renvoi to the applicable general law with the attendant divergencies between the laws of different States or groups of States.

12. The draft Convention seeks to fill these lacunae as well as to harmonise those aspects of the relations between hotelkeepers and guests which are already regulated by a number of national laws. Its substantive scope is therefore much wider than that of the Council of Europe Convention and, unlike that instrument, which was worked out within a regional framework, the future Convention is intended to apply on a worldwide level.

13. One of the principal problems facing the Committee of Governmental Experts, however, lay in determining the conceptual approach to be followed in regulating relations between the hotelkeeper and the guest. On the one hand a number of delegations laid stress on the underlying contractual relations existing between the hotelkeeper and the guest and this analysis finds confirmation in the title of the draft Convention and in the fact that Article 1, paragraph 1 sets out a definition of the hotelkeeper's contract for the purposes of the application of the future instrument. This approach represents the development of a trend already to be seen at the 1970 Brussels Diplomatic Conference on the Travel Contract at which the term "hotelkeeper's contract" appears to have been officially used for the first time at an international level and would also seem to constitute an innovation from the standpoint of the national law of many States for although attempts have been made by writers in certain countries to identify the various elements which might go to make up such a contract, it is to date only in the Civil Code of Ethiopia of 1960 that a fully developed body of rules concerning the legal relationship between hotelkeeper and guest is to be found⁽¹⁰⁾.

14. As against this "contractual" analysis of the relations between hotelkeepers and guests, a number of delegations, especially those representing Common Law countries, considered that a more fruitful approach might be to formulate rules based upon the concept of the status relationships between the hotelkeeper and the guest and to rely upon the contract only in connection with matters expressly arising out of agreement between the two parties. This view was urged with particular force once the

(10) Title XVI, Contracts for the Performance of Services, Chapter 6 - Contracts of Innkeepers, Articles 2653-2671.

decision had been taken to include within the ambit of the future Convention relations between a hotelkeeper and a guest arising from a contract concluded between a hotelkeeper and a party other than the guest, such as a travel organiser, (Article 1, paragraphs 2 and 3 of the draft). In consequence, a considerable number of references to the hotelkeeper's contract in the draft were deleted and the text of the draft Convention approved by the Committee of Governmental Experts may be seen as representing a compromise between the differing conceptual approaches.

15. The general structure of the draft Convention is the following:

Chapter I - Definition and scope of application (Articles 1 and 2)

Chapter II -- Conclusion and performance of the contract (Articles 3 to 10)

Chapter III - Liability of the hotelkeeper for death and personal injuries (Article 11)

Chapter IV - Liability of the hotelkeeper for damage to property (Articles 12 to 18)

Chapter V -- Miscellaneous provisions (Articles 19 to 21)

Chapter VI - Final clauses (Articles 22 to 29)

16. The draft articles are discussed below in detail in Part III of this Explanatory Report but before concluding these general observations it should be indicated that the Committee of Governmental Experts endorsed the preference already expressed by the Working Committee for the future instrument's being cast in the form of a Convention rather than that of a model law, the reasons for the choice being twofold. In the first place, and notwithstanding the many criticisms which have been levelled against the CCV, the hotelkeeper's contract has many affinities with the travel contract and the CCV is cast in the form of an international Convention. More important, however, the constitutional procedures of certain States are such that it is easier for the content of a Convention to be incorporated into municipal law than that of a model law, whether this be with respect to the original ratification of a Convention or to subsequent revisions of it.

III

ARTICLE BY ARTICLE COMMENTARY ON THE DRAFT CONVENTION

Chapter I - Definition and scope of application

Article 1

17. Paragraph 1 contains the definition of the hotelkeeper's contract, which is of fundamental importance for the draft Convention. While some delegations were unhappy at the prominence given to the contractual basis of the relations between the hotelkeeper and the guest (see above, paragraph 14), the Committee nevertheless recognised that any attempt to define the term "hotel", for the purposes of the future Convention, would meet with little success, given the wide differences in the nomenclature and character of establishments offering accommodation to the public at large, not only from one country to another, but within each country itself. It was therefore considered desirable to avoid distinguishing between hotels, boarding houses, pensions etc. and thus to concentrate on a suitably worded definition of the hotelkeeper's contract which, while indicating the essential elements of the contract, would at the same time exclude from the field of application of the future instrument certain cases in which accommodation is provided by one person for another. Moreover, a number of delegations considered that various types of establishments offering accommodation against payment, for example non-profit making establishments and those whose primary aim is not the provision of accommodation, should be excluded from the application of the future Convention and in consequence Article 24, paragraph 1 (a) of the draft permits States to enter reservations on this question (see below, paragraph 171 et seq.).

18. Although Article 1, paragraph 1 does not then define a "hotel" directly, one might construct an indirect definition of it, namely an establishment under the supervision of a person, the hotelkeeper, and in which that person, acting on a regular business basis, undertakes for reward to provide the guest with temporary accommodation and ancillary services.

19. The reference in paragraph 1 to "a person - the hotelkeeper", which might at first sight seem to be unnecessarily heavy, was inserted deliberately by the Committee which was 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 paragraph 1 might not be regarded as a "hotelkeeper", so that there would be no hotelkeeper's contract for the purposes of the Convention.

20. The Committee did not, however, consider it necessary to define the term "guest" although there was some doubt as to whether the word "client" in the French text was as precise as the term "guest" in English. It was, however, decided to retain the word "client" in French as the alternatives of "hôte" and "voyageur" were unsatisfactory. In particular, the choice of the terms "guest" and "client" were considered by the Committee as making it quite clear that it was not its intention to retain the requirement still to be found, at least in theory, in some national legislations, to the effect that the guest must be a traveller ("voyageur").

21. Turning from questions of definition to the essential elements of the hotelkeeper's contract, as set out in paragraph 1 of Article 1, the most important is the hotelkeeper's undertaking to provide the guest with accommodation, so that a person merely availing himself of the ancillary services provided, such as the hotel restaurant, or visiting someone staying in the hotel, cannot be considered to be a "guest" for the purposes of the Convention. Initially, the Committee considered including in the draft Convention one exception to this general principle, by assimilating to a guest, for the purposes of the provisions dealing with the hotelkeeper's liability in Chapters III and IV of the draft, any person entering the hotel with the intention of requesting accommodation. In support of this exception it was suggested that there was no valid reason for distinguishing in this connection between a person to whom accommodation has 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 under the Convention. The majority of delegations, however, considered that the element of intention was too subjective as to be of any real value and that 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. Moreover, it would also be difficult to calculate the limit of the hotelkeeper's liability in respect of loss of, or damage to, property, which is based on a multiple of the charge for accommodation (see below, paragraph 142) as one would not know which accommodation, if any, might have been assigned to the guest. Recourse would thus have to be had to some imprecise notion such as the charge for "average" accommodation in the establishment in question. It was, therefore, decided to exclude such cases from the scope of the future Convention and to leave the would-be guest to bring an action based on the normal principles of extra-contractual liability.

22. While the principal element of the hotelkeeper's contract is thus the provision of accommodation, the Committee felt that this was alone not sufficient to create a relationship of hotelkeeper and guest for the purposes of the application of the future Convention and that it was necessary for some indispensable additional services to be provided such as the cleaning of the room and the provision of water and electric light etc. However, the additional services, apart from the basic ones mentioned above, were deemed by the Committee to be extremely varied as they would depend very much on the terms of the contract and the category of the particular establishment. In consequence, it was decided to employ the term "ancillary services" ("services complémentaires" in French) so as to denote those indispensable for the enjoyment by the guest of the accommodation, thereby leaving it to the parties to determine by contract what other services should be provided thereunder.

23. Apart from the situations mentioned above in paragraph 17, it was considered that there were other cases which might seem to satisfy the requirement that an undertaking has been given by the hotelkeeper to provide accommodation and ancillary services, but which it would be preferable to exclude from the application of the future instrument.

24. The first of these is that of the individual who lets out a room or two in his own home during the tourist season. This is a particularly common practice in a number of countries and plays an important part in the general context of both national and international tourism. It was, however, felt that it would be unjust to place upon individuals, very often of modest means, the liabilities incumbent upon the proprietor of a large establishment and for this reason the requirement of the hotelkeeper's acting on a regular business basis has been included.

25. As is the case with the bulk of the transport law conventions, the preliminary draft also requires that the accommodation should be provided "for reward". Thus the gratuitous provision of accommodation does not constitute a hotelkeeper's contract for the purposes of the future instrument; similarly, the draft does not apply to relations between a hotelkeeper and members of his staff who occupy accommodation on the premises of the hotel under the terms of their contract of employment. A proposal that the term "for reward" be replaced 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 hotelkeeper'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 State, there was no consensus within the Committee that it should be an indispensable element of the hotelkeeper's contract as defined for the purposes of the future Convention.

26. Thirdly, the draft Convention applies only to a contract to provide "temporary accommodation". To the extent that some delegations considered the main purpose of the requirement as being to distinguish a hotelkeeper's contract from a contract to lease premises, they thought that it was unnecessary in view of the added requirement that the establishment remain under the supervision of the hotelkeeper (see below, paragraph 27). It was nevertheless decided to retain the reference to the accommodation being temporary out of deference to the wishes of several delegations whose representatives considered that it would assist them in distinguishing a hotelkeeper's contract from other contracts under their national law. In addition, and while recognising the inherent vagueness of the term, which would be open to various interpretations in national law, the Committee considered that it might also be useful as drawing a distinction between the normal case of the hotel guest who takes up accommodation for a fairly short period of time and that of a person who virtually becomes permanently resident in the hotel and who may enjoy services which are not normally provided for guests.

27. Finally, a further restriction on the application, *ratione materiae*, of the draft Convention is that the establishment in which accommodation is provided to the guest should be under the supervision of the hotelkeeper. The instrument is not therefore intended to apply to the provision to the guest of accommodation in, for example, residences or bungalows forming part of a tourist complex if, as is generally the case, the proprietor exercises no supervision thereover.

28. While paragraph 1 of Article 1 defines, for the purposes of the future Convention, the hotelkeeper's contract and requires that the hotelkeeper undertake to provide the guest with accommodation, it nowhere states that the contract must actually be concluded between the hotelkeeper and the guest.

29. The question of who may be parties to the hotelkeeper's contract is dealt with in paragraph 2 of Article 1, which makes it clear that the contract may be concluded with the hotelkeeper either by a guest or by a party other than the guest, such as a travel organiser. A third category of contracts includes those where the contract is concluded by a person acting on behalf of the guest, such as a simple travel agent, but who, unlike the travel organiser, does not contract with the hotelkeeper in his own name. Serious consideration was indeed given by the Committee to the insertion in paragraph 2 of a reference to persons "acting on behalf of the guest" which some delegations thought would make it clear that 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. The majority of delegations however were of the opinion that the words in question could give rise to confusion, especially in cases where a travel agent is acting as an agent of the hotelkeeper or even on behalf of both hotelkeeper and guest and so it was decided not to refer in paragraph 2 to persons acting on behalf of the guest although the understanding of the Committee as a whole was that contracts concluded on behalf of a guest by travel intermediaries such as a travel agent should be deemed to have been concluded with the guest himself, subject to the application of the rules of each legal system governing agency relationships. The same would be true of contracts concluded on behalf of a group by a member of that group acting as an agent for the other members.

30. Since the hotelkeeper's contract may also be concluded between a hotelkeeper and a party other than the guest, the future Convention will apply to all persons to whom accommodation is provided in accordance with Article 1, paragraph 1, subject to the reservations contained in Article 24, paragraph 1 (a) and (b), for example guests accommodated in an establishment under an organised travel contract, or for whom a reservation has been made by an embassy or a firm, as well as to the members of the family or staff of a guest staying at the hotel.

31. With regard to guests occupying accommodation under an organised travel contract, the Committee recognised that the applicability to them of the future Convention on the hotelkeeper's contract raised the question of the co-existence of the new instrument with the CCV of 1970. The matter was discussed at length by a small working party of the Committee in which a consensus emerged that there was no legal incompatibility between the CCV and the draft Convention on the hotelkeeper's contract,

although 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 future Convention on the hotelkeeper's contract. Moreover, 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 for defective performance of the hotelkeeper's contract would fall to be determined by the hotelkeeper's Convention but in any event such considerations were irrelevant to the question of the hotelkeeper's liability to which the latter instrument principally addressed itself and were more closely related to the issue of whether the CCV was in need of revision.

32. While the Committee was unanimously of the opinion that the future Convention should apply to all guests, irrespective of whether or not they had themselves been parties to the hotelkeeper's contract, some delegations dissented from the majority view of the Committee, as expressed in paragraph 3 of Article 1, to the effect that the Convention should in principle apply only to relations between the hotelkeeper and the guest. The delegations in question considered that since an increasing proportion of hotel accommodation is occupied by guests on the basis of organised travel contracts, an instrument which overlooked such "collective" contracts and which failed to provide even minimal and supplementary rules governing relations between hotelkeepers and travel organisers arising under them would lose much of its interest.

33. The majority of the Committee, however, as well as the representatives of the hotelkeeping and travel agency professions, were reluctant to interfere with the present freedom of contract existing between professionals, although some exceptions to this general approach were admitted in Article 6, paragraph 6 of the draft Convention (see below, paragraph 69 et seq.), and in Article 21, paragraph 2 (see below, paragraph 165).

Article 2

34. While Article 1 is concerned with the material or substantive field of application of the future instrument, Article 2 deals with the geographical scope which is determined, in this instance, by a territorial link with the State upon whose territory the hotel providing the accommodation is situated. The Convention, therefore, will be applicable only when the State in question is a Contracting Party to it. Once this condition is satisfied, the Convention will, under the terms of Article 2, be applicable to the hotelkeeper's contract irrespective of the presence or otherwise of an international element such as the habitual residence of the guest.

35. Some delegations however, favoured requiring the presence of an international element so as to avoid the application of the future instrument to purely internal hotelkeepers' contracts and, out of deference to their wishes, the Committee decided to introduce a reservation clause, contained in Article 24, paragraph 1 (b), to the effect that the 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". This provision is discussed below in paragraph 176 et seq.

Chapter II - Conclusion and performance of the contract

Article 3

36. Paragraph 1 of this article, which contains the first of a series of provisions concerning the conclusion and duration of the hotelkeeper's contract, lays down the principle that a hotelkeeper's contract is concluded only when one party expressly accepts the offer made by the other. This rule might seem to be self-evident but it should be recalled that many hotelkeepers' contracts are concluded by advance reservation and the Committee felt that it was important to state expressly the general principle contained in paragraph 1 so as to make it perfectly clear that when accommodation has been reserved for a guest in advance the parties are bound to perform their obligations under the contract. Moreover, it was felt that the wording of paragraph 1 would avoid the danger of one of the parties, in most cases the hotelkeeper, being held to have tacitly accepted the other party's offer by failing to reply to it, a solution which had indeed been adopted by the UNIDROIT Working Committee in the initial preliminary draft Convention.

37. Paragraph 2 recognises that a large number of hotelkeepers' contracts are concluded orally and the Committee considered that it would be in the interests neither of the hotelkeeping profession nor of the public to insist upon any extra formalities. As regards the wording of the provision, it is modelled on the first sentence of Article 15 of the 1964 Uniform law on the International Sale of Goods (ULIS) and Article 10 of the UNCITRAL Draft Convention on Contracts for the International Sale of Goods.

38. There is, perhaps, a certain difficulty as regards the formulation of Article 3, especially when read in conjunction with Article 1, paragraph 3. The latter provision stipulates that "except when this Convention provides otherwise, it shall apply only to relations between the hotelkeeper and the guest". Some delegations considered that since Article 3 makes no reference to relations between hotelkeepers and parties to the hotelkeeper's contract other than the guest, it would only be applicable to relations between hotelkeepers and guests and that its scope is therefore limited to contracts concluded between them. Other delegations, however, were of the opinion that Article 3 would be applicable to hotelkeepers' contracts concluded by the hotelkeeper with parties

other than the guest and it must be admitted that there is here a certain ambiguity which needs to be resolved. Moreover, if the view is ultimately taken that the article should not be restricted in its application to contracts concluded between hotelkeepers and guests, then it may prove to be necessary to clarify the precise time at which a contract concluded between a hotelkeeper and a travel organiser in respect of a block of rooms, the prospective occupants of which are unknown at the time of the conclusion of the contract, would become a hotelkeeper's contract for the purposes of Article 3.

Article 4

39. Paragraphs 1 to 3 of this article are concerned essentially with the duration of the hotelkeeper's contract and distinguish three types of factual situation. The first is where, at the time of the conclusion of the contract, the day on which the guest's occupation of the accommodation shall end has been agreed. This is, perhaps, the most normal situation and is referred to in paragraph 1 as a contract for a determined period. In such cases, the hotelkeeper may require the guest to vacate the accommodation on the agreed day in accordance with paragraph 4 of the article (see below, paragraph 46), although the parties may agree, on the basis of a new contract, that the guest continue to occupy the accommodation for a further determined period or for an indeterminate period, either on the same terms as those of the original contract or on different terms, as when a guest initially occupying accommodation on special terms under an organised travel contract decides to stay on in the hotel on the basis of a contract concluded between him and the hotelkeeper.

40. The second situation, dealt with in paragraph 2 of Article 4, is that of a contract concluded for an approximately defined period of time, as where a guest requests accommodation for "4 or 5 days", "2 to 3 weeks", or "about a month". The Committee, while recognising that in most cases the parties would, at a fairly early stage during the guest's stay, agree upon a fixed term for the contract so as to permit the hotelkeeper to plan ahead and thereby avoid either the danger of overbooking or having empty rooms, should the guest leave before the end of his projected stay, nevertheless considered that some rule should be laid down on the matter.

41. The solution adopted is to consider such contracts as being concluded for a determined period, as is stated in the first sentence of paragraph 2, and to calculate their length on the basis of the earliest date or shortest period mentioned in the period defined. Thus a contract for "4 or 5 days" or for "2 to 3 weeks" would be considered to be one for a determined period of 4 days or 2 weeks, while references to a week are to be taken as seven days and to a month as twenty-eight days.

42. One delegation, however, expressed 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. It was therefore proposed that there should be an obligation on the hotelkeeper to give notice to the guest of the rule contained in the paragraph, for in most cases the guest would not be aware of its existence. Another solution proposed with a view to satisfying the requirements of consumer protection was 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. It was suggested that such a solution 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.

43. Difficulties were, however, seen in the proposal requiring the hotelkeeper to give notice to the guest of the rule contained in paragraph 2. 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 of the content of paragraph 2, then the guest would be entitled to occupy 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 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 indicated that the effect might be contrary to the interests of the guest to the extent that the rules governing the guest's liability for damage suffered by the hotelkeeper as a result of the guest's no-show or of his leaving the hotel before the end of the stipulated period, contained in Article 6 (see below, paragraph 56 et seq.) were to apply.

44. In these circumstances, and in view of the considerable difficulties experienced in finding an appropriate and simple form of words to cover the suggested requirement of notice, the Committee decided not to insert a provision on the matter in the draft Convention, without prejudice however to further consideration being given to the idea prior to the Diplomatic Conference to be convened for the adoption of the Convention.

45. The third situation, dealt with in paragraph 3 of Article 4, is that where the parties have stipulated no time-limit for the occupation of the accommodation or where a specified time-limit has been extended for an indefinite period with the consent of the hotelkeeper. In such cases, the contract is considered to have been concluded, either ab initio, or from the expiry of the determined period for an indeterminate period and its duration is, under paragraph 3 deemed to be one day. In consequence, either the hotelkeeper or the guest may, before midday, or such

other reasonable time as provided for in the hotelkeeper's contract or the regulations of the hotel, inform the other party of his intention to terminate the contract. The reference to the regulations of the hotel recognises the lack of uniformity between one country and another, and between one hotel and another, with regard to fixing the hour at which one party must inform the other of his intention to terminate the contract. On the other hand, the requirement that the time stipulated in the contract must be a reasonable one is dictated by the consideration that it will be linked to the hour at which the guest must vacate the room (see below, paragraph 46), often one or two hours after the last time at which he may inform the hotelkeeper of his intention to terminate the contract, and that it would be unreasonable to require the guest to vacate the accommodation by, for example, 7 or 8 a.m. Finally, it should be noted that nothing in paragraph 3 would prevent a contract for an indeterminate period 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.

46. In point of fact, all hotelkeepers' contracts are ultimately destined to become contracts for a determined period when one party has indicated his intention to terminate the contract and paragraph 4 recognises this by providing that the hotelkeeper may require that the guest vacate the accommodation occupied by him on termination of the contract. The aim of this provision is twofold. First, it avoids the difficulties which could arise for the hotel profession, especially in connection with group bookings, if guests were permitted to insist on occupying accommodation after the expiry of the contract on the basis of a new contract, to the detriment of the other guests or groups who had reserved that accommodation for a specific day, a problem which in some countries exists in practice and gives rise to the phenomenon of overbooking. The second purpose of the provision, which stipulates the time at which the guest may be required to vacate the accommodation, is clearly related to the last sentence of paragraph 3 of Article 4, the intention being that by virtue of the parallelism established between the two provisions, the guest should always be allowed a reasonable time, after the announcement by the hotelkeeper or by himself of the termination of the contract, to pack his belongings. The difference of two hours between the times stipulated in paragraph 3 and paragraph 4 should also serve as a guide to hotelkeepers when drawing up their regulations.

47. Finally, in connection with Article 4, it should be noted that, as with Article 3, the question arises as to whether the provisions of paragraphs 2 and 3 of this article apply to the relations between hotelkeepers and parties to the hotelkeeper's contract other than a guest. Here, however, the problem seems less acute than in the context of Article 3 for a number of delegations considered that it was difficult to see the circumstances in which paragraphs 2 and 3 of the article, 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. It was further pointed out that in any event Article 4 was concerned with the establishment of

the duration of hotelkeepers' contracts 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 the article.

Article 5

48. This article deals with the consequences of failure by the hotelkeeper to provide the guest with the accommodation and services agreed under the hotelkeeper's contract. Two distinct situations may arise; either the hotelkeeper provides no accommodation at all, usually because he has overbooked, or he provides accommodation or services different from those stipulated in the hotelkeeper's contract, for example a room over a noisy street instead of a quiet room overlooking the sea which he had agreed to provide. The two paragraphs of Article 5 are intended to apply in both cases, as is indicated by the use of the words "to the extent that he [the hotelkeeper] fails to provide the accommodation and services agreed under the hotelkeeper's contract". While only one delegation argued in favour of the application of the article 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 within the Committee 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 would thus be called upon to act as an insurer of the travel organiser.

49. A majority of delegations, however, favoured a rule to the effect that the guest should be entitled to proceed directly against the hotelkeeper, even when not a party to the hotelkeeper's contract. In the first place it was pointed out that a direct action (action directe) was available in many jurisdictions, often on the basis of the concept of stipulations in favour of third parties. As to the possibility of a successful action being brought by the guest against the travel organiser, this might in fact be virtually non-existent, as when the latter was insolvent or when the CCV was applicable or when the travel organiser had sought to exclude or limit his liability to the guest by contract. Furthermore, it is clear from the use of the words "agreed under the hotelkeeper's contract" in the first sentence of paragraph 1 that

the hotelkeeper will not be liable to a guest in cases where, for example, a travel organiser brings to the hotel a larger number of guests than was agreed or where he holds out in his prospectus that the hotel offers services or amenities which the hotelkeeper has 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 instance in respect of any injuries caused to his professional reputation.

50. In consequence, the text adopted by the Committee provides the guest with an action against the hotelkeeper irrespective of whether or not the guest is a party to the hotelkeeper's contract.

51. Finally, in connection with paragraph 1, it should be noted that while the Committee was opposed to the introduction in the text of any limitation on the compensation payable by the hotelkeeper or of any criteria for limiting the damage in respect of which the hotelkeeper should be held liable, for example to foreseeable or direct damage, the majority nevertheless considered that the guest should under no circumstances be entitled to recover punitive damages and this possibility is excluded by the reference to damage "actually suffered" by the guest. It was however considered wiser to leave the question of the award of damages for non-material damage to be determined by each legal system according to its own general principles.

52. Paragraph 2 makes provision for the hotelkeeper to 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. In drafting this provision, the Committee recognised that perhaps the most frequent cause of damage being suffered by a guest is that of his arriving at a hotel and finding that the accommodation reserved for him is not available. In such cases, it is extremely difficult for the guest to prove actual financial loss, since the damage suffered by him can as a rule be measured more in terms of inconvenience. The Committee was informed that 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 it was suggested by one delegation that since such a solution might reasonably be expected to spread to other continents in the near future it might be desirable to include provision in the future Convention for such an on-the-spot remedy.

53. While recognising the interest of this proposal and perhaps the possibility of making provision for its being contained in a reservation clause at a later stage, the Committee was not, however, prepared to include the principle in the body of the draft Convention itself. On the other hand, it considered that the requirements to be met if the hotelkeeper is to avoid liability by invoking paragraph 2 of Article 5 should be strict. The hotelkeeper must, therefore, actually procure for the guest equivalent accommodation and services, and he does not relieve

himself of liability merely by indicating to the guest the availability of alternative accommodation and then leaving him to make the necessary arrangements himself. Moreover, the accommodation must be "in the same locality", so that it is not sufficient for a hotelkeeper who has agreed to provide accommodation in a city centre to obtain alternative accommodation for the guest in a distant residential suburb. Moreover, the text makes it quite 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.

54. 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. It goes without saying, however, that in the event of the alternative accommodation being more costly than that which the hotelkeeper had originally undertaken to provide, it is he, and not the guest, who must pay the difference in price to the second hotelkeeper.

55. Finally, it should be stressed that if a new hotelkeeper's contract is concluded with the hotelkeeper providing the alternative accommodation, the first hotelkeeper can only be liable in respect of his failure to perform his obligations under the initial contract; he will not therefore be liable for damage suffered by the guest in the second hotel under the provisions of Chapters III or IV of the draft Convention unless it can be proved that the second hotelkeeper was acting on his behalf for the purposes of Article 19 (see below, paragraph 159).

Article 6

56. Whereas Article 5 is concerned with the liability of the hotelkeeper in the event of total or partial failure on his part to perform his obligations under the hotelkeeper's contract, Article 6 deals with the correlative liability of the guest. Paragraph 1 of the article thus lays down the general rule that "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". The provision is so worded as to indicate in the first place that the article will be applicable to cases not only of no-show by the guest but also when he takes up the accommodation at a later date than that agreed for occupation or vacates the accommodation before the date of the termination of the contract. Secondly, by speaking of the "damage actually suffered" by the hotelkeeper, it seeks to make the point that if the hotelkeeper relets the accommodation on the same terms to another guest, the original guest will not be liable to pay compensation. It should, however, be

pointed out that the provision is not without a certain ambiguity for even if the hotelkeeper relets the accommodation reserved for the guest to another person, he may still have vacant rooms in the hotel and might claim compensation for the loss of the bargain with the first guest. In other words it is not clear whether the guest can avoid liability only if the hotel, or at least the type of accommodation requested by him, is fully booked out and it would seem desirable to clarify this question on the occasion of the holding of the Diplomatic Conference for the adoption of the draft Convention.

57. There is, moreover, another ambiguity in paragraph 1 of the article. The Committee agreed that the provisions of Article 6 were in principle directed only to contracts concluded between hotelkeepers and guests. It was, however, considered unnecessary to state this expressly in paragraph 1 to the extent that paragraph 6 would deal with contracts concluded between hotelkeepers and parties to the hotelkeeper's contract other than the guest. Paragraph 6, however, (see below, paragraph 69 et seq.) refers only to "relations between a hotelkeeper and a party to the hotelkeeper's contract other than the guest" and since Article 1, paragraph 3 provides that the "Convention ... shall apply ... to relations between the hotelkeeper and the guest", one interpretation would be that paragraphs 1 to 5 of Article 6 apply in their entirety to relations between a hotelkeeper and a guest even though the contract was not concluded by the guest. If this were to be the case, a guest who had paid over to a travel organiser a sum of money in respect of an organised tour might find himself being sued by a hotelkeeper where, for example, the travel organiser fails to provide the necessary transportation enabling the guest to reach the hotel with the consequence that the accommodation remains unoccupied. If the travel organiser were himself to be insolvent, the hotelkeeper might well be tempted to seek recovery from the guest who could thus be required to pay twice over for accommodation which in fact he never occupied. It was certainly not the intention of the Committee as a whole to bring about such a result and in consequence it would seem that at a later stage paragraph 1 should be amended so as to translate accurately the intentions of the Committee.

58. Paragraph 2 of the article is closely linked to paragraph 1 in that it provides that the hotelkeeper shall take all reasonable steps to mitigate any damage actually suffered by him. This in practice puts an obligation upon him to attempt, within reasonable limits, to relet accommodation which has not been taken up or which has been relinquished by a guest in breach of his obligations. This provision corresponds to the implied requirement that the guest mitigate damage suffered by him in that the hotelkeeper shall only be required under Article 5, paragraph 2, to meet the "reasonable" expenses incurred for the guest by the substitution of the accommodation contemplated under the original contract.

59. Paragraph 3 of Article 6 deals with a subject which was discussed at great length by the Committee, namely the principle that the amount of compensation payable by the guest under paragraph 1 should be limited. On this question, certain delegations and also the representatives of the hotelkeeping interests were opposed to the limitation of

liability and considered that there was a strong case for deleting paragraph 3 altogether. On the one hand it was argued that there was 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 Article 5, while misgivings were also expressed by a number of delegations concerning the possible impact of paragraph 3 on establishments catering for the tourist industry, especially small seasonal hotels, which could suffer very considerable loss as a result of placing limits on the compensation payable to them in the event of no-show by a guest. On the other hand, the view was expressed that the penalties laid down in paragraph 3 were considerably stiffer than those usually applied and might stimulate proprietors of commercial hotels who in practice rarely claim compensation for no-show, to adopt a more severe position vis-à-vis the guest.

60. The majority of delegations, however, favoured the principle of limiting the liability of the guest under Article 6, paragraph 1, partly because in practice hotelkeepers rarely claimed the full amount due from the guest in respect of the period covered by the contract, partly because the existence of such a limitation would encourage the hotelkeeper to avoid loss by reletting the accommodation and last, but not least, because the rule met the growing demand for consumer protection.

61. As to the special problems associated with the loss which could be suffered by small seasonal hotels which might have difficulty in reletting accommodation after the cancellation at short notice of a reservation for a lengthy period, a number of delegations 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 permit such establishments to derogate from the provisions of paragraphs 3, 4 and 5 in their relations with guests contracting directly with 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 paragraph 6 (see below, paragraph 69 et seq.) would leave unaffected the freedom of hotelkeepers and parties to hotelkeepers' contracts other than the guest to derogate from the provisions of Article 6, this would considerably attenuate the difficulties which might be encountered by seasonal hotels through the application of the provisions of the article.

62. Paragraph 3, therefore, provides that the guest's liability shall be limited in respect of the first two days of the contract to 75 percent of the price of the accommodation and ancillary services provided for in the contract and to 40% of that price in respect of the following five days, no damages being payable by the guest in respect of any subsequent days. Here, it should be noted that the figures represent a maximum and that the compensation payable by the guest may be less, to the

extent that the amount of damage actually suffered by the hotelkeeper is lower than the percentage fixed, for instance when he has relet the room, and paragraph 3 should not be taken as laying down a rule governing liquidated damages.

63. Secondly, in connection with this paragraph, the reference to "the price of the accommodation and ancillary services provided for in the contract" refers not merely to the ancillary services mentioned in Article 1, paragraph 1, so that in the case of a contract for full or half pension it is the total price, including the provision of food, which would have to be taken into consideration and not the charge for the accommodation alone. On the other hand, the calculation for the purposes of paragraph 3 would not cover such items as telephone calls or bar service, the charge for which would not have been included when determining the sum payable to the hotelkeeper when the contract was stipulated. More difficult would be the case of the provision of extraordinary services such as the special installation of conference facilities in a hotel but here there would appear to be no valid grounds for limiting the compensation payable to the hotelkeeper for any loss incurred as a result of outlay by him and it would seem that the best solution would be to leave the question of the compensation payable to him by the party who had requested such extraordinary services to be dealt with by national law.

64. Paragraphs 4 and 5 of the article provide that the guest shall not be required to pay any compensation to the hotelkeeper in respect either of no-show (paragraph 4) or of his relinquishing the accommodation before the termination of the contract (paragraph 5) if the hotelkeeper has been given adequate advance notice of the fact, and there is perhaps a slight defect in drafting as neither provision covers the case of the guest's late arrival.

65. The mechanism of the two paragraphs is identical, the period of notice required for the guest to avoid liability becoming progressively longer in accordance with the length of the stay. The longest period of notice which may be required by the hotelkeeper is that of seven days in respect of a stay exceeding seven days or of a contract which has more than seven days to run, it being felt that usually such stays would be in tourist, as opposed to commercial, hotels and that such a rule would give more security to small seasonal hotels.

66. While the Committee was unwilling to contemplate any derogations to the provisions of paragraphs 1 to 5 of Article 6 with regard to contracts concluded 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 to permit the guest to know in advance his liability in the event of no-show and to take out appropriate insurance cover, it decided that there should be no automatic application of Article 6 to relations between hotelkeepers and parties to the hotelkeeper's contract other than the guest.

67. This question was one which had been discussed at considerable length in the course of the Committee's work. In the first place, some delegations considered that the future instrument should apply to all cases of cancellation and in support of this contention it was argued that to exclude completely organised travel contracts would greatly restrict the interest of the Convention for many countries, especially developing countries, where tourism is for the most part carried out on the basis of organised package travel and where the hotelkeeper is frequently the economically weaker party. Secondly, it was suggested that to exclude contracts concluded on such a basis from the application of Article 6 would involve relying on existing practice which effectively means on the consequences of the respective economic bargaining power of travel organisers and hotelkeepers, whose contractual relations are only in a minority of cases governed by the Hotel Convention relative to Contracts between Hoteliers and Travel Agents concluded between the International Hotel Association (IHA) and the Universal Federation of Travel Agents Associations (UFTAA). Minimum rules at least should therefore be laid down in the draft regarding such contracts.

68. A majority of delegations, however, supported by the representatives of the hotelkeeping and travel agency professions, considered that there were serious objections to the future Convention's laying down directly or indirectly rules governing compensation for the cancellation of reservations of accommodation made by travel organisers. In the first place, the professional organisations insisted on the need for drawing a clear distinction in this context between on the one hand contracts concluded between hotelkeepers and guests, which are essentially consumer contracts, and on the other contracts of a purely commercial character between hotelkeepers and travel organisers, the nature of which varies considerably and in respect of which they argued in favour of the maximum freedom of contract. In this connection it was noted that in many cases such contracts form part of a series of agreements concluded between the travel organiser and other operators (e.g. carriers) in the framework of the contract binding the travel organiser and the traveller. A further objection to the draft's covering cases of cancellation by travel organisers and overbooking by hotelkeepers with the result that they cannot honour their contracts with travel organisers was that either this would result in the need for lengthy negotiations if special rules were to be worked out to cover liability in such cases or alternatively that it would upset the balance created by Articles 5 and 6 of the draft, which had been elaborated with individual hotelkeepers' contracts in mind, if an attempt were to be made to solve the problem in the context of those articles as drafted. The view was also expressed that such an extension of the scope of application of the draft Convention would render it more complex and thus less acceptable to States.

69. By way of a compromise solution, it was agreed that paragraph 6 should lay down the rule that Article 6 is in principle applicable to relations between a hotelkeeper and a party to the hotelkeeper's contract other than the guest but that the freedom of contract between the parties should be respected by permitting them to make alternative arrangements

pending the possible conclusion of an intergovernmental international Convention on the subject at some later stage if this were thought to be desirable or even necessary. The Committee recognised that as regards contracts concluded between hotelkeepers and travel organisers, alternative rules to those laid down in Article 6 would almost invariably be stipulated but the provisions of the article might nevertheless be applicable in those cases where contracts are concluded between hotelkeepers and, for instance, embassies booking accommodation for a visiting delegation or firms for their employees and where no rules governing cancellation are stipulated between the parties to the hotelkeeper's contract.

70. In any event, however, it should be recalled that any agreements between hotelkeepers and parties to the hotelkeeper's contract other than the guest derogating from the provisions of Article 6 can in no way prejudice the rights of the guest under the Convention by virtue of Article 21, paragraph 2 (see below, paragraph 165).

71. Finally, in connection with this article, the possibility was referred to of introducing a provision to the effect that the hotelkeeper should keep the accommodation at the disposal of the guest for one day, or in respect of 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 a late stage of the Committee's work, of the mechanism for compensation provided for elsewhere in Article 6, it was decided merely 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 the last session of the Committee and the Diplomatic Conference for adoption.

Article 7

72. This article groups together a number of miscellaneous obligations of the guest and the hotelkeeper. The first of these is a mutual obligation to "behave in a manner and show the consideration which the other could reasonably expect". While recognising that this obligation was somewhat vague and that it was unusual to legislate in this sphere of relations, the Committee nevertheless considered that the hotelkeeper's contract was in many respects atypical and that to a far greater degree than in most other contracts its satisfactory performance depends as much upon the social behaviour of the parties as on the performance of purely legal obligations. The second sentence of paragraph 1, however, which places an additional obligation on the guest by requiring him "in particular, to 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", has a more objective basis, although a number of delegations from countries with a civil law tradition 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 countries feared that the absence of the term might be interpreted by their courts as laying on the guest an absolute obligation to observe the regulations of the hotel, it was agreed to retain the word. As to the precise meaning of the words "duly brought to his notice", the general feeling of the Committee was that it would be undesirable to speak in more specific terms of the requirement of notice, for instance whether it would be sufficient for the regulations to be posted up in the entrance hall of the hotel or in which languages they should be displayed, in view of the different laws and practices prevailing from one country to another and of the differences existing between various categories of establishments. With a view, however, to indicating in the text itself the need for flexibility in interpreting the provision, the Committee decided to add at the end of it the words "having regard to all the circumstances and to the usual practice".

73. Paragraphs 2 and 3 of the article deal with the consequences of breach by one of the parties of his obligations under paragraph 1 and on this point there was no consensus within the Committee as to the exact nature of the sanctions to be imposed on the party in breach. While some delegations wished to make express provision for the payment of damages, others felt that it would be sufficient to permit the innocent party to terminate the contract in the event of serious or repeated breach by the other of his obligations, subject however to the hotelkeeper's being required to observe the provisions of Article 4, paragraph 4 when requesting a guest to leave the hotel. The Committee therefore adopted the minimal solution, leaving open to national law the question of whether, and in which circumstances, damages should be payable by one party to the other for a breach of his obligations under paragraph 1 of this article. It was, however, agreed that a party suffering damage arising out of such a breach should nevertheless retain any rights to compensation which he might have against the other party under the Convention, for example, the guest's right to compensation under Article 5 or that of the hotelkeeper under Article 6 and this principle has been given expression in paragraph 3 of the article. It goes without saying, moreover, that nothing in this article will prevent a party against whom paragraph 1 has been wrongfully invoked from claiming compensation from the other party for damage suffered by him in consequence thereof.

74. The final words in paragraph 2, "contract concluded by them" indicate that this provision constitutes an exception to the general rule laid down in Article 1, paragraph 2 in that it only applies to contracts concluded between hotelkeepers and guests. The Committee considered in fact that in case of breach by the hotelkeeper or the guest of his obligation under Article 8, paragraph 1 when the guest is accommodated under

an organised travel contract, it would be normal for the party invoking the provisions of paragraph 1 to address himself first to the travel organiser or a representative of his with a view to remedying the situation.

75. In the course of the discussions on this article, one delegation noted that generally speaking the draft Convention seemed to be less concerned with the obligations of the guest than with those of the hotelkeeper and that the future instrument should attempt to cover some other obligations of the guest and in particular his duty to pay the price of the accommodation and ancillary services provided by the hotelkeeper and his duty to make reparation for any damage caused by him on the premises of the hotel.

76. The second point would seem to be met in part by the wording of paragraph 2 of the article in that the hotelkeeper might well be entitled to terminate the contract and although that paragraph does not make express provision for the payment of damages, neither does it exclude the possibility of an extracontractual claim being brought against the guest by the hotelkeeper for damage to hotel property.

77. As to the guest's obligation to pay the price of the accommodation and services provided, the Committee thought it was unnecessary to make express reference to it, partly on the grounds that this was self-evident and partly because the duty was considered to be referred to implicitly by the presence of the words "for reward" in Article 1, paragraph 1.

Article 8

78. While being of the opinion that the draft Convention should contain a provision relieving the hotelkeeper or the guest of liability in certain cases where it becomes impossible for the former to provide, or the latter to occupy, the accommodation, the Committee experienced difficulty in finding a form of words to express the idea which could command general support. After a number of formulae had been rejected, and in particular that of "force majeure", which was recognised as having widely different connotations in different legal systems, the Committee decided to adopt the wording "an unavoidable and irresistible event which cannot be imputed to the party who invokes it." This wording, which took account of the work of the Council of Europe's Sub-Committee on Fundamental Legal Concepts, was seen as having the special merit of indicating that the event must be caused by a factor external to the party invoking it and at the same time avoiding any reference to the "unforeseeable" nature of the event, since some events might be foreseeable but their precise occurrence totally unpredictable, for instance earthquakes in areas more than usually susceptible to such phenomena. The Committee also stressed that in the case of an event described in paragraph 1 occurring, the contract will be automatically terminated.

79. Paragraph 2 of the article further develops paragraph 1 by providing that a party invoking this provision will be liable under the future 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", thereby permitting the latter, where possible, to mitigate his loss, although the view was also expressed that paragraph 2 was unnecessary given that the duty to give notification in such cases is already imposed by the general principles of law and that failure to give notice would amount to the commission of a fault by the party invoking paragraph 1.

Article 9

80. This article deals with a situation which arises quite commonly in practice, namely where the hotelkeeper requests the guest to pay a certain sum of money in advance, and although the Committee was opposed to the inclusion in the future instrument of a provision which could be interpreted as meaning that the payment of a deposit by the guest should be compulsory, it considered that the matter could not be entirely ignored.

81. At present in some legal systems, a sum paid to the hotelkeeper in advance is considered to be a forfeitable deposit so that if the guest does not occupy the accommodation, the hotelkeeper may keep the sum in toto. Although there was some support for this solution, or at least one which would permit the hotelkeeper to treat the advance payment as a forfeitable deposit if the parties so agree, the majority of delegations were opposed to such a rule. This, they pointed out, would allow the hotelkeeper to avoid the application of the limits laid down in Article 6 in respect of the compensation payable by the guest, for example by requesting that the whole of the sum payable under the hotelkeeper's contract be paid in advance, not to mention cases where the hotelkeeper relets the accommodation to another guest, thus suffering no loss at all.

82. The wording of the provision therefore does not permit the hotelkeeper to retain any part of the sum paid to him in advance in excess of the amount due to him under the terms of the Convention, and it should be noted that by speaking of the hotelkeeper's receiving "from the guest a sum of money in advance", the Committee deliberately restricted the scope of application of the provision to contracts concluded between hotelkeepers and guests. On the one hand, this drafting seeks to exclude the possibility of a guest occupying accommodation under a travel contract concluded by a travel organiser arbitrarily giving notice to the hotelkeeper of his intention to leave the hotel before the expiry of the contract and then claiming restitution from the hotelkeeper of the sum corresponding to the charge for the accommodation and ancillary services which he had not in fact enjoyed but in respect of which payment had already been made by the travel organiser to the hotelkeeper. On

the other, the drafting of the provision represents the view of the Committee that since 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, such arrangements thus being left to the exercise of the contractual freedom of the parties.

Article 10

83. Paragraph 1 of this article embodies the widely, although not universally, recognised rule that the hotelkeeper may, as a guarantee for payment of the charge for the accommodation and services actually provided to the guest, detain property brought to the premises of the hotel by the latter. Historically, the right may be regarded as a counterbalance to two particular features of the status of the hotelkeeper, namely his duty, in some countries at least, to accept all comers and his special liability with regard to the safekeeping of the property of his guests. These justifications for the rule are, however, just as real today, for although in many States the almost absolute liability of the hotelkeeper has been attenuated, a heavy burden nevertheless remains upon him while he is in addition still at risk as regards the solvency of his guests as in many cases payment will be requested only at the end of the guest's stay.

84. The Committee noted, however, that differences both in the mechanism of the exercise of the right and as regards the property which may be detained are to be found between one legal system and another. Thus while the majority of the Common Law States have followed the English notion of the hotelkeeper's lien over the guest's property brought to the hotel, some civil law States have founded the rights of the hotelkeeper on the basis of a legal pledge, while others grant him a right of detention and yet others make provision for giving him a preferred claim without making any reference to the right of detention. The Committee felt, therefore, that the simplest solution would be to adopt a general formulation of the right of detention which would not enter into detail and thereby avoid embarrassing any legal systems whose law contains special provisions, especially those of a procedural character.

85. As to the type of property which may be detained by the hotelkeeper, some delegations considered that to the extent that the right of detention is merely a guarantee for payment, it should apply only to property which can be sold and thus not extend to such items as the guest's passport or his travellers' cheques which are not capable of being sold. They also assimilated such objects to the clothes the guest is actually wearing as their detention would effectively amount to the detention of the guest himself, while another delegation suggested 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. On the other hand, it was argued that since the right of detention constitutes a means of putting pressure on the guest to settle his bill, the hotelkeeper should be permitted to detain even such objects as passports and other personal documents and finally a compromise solution was adopted which is reflected in the text of paragraph 1. This provision states that property may be detained by the hotelkeeper "as a guarantee for payment of the charge for the accommodation and for any other ancillary services supplied by him" and that in addition that property must be of "commercial value". The term "commercial value" is admittedly somewhat vague but it was felt that it translated adequately the idea that the hotelkeeper cannot detain such items of property as passports or airline-tickets, which are not transferable, and thereby effectively detain the guest himself.

86. Property used by the guest for the carrying out of his professional activities would, however, as a rule fall within the notion of "property of commercial value", as also would vehicles brought onto the premises of the hotel or property left with such vehicles, even when the hotel in question is situated in a State which excludes the application of Articles 12 to 18 of the future Convention to them under Article 24, paragraph 1 (d) (see below, paragraph 179 et seq.). The right of detention would not, however, be exercisable under the Convention in respect of live animals (see below, paragraph 162 for the comments on Article 20, paragraph (b)). Lastly, the Committee experienced considerable difficulty as regards the exercise of the rights of detention and sale over property brought to the hotel by a guest but belonging to a third party and an attempt to deal with such situations has been made in paragraph 4 of Article 10 (see below, paragraph 94 et seq.).

87. The use in paragraph 1 of the words "except in cases where the sum payable to the hotelkeeper is due from a person other than the guest" indicates the view of the Committee that the hotelkeeper should not be entitled to exercise the right of detention when the accommodation and services are provided to the guest under an organised travel contract for in such cases the obligation to pay the hotelkeeper for them falls not upon the guest but upon the travel organiser. The right would, however, be exercisable by the hotelkeeper in respect of additional services or goods supplied by him to such a guest, for example extra meals, drinks or the cost of telephone calls, although it was considered that the right of detention should not apply to sums advanced by the hotelkeeper to third persons on behalf of the guest, for example goods brought to the hotel by tradesmen at his request, or to compensation which might be due to the hotelkeeper for damage caused by the guest to hotel property.

88. The Committee was also of the opinion that the right of detention should be available only in respect of accommodation and services "actually provided" by the hotelkeeper so that he will not be entitled to detain property in respect of a claim under Article 6, for example when the guest relinquishes the accommodation before the end of the

period stipulated by the contract without giving the notice required by paragraph 5 of Article 6. Finally, the question was discussed as to whether it should be stated in the text that the hotelkeeper's right of detention ought to extend only up to such property as is necessary to realise the sum owed by the guest. In this connection it was pointed out on the one hand that in many cases the hotelkeeper could have no idea of how much the property was worth until it had been officially valued and on the other that he might not even know what the property was at the time of its detention, for instance the contents of a locked trunk. For these reasons it was agreed not to deal with the point specifically in the text although it was felt that the reference therein to a guarantee for payment would indicate that the hotelkeeper should not exercise his right abusively by detaining property of value obviously far in excess of the sum due to him.

89. The purpose of paragraph 2 is to exclude the exercise of the hotelkeeper's right of detention of property when a sufficient guarantee for the sum claimed is provided or an equivalent sum deposited with a mutually accepted third party or with an official institution such, for instance, as a court or a notary, authorised to act in such cases under the national law applicable. This constitutes a satisfactory solution in two different factual situations, namely when the guest, while not disputing the sum payable to the hotelkeeper, is unable to settle the bill, as might happen if he were robbed of all the cash he had on his person, or where, while disputing the bill presented to him by the hotelkeeper for the accommodation and services provided, he wishes to avoid the exercise of the right of detention, as could be the case of a commercial traveller whose samples have been seized by the hotelkeeper. The provision does not specify that the guarantee or deposit must be provided by the guest so as to leave open the possibility of its being provided by a third party with an interest in the property which the hotelkeeper would otherwise detain.

90. Like paragraph 1, paragraph 3 contains a general principle to be found in most national legal systems, namely that the hotelkeeper may, after giving notice to the guest, cause to be sold as much of the property over which he has exercised his right of detention as is necessary for him to satisfy his claim against the guest. Here again, the Committee considered that there were quite considerable divergencies in the law of States regarding the detailed procedure to be followed and that it was in the interests of unification to lay down a rule capable of gaining general support while leaving intact the peculiarities of national law, rather than to attempt to find a common denominator which might render the article more difficult to accept. It is therefore provided that the conditions and procedures to be followed in connection with the sale, which are to be considered as englobing the repayment of any surplus proceeds realised, shall be governed by the law of the place where the hotel is situated, it being understood that the law referred to is the law of the jurisdiction in question to the exclusion of its conflicts of law rules as such procedural matters are always regulated by the internal law of that jurisdiction.

91. As to the interpretation of the word "claim", the Committee considered it desirable to leave this to be determined by national law, although it was the understanding of many delegations that it covered not only interest on the debt but also any expenses to which the hotelkeeper might be put in making the arrangements for the sale.

92. The requirement that the hotelkeeper must give the guest "adequate and timely notice" of the sale of the property detained by him is intended to permit the guest to settle the claim and thereby avoid the sale, or alternatively to intervene before the sale if he considers that the property was wrongfully detained by the hotelkeeper. Similarly, the property might belong to a third party and so as to cover cases where the hotelkeeper has notice that the property does belong to such a person, the provision leaves open the question of the person to whom the notice must be given. Indeed it is the case in some jurisdictions at present that when the hotelkeeper has such notice he may neither detain nor sell the property concerned.

93. The Committee did not consider it advisable to expand the notion of "adequate and timely notice", and to attempt to deal expressly with such questions as whether mere publishing in a local paper of notice of the sale would be adequate if the guest had already left the country in which the hotel was situated and had returned to his home in a distant country. In consequence such matters are left to be determined by the national law applicable.

94. As mentioned above, the Committee gave lengthy consideration to the problem of the existence of third party rights over the property which the hotelkeeper might wish to detain and sell. While some delegations preferred not to deal with the matter at all, as any provision concerning it would raise conflicts of law issues, which had been avoided elsewhere in the draft Convention, others feared that if the article were to remain silent on the question the implication might be 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 decided to include in paragraph 4 of Article 10 a rule to the effect that "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".

95. While one delegation suggested that, in the interests of unification, paragraph 4 should also provide that the law of the place where the hotel is situated determine the existence of third party rights over property brought to the hotel, the Committee as a whole favoured restricting its application to the effects of such rights on the hotelkeeper's rights of detention and sale; its principal function would thus be the establishment of a choice of law rule for the determination of priorities between competing claims over the property, the determination of the existence of third party rights being left to the free play of the rules of private international law. As to the meaning of the term "internal law", which is to govern the effects of third party rights over the property concerned

or the proceeds of sale, the Committee considered that it was sufficiently clear that the intention was to prevent recourse being had to the private international law rules of the place where the hotel is situated, thus avoiding the danger of continual references back and forth between the law of different jurisdictions.

Chapter III - Liability of the hotelkeeper for death and personal injuries

Article 11

96. Together with the provisions of Chapter II, dealing with a number of aspects of the conclusion and the performance of the hotelkeeper's contract, this article constitutes one of the most important features of the draft Convention in that it seeks to lay down uniform rules in an area which has hitherto been the province of national law, namely the hotelkeeper's liability for the death of, or personal injuries suffered by the guest. In this connection, one delegation intimated the difficulties which might arise for it in view of the specific liability régime established in Article 11 in the context of the pending reform of its legislation regulating occupier's liability and it therefore raised the possibility of deleting Article 11 or of at least introducing a reservation clause permitting Contracting States not to apply its provisions. No other delegation supported the idea of deleting the provisions in the draft Convention concerning death and personal injuries but some delegations nevertheless expressed sympathy for the difficulties encountered by the delegation in question and declared that while their Governments would probably not avail themselves of a reservation clause along the lines suggested, they were not in principle opposed to the proposal if this would facilitate acceptance of the future Convention. It was therefore agreed that while no decision should be taken by the Committee as to the desirability of introducing a reservation clause permitting Contracting States not to apply the provisions of Article 11, the question should not be overlooked in the Explanatory Report on the draft Convention which would accompany the text at the time of its submission to the Diplomatic Conference for adoption.

97. Paragraph 1 is concerned with all cases in which loss or damage is suffered as a result of the death of, or 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, except when death or injury results from the consumption of food or drink, a special situation dealt with in paragraph 2 of the article (see below, paragraph 108 et seq.).

98. The first point to note in connection with this provision is that the term "lésions de toutes natures" in the French text was chosen as a translation of the English expression "personal injuries", in preference to the words "blessures corporelles", used for example in the French text of the Warsaw Convention, so as to avoid giving the possible impression that the provision does not cover cases of mental harm or nervous shock suffered by the victim.

99. Secondly, the event causing the damage need not take place on the premises of the hotel but may also occur in any other place under the supervision of the hotelkeeper, for example a private beach not adjoining the hotel, although the provision does not cover events occurring in places such as golf courses which are not under the supervision of the hotelkeeper but to which the guest may have access on special terms by reason of his staying at the hotel. Again, paragraph 1 does not encompass situations in which the hotelkeeper provides transport facilities to the guest as the liability for any injury caused in the course of such transport operations would be regulated by the appropriate national law governing the carriage of passengers.

100. During its examination of this provision, the Committee also considered whether it should apply only in cases where the guest is injured on premises or in a place to which the hotelkeeper has authorised him to have access. Such a clarification was, however, deemed to be unnecessary for the hotelkeeper could either plead that he had himself exercised the care called for under the second sentence of paragraph 1 (see below, paragraph 106) or else allege that the guest had been at fault in placing himself in the situation in which the damage occurred so that there could be a reduction or disallowance of compensation to the guest in accordance with the provisions of paragraph 3 of the article (see below, paragraph 112 et seq.). Moreover, situations might also be envisaged 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.

101. The Committee also examined the question of whether some temporal requirements, similar to those contained in Article 12 (see below, paragraph 122 et seq.), should be inserted in the provision to the effect that the hotelkeeper would be liable for death or personal injury occurring "during and for a reasonable period before and after the time when the guest is entitled to accommodation". It decided not to do so for a number of reasons. Apart from a certain inherent vagueness in the concept, it might have the effect of modifying existing civil liability régimes in various countries and it was also considered to be 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. As regards those cases where the damage occurs after the accommodation has been vacated by the guest it will be left to national law to determine whether it would be appropriate for the provisions of Article 11 to apply.

102. While the first sentence of paragraph 1 is concerned with the nature of the injury suffered by the guest and with the place where the damage must occur if the hotelkeeper is to incur liability under Article 11, the second sentence deals with the liability régime itself. Although the Committee rejected the notion of imposing a strict liability on the hotelkeeper in the cases contemplated by paragraph 1, and was generally agreed that his liability should essentially be based on the fault principle, there was a considerable division of opinion as to the question of the party on whom the burden of proof should lie. On the one hand, certain delegations considered that the effect of a provision which enshrined the principle of the presumed fault of the hotelkeeper with the burden of proof reversed would in effect make the hotelkeeper an insurer of the guest's safety. Such a rule, they maintained, would involve a considerable extension of the hotelkeeper's liability for personal injuries in their own countries and, to the extent that an action brought by the guest against the hotelkeeper could be regarded as founded in tort, then conceptual difficulties would also arise. The introduction of such a principle, it was further argued, would have the effect of raising very considerably the insurance premiums payable by hotelkeepers and it was therefore proposed that the burden of proving that the hotelkeeper had not met the requisite standard of care be placed on the guest. It was also stressed that the position of the hotelkeeper could not be equated to that of a carrier and that even in the carriage Conventions the presumed liability of the carrier was accompanied by provisions limiting his liability in the event of death or personal injury to the passenger, which was not the case here. If it was accepted that the liability of a hotelkeeper was more akin to that of an occupier, then the inequity of presuming him to be liable in all cases became all the more apparent.

103. Other delegations, however, stated that a rule placing on the hotelkeeper the burden of proving that he had not been at fault coincided with the position at present obtaining in their own jurisdictions and that any move in the direction of requiring the guest to prove fault on the part of the hotelkeeper would represent a step backwards which it would be difficult for them to contemplate in this age of ever-increasing awareness of the need to provide adequate protection for consumers. In this context, reference was also made to the provisions of the Council of Europe's Convention on Products Liability in regard to Personal Injury and Death and it was recommended that attempts should be made to avoid any incompatibility between the future Convention on the hotelkeeper's contract on the one hand and the Council of Europe Convention and the draft directive of the European Economic Community on the same subject on the other. Furthermore, it was stressed by more than one delegation that, with respect to the bringing of evidence, it would in most cases be easier for the hotelkeeper, who was thoroughly familiar with his premises, than for the guest, to discharge the burden of proof, especially in cases where the symptoms of damage began to appear some time after the guest had left the hotel.

104. Yet a third view was that it did not greatly matter upon whom the burden of proof was placed since in any event a court would almost certainly be faced with conflicting evidence brought by the guest and the hotelkeeper, and would decide in favour of one or the other on the balance of such evidence.

105. In the light of this difference of approach, the Committee concluded that it would not be possible to lay down a rule commanding unanimous or even quasi-unanimous support and in consequence the drafting of the provision is intended to leave open the question of the party upon whom the burden of proof is to be imposed so that each jurisdiction may decide the matter in accordance with its prevailing law and practice. It was, however, recognised that such intentional ambiguity in a uniform law text was to be regretted and the Committee noted a suggestion 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.

106. As to the precise wording of the second sentence of paragraph 1, this follows closely that to be found in a number of European transport Conventions concerning the carriage of passengers, although one departure from these texts has been made in view of the importance attached by the delegations of a number of Common Law countries to the introduction in the English text of the concept of "reasonable care" and, to take account of this concern, the provision is worded 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).

107. Finally, in connection with this provision, the question was raised as to the extent to which the hotelkeeper would be liable in certain cases where it would perhaps be difficult to consider him as having been at fault, for example if the guest were to suffer injury as a result 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 and, if he were to be held liable in such a case under paragraph 1, it was suggested that recourse might have to be had under national law to some concept such as that of non-delegable duties. In this connection the Committee considered that it was necessary to refer to Article 19, concerning liability of the hotelkeeper for acts and omissions of his servants and agents (see below, paragraph 159 et seq.). As this article was intended to establish, inter alia, the hotelkeeper's liability in respect of independent contractors, it was thought that he could be liable thereunder in the type of case mentioned. In addition, it was noted that the hotelkeeper would, of course, have a recourse action against the supplier while the guest himself would be entitled to proceed directly against such a person instead of, or together with, the hotelkeeper.

108. The provisions of paragraph 2 of this article constitute an exception to the general rule laid down in paragraph 1 in the sense that the liability imposed upon the hotelkeeper for injury suffered as a result of the consumption of food or drink supplied by him to the guest is a strict liability. In consequence the hotelkeeper cannot avoid liability by showing that even though he used the care which the circumstances called for, the event causing the damage could not have been avoided or its consequences prevented. It is thus of no avail for the hotelkeeper to claim that the food was contaminated before it reached him and that it would have been impossible for anyone, in the absence of scientific tests, to discover the impurity.

109. The one defence open to him is that the food was fit for human consumption so that he will be relieved of liability if he provides normal, wholesome food or drink to a guest who, owing to some peculiarity of which the hotelkeeper could not have known, falls ill as a consequence of consuming it or if a guest suffers damage as a result of uncontrolled over-indulgence in consuming certain food or drink. If, on the other hand, the guest informs the hotelkeeper of his allergy or susceptibility to particular food or drink and notwithstanding this fact he is provided with it by the hotelkeeper, then the latter would be liable in any event under the provisions of paragraph 1 of the article.

110. The burden of proving that the food or drink was fit for human consumption lies on the hotelkeeper and although the Committee recognised that this was a heavy one, it was unable to accept a suggestion that the burden of proving that the food or drink was unfit for human consumption be imposed on the guest as it would be even more difficult for him, with 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.

111. Some hesitation was also expressed as to hotelkeeper's being strictly liable in cases where food provided by him is consumed outside the hotel, for example a packed lunch, as the food might be contaminated after it had left the hotel, but it was not considered possible to deal with such specific cases in the text of the Convention itself. It would thus be necessary to examine the facts of the case to see whether the contamination might not have been due to the act or neglect of the guest so that the hotelkeeper might be relieved of his liability under paragraph 3 of Article 11. A similar point was raised as to whether the hotelkeeper would be liable under paragraph 2 if a guest, accommodated in a hotel under a contract whereby the hotelkeeper undertook to provide full board and lodging, were to fall ill as a result of consuming food or drink supplied not on the premises of the hotel but in a nearby restaurant under a standing arrangement between the hotelkeeper and the restaurateur. Here it was noted that, unlike paragraph 1 of Article 11, paragraph 2 makes no reference to the question of where the event causing the damage occurs and in consequence the hotelkeeper would be liable under Article 19 as the restaurateur would be an agent of his for whose acts and omissions he is responsible.

112. Paragraph 3 provides that in cases where the hotelkeeper is liable under the provisions of Article 11, the compensation due to the guest may be reduced to the extent that the loss or damage has been caused by his fault. The first feature of this provision calling for comment is that it leaves it open to national courts to decide whether or not to permit a reduction of damages or even to disallow them completely to the extent that the damage has been caused by the fault of the guest. The possibility for courts not to make such a reduction or exclusion of damages was provided for at the request of one delegation in particular which indicated that it would be consistent with legislation which had been introduced in its country considerably cutting down the possibility of damages being reduced in civil claims for death or personal injury on the grounds of contributory negligence so that in effect it was now usually required that the plaintiff should have been grossly negligent before any such reduction would be made.

113. The second point to note is the reference to the "fault" of the guest in the English text, "faute du client" in the French. These expressions were chosen by the Committee after much discussion as to whether it would be 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 might be adopted, some delegations proposed to speak in the French text of the "fait du client" rather than the "faute du client". Other 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 maintained 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 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 it was decided to speak in the French text of the "faute du client" and in the English 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.

1114. The Committee also considered the problem of the applicability of paragraph 3 to the case of a guest 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.

115. Finally, in connection with this paragraph, the Committee discussed the question of whether there might not be a case for extending its application to situations where the fault could be attributed in part to a person accompanying the guest or in his employment. It was, however, felt that such situations would arise but rarely in practice and that it would not be unreasonable to treat such persons as third parties so that the rules set out in paragraph 4 would be applicable.

116. The purpose of paragraph 4 is to relieve the hotelkeeper of liability when the loss or damage results in part from the fault of a party other than the guest, although the hotelkeeper will nevertheless be required to compensate the guest in full in such cases so as to avoid the latter having to bring actions against two defendants, one of whom, the third party, it might be difficult or even impossible to identify. Initially, the Committee also considered introducing a provision dealing with cases where the damage resulted wholly from the fault of a party other than the guest but it subsequently decided that such a provision would be at the least superfluous and at the most dangerous. It was deemed 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 Article 11 while, in the special case of the provision of food and drink, it was the Committee's intention that the hotelkeeper 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. 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 situations and in consequence the Committee decided to make no provision for relieving the hotelkeeper of liability unless the damage was caused entirely by a third person, it being understood that the person for whom the hotelkeeper is liable under Article 19 cannot be considered as third parties.

117. Finally, in connection with the defences available to the hotelkeeper under Article 11, the Committee examined the question of whether provision should be made for a defence based on the force majeure principle but this was deemed to be 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.

118. Paragraph 5 provides that the provisions of Article 11 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

119. These articles deal with the liability of the hotelkeeper for damage to, or destruction or loss of, property brought to the hotel by guests and are largely modelled on the provisions contained in the Annex to the Council of Europe Convention on the Liability of Hotel-keepers concerning the Property of their Guests which was itself inspired by the pre-war UNIDROIT draft uniform law respecting the liability of innkeepers for goods brought to inns by guests. Both the Working Committee and the Committee of Governmental Experts considered that everything should be done to reduce to a minimum differences between the new instrument and the Council of Europe Convention and apart from a certain rearrangement of the provisions and a number of minor changes, the principal difference between the two texts is to be found in Article 13, paragraph 2 of the present draft Convention, in connection with the hotelkeeper's right to limit his liability in respect of property deposited with him for safe custody.

Article 12

120. This provision lays down the general rule to be found in the national law of many States that 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. This liability is a strict one so that it is unnecessary for the guest to prove that the hotelkeeper or his servants or agents have been at fault, subject to the exception contained in Article 18 (see below, paragraph 152).

121. The spatial requirement here is different from that laid down in Article 11, owing to the differences in the damage contemplated. In consequence the hotelkeeper will be held liable in respect of property of which he takes charge outside the hotel, for example when he agrees to transport the guest's luggage to the hotel from an airport or railway station or vice-versa. Similarly, he will be liable if he takes charge of the guest's car and of property left with it in a garage outside the premises of the hotel although States are entitled to make a reservation in respect of vehicles and such property under Article 24, paragraph 1 (d), (see below, paragraph 179 et seq.). Again, this paragraph covers the case of damage to, or loss of, property handed over by a guest to an employee or agent of the hotelkeeper responsible for the supervision of a private beach to which hotel guests have access but not the situation where such loss or damage occurs to property which has not been placed in the charge of the superintendant, for example a watch carelessly left lying on the beach.

122. Unlike Article 11, Article 12 also lays down a temporal requirement for the hotelkeeper's liability to be engaged, namely that the loss or damage to the property must occur during, or within a reasonable period before or after, the time when the guest is entitled to accommodation. This wording takes account of the fact that the guest's luggage may be sent on by him to the hotel before his arrival or that he may make arrangements with the hotelkeeper for it to be dispatched to him after his stay, or simply leave it with the hotelkeeper for a few hours after vacating the accommodation and before catching his train or plane. The provision covers all of these situations as also that of the guest's property being damaged or stolen from the hotel lobby while he is actually concluding the contract with the hotelkeeper. The Committee recognised that it would not be possible to lay down precise rules regarding the length of time before or after the guest's entitlement to the accommodation during which the hotelkeeper would be liable and in consequence it will be for national courts to determine in each case whether the period is "reasonable" for the purposes of Article 12.

123. Lastly, in connection with this article, the words "when the guest is entitled to accommodation" are used so as to make it clear that the hotelkeeper will still be liable in respect of the guest's property in cases where, owing to overbooking, he is unable to provide the guest with the accommodation agreed or even in cases where the guest, while paying the charge for the accommodation, does not actually occupy it for all or part of his projected stay.

Article 13

124. Paragraph 1 of this article lays down the rule that the hotelkeeper must receive securities, money and valuable articles for safe custody and that he may refuse them only if they are dangerous or cumbersome. This provision corresponds to that contained in Article 2, paragraph 2 of the Annex to the Council of Europe Convention, the principal difference being that under the future Convention the hotelkeeper will not be permitted to refuse the deposit of property on the grounds that its value is excessive. In departing from the provisions of the Council of Europe Convention on this point, the Committee noted on the one hand that it would be open to question in each case whether the property was indeed "of excessive value", which could give rise to considerable litigation, and on the other that on the basis of information supplied by the hotelkeeping profession, it seemed that it is not the practice of hotelkeepers to refuse to accept property for safe keeping on account of its value.

125. Paragraph 2 of the article provides that the hotelkeeper shall be entitled to examine the property tendered to him for safe custody and to require that it shall be put in a fastened or sealed container.

126. Some hesitations were expressed regarding the hotelkeeper's right to examine the property offered for deposit, which it was felt might give rise to difficulties when, for instance, a guest hands over for deposit confidential documents. The Committee acknowledged the existence of the 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 a packet containing drugs, or to ascertain, in the case of money deposited, that its value corresponds to that declared by the guest. It decided therefore to affirm the hotelkeeper's right to examine the property, trusting to the hotelkeeping profession to exercise the right of examination in a reasonable manner and with the necessary discretion.

127. As to the placing of the property in a sealed or fastened container, the Committee considered the question of who should provide such a container, the hotelkeeper or the guest. 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 he would usually make such a container 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 be met and in these circumstances the Committee saw no need to lay down a general rule as to who should provide the container.

128. The principal departure from the terms of the Council of Europe Convention is to be found in paragraph 3 of Article 13, which provides that the hotelkeeper may limit his liability in respect of property deposited with him for safe custody, provided that the guest has been duly notified of such a limit prior to the deposit, it being left to national law to determine what constitutes due notification in such cases.

129. The introduction of this new rule had its origins in a proposal by one delegation that if the rule providing for unlimited liability in such cases were to be retained, then a reservation clause should be included in Article 24 permitting States to make provision for the hotelkeeper to limit his liability. 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 Committee to the effect that the substance of the proposed 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.

130. The principal arguments adduced in favour of the retention of the principle of limited liability were on the one hand the fact that it was already part of the law of many countries, especially those which had ratified the Council of Europe Convention and, on the other, that it is difficult to see why there is 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 is already unlimited in respect of personal injuries suffered by the guest.

131. Against this latter argument it was pointed out that there are considerable differences in premiums regarding personal injury and damage to, or loss of, property. The latter is a far more likely occurrence in a hotel and moreover it ought not to be forgotten that different liability régimes apply under the draft Convention; while the liability attaching to personal injury is, 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 is a strict liability and this difference would be reflected in the different insurance premiums. It was further observed that while it might be the case that a number of States recognise the unlimited liability of the hotelkeeper for property deposited with him, many others do not and 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 the rule, absent in the present draft Convention, permitting the hotelkeeper to refuse to accept property of excessive value, and although large luxury hotels might 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 safe-keeping of goods. Moreover, the supporters of the principle of limited liability also stressed that there were a number of exceptions and attenuations to this principle as enumerated in paragraph 3. In the first place, the limit would only apply if appropriate notice were given to the guest of the limits of liability before the deposit was made; secondly, the limit could be set at a sufficiently high level to cover almost all cases which would arise in practice, while thirdly 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 on his part as defined in Article 16 (see below, paragraph 146 et seq.). 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.

132. In the light of these arguments, the Committee agreed to insert in paragraph 3 of Article 13 the principle that the hotelkeeper may limit his liability in respect of property tendered to him for safe custody, subject to the requirement of the guest's being notified of the limit and of a possibility for States to enter a reservation under Article 24 allowing for a higher limit of liability or for unlimited liability in such cases (see below, paragraph 178).

133. 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 (for the reasons for calculating the limit on the basis of the charge for the accommodation, see below, paragraph 142 et seq.). In this connection it was 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 took note of this information but decided that it would nevertheless 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.

134. As to the reference to "any single event", this is intended to cover the case of a particularly unfortunate guest's being deprived of his property on more than one occasion during his stay at the hotel and to make it clear that the limitation amount cannot be invoked by the hotelkeeper to cover all incidents causing damage to the guest but must be applied separately on each occasion.

135. Lastly, in connection with this paragraph, the Committee considered a proposal 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. It was suggested 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 useful to the extent that the hotelkeeper's liability for property deposited with him was unlimited, but that since a limit was now provided by the draft Convention, it lost much of its interest. Thirdly, it was pointed out that the introduction of a rule permitting the hotelkeeper to insist on a declaration of value could 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 at the hotel, the hotelkeeper, without actually refusing to accept the property and thereby incurring unlimited liability under paragraph 4 of Article 13, would in effect be able to reduce his liability to the lowest level provided for in Article 14 (see below, paragraph 138). In these circumstances the Committee rejected the idea of linking a declaration of value to the limitation of the hotelkeeper's liability under paragraph 3 of Article 13.

136. Paragraph 4 corresponds to Article 2, paragraph 1 (b) of the Annex to the Council of Europe Convention by providing that the hotelkeeper's liability shall be unlimited in cases where he has refused to accept property which he is bound to accept for safe custody under paragraph 1 of Article 13 for, in the absence of such a rule, the hotelkeeper would once again be able to benefit from the lowest limit of liability provided for in Article 14.

Article 14

137. This provision, which establishes a limit on the compensation payable by the hotelkeeper in respect of damage to, or destruction or loss of, property other than that accepted for safe custody, was adopted both in the Council of Europe Convention and in the preceding UNIDROIT draft and is in addition a feature of a large majority of legislations throughout the world, based as it is upon the need which has become felt to alleviate the extremely severe liability placed on hotelkeepers from Roman law almost until the present day.

138. In view of the decision to make provision in Article 13, paragraph 3 for a special limit of liability in respect of property deposited with the hotelkeeper for safe custody, the limit laid down in Article 14 is necessarily restricted to all other cases of loss or destruction of, or damage to, property. The Committee agreed that the limit under Article 14 should be considerably lower than that provided for in Article 13 for, on the one hand, by accepting property for safe custody the hotelkeeper must be taken to have assumed a greater responsibility than would be the case with property left by a guest in his room while, on the other, property deposited would normally be of higher value.

139. After lengthy consideration of the suggestions advanced as to the limit to be applied, the Committee decided to adopt the multiple of one hundred times the charge for the accommodation 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 reason for not adopting this latter solution was that it would entail a definition of valuable property which was not at present to be found in the draft Convention and which would be far from easy to elaborate. Moreover, it could always be argued that failure to deposit valuable property would, in certain circumstances, amount to fault on the part of the guest for the purposes of Article 17 (see below, paragraph 149).

140. On the other hand, the Committee departed from the Council of Europe Convention in two respects. In the first place it rejected the idea of adopting an alternative limit of liability, based on a fixed-sum, to that founded on a multiple of the charge for the accommodation, partly because of the difficulty of establishing a satisfactory unit of account and partly because, as experience of the Council of Europe Convention has shown, such limits soon tend to become inadequate as a result of inflation. Secondly, the Committee evinced no enthusiasm for the idea

of imposing a special limit of liability in respect of any single item of property lost or damaged. In adopting these solutions, the Committee recognised that there would now be a certain lack of consistency between the future Convention and that of the Council of Europe but the problem was seen as being more apparent than real as the changes had the effect of increasing the hotelkeeper's eventual liability and to this extent were compatible with the spirit of the Council of Europe Convention which laid down what were in effect minimum rules.

141. As is the case with Article 13, paragraph 3, Article 14 provides that the limitation figure may not be invoked globally in respect of damage suffered by the guest on separate occasions and provision is also made in Article 24, paragraph 1 (c) for States to establish a higher limit of liability or to set no limits thereon at all (see below, paragraph 178).

Article 15

142. Both Articles 13 and 14 calculate the limit of the hotelkeeper's liability on the basis of a multiple of the charge for the accommodation and Article 15 defines this expression as "the highest daily charge for the accommodation exclusive of taxes, service charges and additional services". The intention of this provision is in the first place to indicate that the basis of calculation excludes any elements other than the charge for the room itself, for example meals provided by the hotelkeeper, which are taken into consideration for the purposes of limiting the guest's liability under Article 6 (see above, paragraph 63).

143. It should, however, be pointed out that there is a slight discrepancy between the wording of the English and French texts for whereas the former speaks of "service charges and additional services", the latter refers to "services et prestations accessoires". Since, throughout the draft Convention, the French expression "services et prestations" has been used synonymously with the English word "services", it would seem that the French text does not contain any mention of "service charges" and this inconsistency should be eliminated on the occasion of the adoption of the final text by a Diplomatic Conference.

144. The second aim of the provision is to take account of the fact that different charges may be made in respect of a hotel room or suite according to whether the guest has contracted individually with the hotelkeeper or whether the accommodation has been procured for him by a travel organiser or by, perhaps, a corporation which obtains a discount on the price normally charged and posted up in the room. Many other situations could also be envisaged and so with a view to achieving some degree of certainty, the Committee decided that the limit of liability should be calculated on the basis of a multiple of the highest daily charge for the accommodation. In so doing it was aware that such a rule might not cover all situations, for example that of hotels whose total

operations are based on group travel so that there might be no fixed price at all for the accommodation. It seemed, however, impossible to make specific provision for such cases and the national judge will have to reach a solution based on all the facts of the case, ascertaining wherever possible the cost of the other components of the organised travel contract, for example the cost of transport, and deducting them from the total paid by the guest to the travel organiser.

145. The second sentence of the article provides that "if the accommodation is occupied by several persons, the calculation of the limit of liability shall be made by taking account of the total charge for the accommodation and by considering all the occupants as a single guest". The aim of this provision is again twofold. On the one hand it seeks to avoid a court holding that the limitation may apply in respect of each person, for instance a husband, wife and child occupying one room in the hotel, and thereby tripling the limitation figure in the example given, and, on the other, when a suite of rooms or more than one room is occupied by one or more persons, to ensure that the limitation of liability will be calculated in accordance with the total charge for the accommodation and not just the room in which the lost or damaged property was situated.

Article 16

146. This provision, which deprives the hotelkeeper of the right to avail himself of the limitations on his liability provided for in Articles 13 and 14 of the Convention in cases 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 under Article 19, is modelled on Article 4 of the Annex to the Council of Europe Convention, and reflects a principle to be found in all those legal systems which contain specific provisions concerning the liability of the hotelkeeper for property brought to the hotel.

147. It should be noted, in addition, that whereas the Committee had, in the English text of Article 13, preferred to employ the less precise term "fault" to qualify the acts or omissions of a guest or of a third party which might relieve the hotelkeeper in whole or part of his liability for death or personal injury, it considered it more appropriate, in connection with the liability of the hotelkeeper for damage to, or loss of, property, to use the more established expression "negligence or wilful act or omission" to correspond to the French word "faute".

Article 17

148. This article follows Article 3 of the Annex to the Council of Europe Convention in providing that in three situations the hotelkeeper shall not be liable under Article 12 for damage to, or destruction or loss of, property.

149. Paragraphs (a) and (b), concerning respectively those cases where the damage is due to the negligence or to the wilful act or omission of the guest or of any person accompanying him or in his employment or visiting him, and those where it is caused by an unavoidable and irresistible event which cannot be imputed to the hotelkeeper, differ somewhat in wording from the corresponding provisions to be found in the Council of Europe Convention but nevertheless convey substantially the same meaning and reflect rules to be found in a large number of legal systems. The wording of paragraph (a) in the English text reproduces that contained in Article 16 as far as the translation of the French term "faute" is concerned, whereas that of paragraph (b) repeats the formula used in Article 8, paragraph 1 of the draft Convention (see above, paragraph 78) to cover the force majeure situation, in preference to the formula employed in the Council of Europe Convention, namely "an unforeseeable and irresistible act of nature or an act of war".

150. The origins of paragraph (c) are to be found in the Annex to the Council of Europe Convention (Article 3, paragraph (c)) for there is no corresponding provision in the pre-war UNIDROIT draft and a specific provision in this sense is lacking in the law of many States. However, such a rule, which has its counterpart in many transport law Conventions, is a useful one for the hotelkeeper can scarcely be held liable for the loss or deterioration of, for example, highly inflammable or perishable goods which the guest has introduced into the hotel.

151. Finally, it should be noted that the reference, in the introduction to Article 17, to Article 12 which lays down the principle of the hotelkeeper's strict liability in respect of damage to, or loss of property, is intended to make it clear that the defences are available to the hotelkeeper irrespective of whether the property has been accepted by him for safe custody or not.

Article 18

152. This article is modelled upon Article 5 of the Annex to the Council of Europe Convention which was itself inspired by Article 4 of the pre-war UNIDROIT draft and upon the provisions to be found in many national legal systems. Its effect is that the guest will not be entitled to invoke the strict liability of the hotelkeeper if, after discovering the damage to, or destruction or loss of, the property, he fails to inform the hotelkeeper thereof as soon as is reasonably possible, the rationale for the rule being that early report of the loss will permit the hotelkeeper to undertake an enquiry among his staff or to call in the police as quickly as possible and thus increase the chance of recovering the property. Exception was, however, taken to the wording of this provision in the Council of Europe Convention and in the preliminary draft of the UNIDROIT Working Committee on the grounds that it was tantamount to a provision on prescription in that it seemed to deprive the guest of a course of action. The Committee therefore reformulated the

drafting of the article so as 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 Article 12 into a fault liability potentially unlimited, so that the guest, in order to recover, must prove that the damage suffered by him has been caused by the negligence or by a wilful act or omission of the hotelkeeper or by a person for whom he is responsible.

Chapter V - Miscellaneous provisions

153. The three articles contained in this chapter are all that remain of a series of provisions, mainly of a procedural character, which were included in the preliminary draft Convention on the hotelkeeper's contract prepared by the UNIDROIT Working Committee. The articles deleted by the Committee of Governmental Experts dealt respectively with the applicability of the provisions of the future Convention excluding or limiting the liability of the hotelkeeper to extra-contractual claims, with jurisdiction, enforcement and related matters and finally with limitation of actions.

154. As regards the first of these articles, a number of delegations drew attention especially to the problem of overlapping between on the one hand the future Convention on the hotelkeeper's contract and on the other the Council of Europe Convention on Products Liability in regard to Personal Injury and Death and the draft Directive of the European Economic Community on products liability, and it was in particular suggested that failure to take account of possible incompatibility between the various instruments arising from the retention of the article in question might reduce the number of ratifications of the future instrument on the hotelkeeper's contract.

155. In connection with the question of jurisdiction and enforcement of judgments on which there had already been a marked division of opinion within the UNIDROIT Working Group, some support was forthcoming for the inclusion of provisions on these matters in the future Convention on the hotelkeeper's contract. Thus one delegation considered that it would be desirable to retain the article proposed by the Working Committee but on condition that it was accepted as a whole. Another delegation stressed the need for harmonisation in this context and expressed interest in the paragraph of the article enumerating the grounds of jurisdiction, while another argued in favour of the future instrument's containing provisions on enforcement, which would be necessary for its State to enforce judgments given under the terms of the Convention, in view of the limited number of bilateral agreements it had concluded on the enforcement of judgments.

156. A majority of delegations, however, were reluctant to deal with the questions of jurisdiction and enforcement in the future Convention, partly on the grounds that such matters are normally left to regulation by bilateral agreements, partly because the hotelkeeper's contract was not seen as justifying special treatment in this connection and partly because difficulties might arise for member States of the European Economic Community with regard to the relationship between on the one hand the article of the draft Convention concerning jurisdiction and related matters and on the other Article 57 of the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters together with Article 24 of the preliminary draft Convention on the accession of the new member States to the 1968 Convention.

157. With the exception of one delegation which pleaded in support of the maintenance of the proposed article governing limitation of actions in the interests of unification of law, there was general agreement that no such provision be included in the future Convention as there seemed to be little justification for applying to hotelkeeper's contracts rules other than the general ones applicable under statutes of limitation. Various delegations expressed their concern with different paragraphs of the article as proposed by the Working Committee and reference was made in particular to the fact that there were differences between it and the corresponding provisions of the Council of Europe Convention on Products Liability in regard to Personal Injury and Death and the draft Directive of the European Economic Community on products liability. It was also considered that provisions on limitation of actions were of more importance in Conventions dealing with business relations where it is necessary to establish the security of commercial transactions within a short period.

158. In these circumstances, the Committee decided to delete the three articles in question, on the understanding that reference would be made in the Explanatory Report on the draft Convention to the reasons which had led it to do so.

Article 19

159. This article lists the persons for whom the hotelkeeper is responsible and is similar to one inserted in most of the uniform law texts prepared within the framework of UNIDROIT. The provision is worded in such a way as to hold the hotelkeeper liable not only for the acts and omissions of his agents and servants but also for "all other persons of whose services he makes use for the performance of his obligations" so that it covers independent contractors as well (see above, paragraphs 107 and 111, for illustrations of possible application of the rule). It goes without saying, however, that in no way does Article 19 deprive the hotelkeeper of any recourse action available to him under national law.

160. So as to exclude the hotelkeeper's being held liable in cases where it is quite coincidental that the person causing damage to the guest is a servant or agent of the hotelkeeper, for instance when a guest is knocked down in the centre of a town by a car driven by a hall porter of the hotel in which he is staying, the provision requires that the servant, agent or other person must, when the event causing the damage occurred, have been acting "in the course of his duty". In this connection, some delegations doubted whether the article would be applicable in respect of a hotel employee who enters the hotel when off-duty and steals property from a guest's room as he would not then be acting in the course of his duty. Other delegations however considered that such cases would be covered as it would be only on account of his status as a hotel employee that he would have access to the hotel and it was also suggested that the hotelkeeper would in any event be liable because he had not ensured adequate supervision of the premises.

Article 20

161. This article contains two provisions which in effect limit the scope of the future Convention. Paragraph (a) provides that the expression "accommodation" does not include accommodation provided on a vehicle being operated as such in any mode of transport. It thus excludes the application of the instrument to the provision of accommodation in wagon-lits, rail or bus couchettes, or cabins in ships or inland navigation vessels which are already dealt with by other international Conventions, but is so worded as to include within the field of application of the future Convention "floating hotels", such as former transatlantic liners or boathouses which are moored close to land.

162. Paragraph (b) provides that, for the application of the draft Convention, the expression "property" does not include live animals. This provision is inspired by Article 7 of the Annex to the Council of Europe Convention which itself takes account of the fact that in a number of States the hotelkeeper's strict liability for damage to, or loss of, inanimate property has not been considered to be appropriate in respect of live animals. One delegation, however, indicated that under its law the normal hotelkeeper's liability also applies as regards live animals and it raised the question of whether Articles 12 to 18 of the draft Convention should not apply to them to the extent that the hotelkeeper accepts animals on the premises of the hotel. The Committee considered that such a provision was unnecessary for, on the one hand, the hotelkeeper can always extend his liability under Article 21, paragraph 1 (see below, paragraph 164) and, on the other, since the effect of paragraph (b) of Article 20 is to leave the question of the hotelkeeper's liability for live animals to be regulated by national law, each State may legislate on the subject in whatever way it chooses, for instance by applying to live animals identical provisions to those contained in the draft Convention itself.

Article 21

167. Paragraph 1 of this article contains a provision analogous to those to be found in a number of international transport law Conventions, to the effect that any agreement to which the guest is a party shall be void to the extent that it derogates from the provisions of the Convention in a manner detrimental to the guest. It should be noted in this connection that it is not stated with whom the agreement is concluded and in consequence the provision is applicable not only to contracts between guests and hotelkeepers but also to those concluded between guests and travel organisers.

164. In the course of the discussions on this paragraph, the representatives of the hotelkeeping profession expressed the opinion 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. The Committee considered however that such a distinction was not uncommon in international private law Conventions regulating relations between professionals and consumers. The hotelkeeper might, moreover, 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.

165. Paragraph 2 of the article, on the other hand, is concerned with the relations between hotelkeepers and parties other than the guest, such as travel organisers, and here the Committee manifested its desire to respect the principle of contractual freedom by providing that the hotelkeeper may, in his relations with such parties, derogate from the provisions of the Convention on condition that his liability towards the guest is not affected thereby. In other words, he cannot, for instance, deprive the guest of the benefit of the provisions of the Convention by way of the inclusion of standard clauses in agreements concluded with a travel organiser. Although the provision only speaks of agreements to derogate from the provisions of the Convention, it might perhaps be interpreted to the effect that the decision of an arbitral tribunal on a dispute between a hotelkeeper and a travel organiser, which might have the effect of prejudicing the rights of a guest under the Convention, could not be invoked by a hotelkeeper against a guest as *res judicata*, although the Committee considered that this would in any event be the case under the general principles of law.

166. While the Committee decided that the future instrument should not contain provisions dealing with jurisdiction, enforcement of judgments and related matters (see above, paragraph 155), concern was expressed at the possibility of a binding consent jurisdiction stipulated in an agreement concluded between the hotelkeeper and the guest prejudicing the interests of the latter. Paragraph 3 of Article 21 therefore provides that "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". The provision is designed to prevent the hotelkeeper concluding an agreement with the guest purporting to exclude the application of the future Convention in cases where it would otherwise be applicable, 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 in paragraph 3, however, prevents such agreements being stipulated after the occurrence of the event giving rise to the dispute, since it was considered by the majority of delegations that the guest would then be fully aware of the facts and would not therefore need special protection.

Chapter VI - Final clauses (including the draft preamble⁽¹⁾)

167. With the exception of Article 24, (see below, paragraph 170 et seq.), which sets out the permitted reservations to the future Convention, the Committee did not proceed to a detailed discussion of the draft final clauses drawn up by the Secretariat, although observations were made by some delegations on certain provisions. In preparing the draft provisions, the Secretariat has had 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. Except then for Article 24, the draft final clauses were not formally approved by the Committee and are in consequence offered for consideration by the future Diplomatic Conference for adoption with the consent of the Committee but under the sole responsibility of the Secretariat.

(1) See page 1, above.

Articles 22 and 23

168. These articles contain the customary provisions concerning the signature of the future Convention, the deposit of instruments of ratification, acceptance, approval and accession and its entry into force. Two points should, however, be made. In the first place, the Secretariat has included the words "by all States" in paragraph 1 of Article 22 and "all" in paragraph 3 of that article in square brackets out of regard to political considerations which are often advanced at Diplomatic Conferences, and already within the Committee one delegation indicated that its Government might wish to comment on this question at a later stage.

169. Secondly, in Article 23, the Secretariat has, in proposing the figure of five instruments of ratification, acceptance, approval or accession for the entry into force of the future Convention, followed the practice hitherto adopted in UNIDROIT Conventions which have been opened to signature at Diplomatic Conferences convened by member States of the Institute.

Article 24

170. In this article, the Committee has made provision for the Contracting Parties to the future instrument to enter reservations in respect of a number of articles thereof.

171. Paragraph 1 (a) concerns a question to which reference has already been made in paragraph 17 of this report, namely the possibility to exclude, in the absence of any definition of the term "hotel" in the draft Convention, its application to certain types of establishment. The categories mentioned in paragraph 1 (a) are non-profit making establishments such as those run by voluntary organisations, religious houses and certain youth hostels, and establishments whose primary aim is not the provision of accommodation, such as university halls of residence, firms providing holiday homes for employees, hospitals and clinics.

172. As to the first category, the Committee considered that one should look to the character of the establishment as much as to the organisation running it, for while it was clear that a Salvation Army hostel providing temporary accommodation for the needy would be excluded, Salvation Army hostels operating in large cities on a commercial basis for the purpose of raising funds for the Army would be covered by the future Convention. Then again, as regards establishments whose primary aim is not the provision of accommodation, the Committee recognised that there might be border-line cases which would have to be decided by national law such as those of university halls of residence letting out accommodation during vacations and of hotels providing facilities such as thermal cures. In the second situation, the criterion would seem to be whether the services provided are ancillary to the accommodation, as would be the case with a luxury hotel in a spa town with a resident doctor to su-

pervise the taking of thermal cures, or whether the accommodation is ancillary to another purpose for which the guest is in the establishment, for example clinics and hospitals.

173. Some delegations also argued in favour of making provision for a third category of establishments to be excluded from the application of the future Convention, namely those not open to all-comers (such as private clubs, convents or youth hostels). One delegation in particular indicated that in its 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 since the Council of Europe Convention on the liability of hotelkeepers concerning the property of their guests contained no definition of hotel, its Government when ratifying that Convention had not been required to change the existing national definition. It would be unrealistic to expect that this definition would now be altered all the more so as if its Government were to accept the new Convention, it would probably apply it to internal as well as to international hotelkeepers' contracts. As 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 delegation stated that it might perhaps be inclined to agree with this reading if Article 1 stood by itself but the presence of sub-paragraph (a) (i) and (ii) of the article under consideration 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 they remained this could create serious difficulties for the authorities of the delegation in question.

174. A majority of delegations, however, was opposed to the introduction of a provision permitting a reservation in respect of establishments not open to all-comers. In the first place, it was suggested that its inclusion might lend itself to abuse in that an astute hotelkeeper might seek to avoid the application of the Convention by charging a nominal membership fee and thus claiming that his hotel was a private club, although it was suggested that in such cases it would be easy for a judge to examine whether or not the establishment was indeed a bona-fide club. A second objection was that the term "all-comers" in the English text recalled the status of the innkeeper in a large number of Common Law countries where it was employed as part of the definition of hotels and that it might thus be used by such countries to limit the applicability of the future Convention to those establishments which are at present defined as hotels. Thirdly, it was pointed out that a 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 the proposed reservation. Finally, it was suggested that the term "all-comers" might give rise to difficulties at a Diplomatic Conference for the adoption of the Convention and that it might be interpreted by some States which had not so far participated in the drafting of the Convention as touching upon the problem of discrimination by the hotelkeeper against certain categories of prospective guests. Finally,

it was noted that some types of establishment which the provision was meant to cover such as holiday or rest homes for employees of the State or of private firms would in any case fall under sub-paragraph (a) to the extent that they were subsidised and not run on a profit-making basis.

175. In these circumstances the Committee decided to restrict the scope of paragraph 1 (a) to the two categories of establishments defined in sub-paragraphs (i) and (ii) thereof and, with a view to indicating as precisely as possible the type of establishments contemplated, paragraph 2 of Article 24 provides that any State may, at the time of entering its reservation, specify those types of establishment which it considers as falling within the different sub-paragraphs of paragraph 1 (a).

176. As mentioned above (paragraph 35), some delegations were of the opinion that it should be possible to limit the application of the future Convention to what might be termed "international" hotelkeepers' contracts, this international element residing in the fact that "the hotel is situated on the territory of a State other than that in which the guest has his habitual residence". They considered that nothing in the provision would prevent those States which wished to have a unified system of rules governing the hotelkeeper's contract from achieving this result simply by not availing themselves of the provision in question. To the objection that the inclusion of the provisions 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, a situation which might even arise with regard to guests staying in a hotel under the same organised travel contract, it was replied that it was not unprecedented for apparently similar categories of persons to be treated differently and by way of example it was recalled that it was perfectly possible for travellers in the same train in Europe to be subjected to three different régimes.

177. One delegation in particular 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, and although some delegations expressed regret at the setback to unification of law which sub-paragraph (b) represented, the Committee agreed to its inclusion.

178. Sub-paragraph (c) of paragraph 1 provides that a Contracting State may set the limits of liability for which provision is made in Articles 13 and 14 at higher levels or indeed establish no limit at all, in accordance with the decision taken by the Committee in connection with those articles, (see paragraphs 132 and 141).

179. Sub-paragraph (d) of paragraph 1 is concerned with the applicability of the future Convention to the hotelkeeper's liability in respect of damage to, or loss or destruction of, vehicles and property left with them (see above, paragraph 121). Article 7 of the Annex to the Council of Europe Convention excludes such vehicles and property from the scope of that instrument and there was some support for this view in the Committee, reference being made to the considerable growth of motels in recent years. To apply the strict liability contemplated by Article 12 of the draft Convention in such cases would, it was suggested, expose the hotelkeeper to the risk of enormous damages being awarded against him if a large number of vehicles in the motel park were destroyed, for example by fire. In addition, it was suggested that the exclusion of vehicles and property left with them was justified on other grounds. In the first place, it would often be difficult to decide in practice whether vehicles were parked on the premises of the hotel or whether they were actually under the supervision of the hotelkeeper. Secondly, it was felt that there might be problems in conceiving the application of the special liability attaching to hotelkeepers to vehicles even when stored in a hotel garage, in view particularly of the difficulty for hotelkeepers to prove that damage suffered by such vehicles had not been caused by their servants. Thirdly, it was thought that confusion might arise between the hotelkeeper's contract and the garage contract and that it would not seem desirable that hotel garages should be governed by rules different from those governing other garages. Fourthly, reference was made to the difficulty for hotelkeepers to obtain insurance cover in respect of property left in vehicles outside the premises of the hotel.

180. The objections to the application to motor vehicles of the special rules governing the hotelkeeper's liability for damage to property were considered as being likewise relevant in the context of the hotelkeeper's right of detention under Article 10, it being pointed out that as the value of a motor vehicle would as a rule be considerably higher than a hotel bill, it would seem exaggerated to permit the hotelkeeper to detain the vehicle for payment of a small sum. Moreover, vehicles might very often be subject to a hire-purchase agreement and therefore the person in possession might not be the owner, thus raising the difficult problem of the conflict between the hotelkeeper's right to detain and sell property and the existence of third party rights over such property (see above, paragraph 94).

181. A number of delegations were, however, reluctant to see vehicles and property left with them excluded from the scope of the future instrument and in consequence a compromise solution was adopted whereby the draft Convention is in principle applicable to such property, subject to the possibility for a State to exclude the application thereto of Articles 12 to 18 by way of a reservation. It should be noted in this connection that the reservation clause does not extend to Article 10, so that the rights of detention and sale remain available to the hotelkeeper in respect of vehicles or property left with them even if a State makes the reservation under Article 24, paragraph 1 (d).

182. The Committee noted the concern of one delegation which stated that under its national law the hotelkeeper is held liable for damage to vehicles or to property left with them only if their presence at the hotel has been brought to his attention. In these circumstances it was agreed that sub-paragraph (d) should be worded in such a way as to make possible partial derogations from the applicability of Articles 12 to 18 of the draft Convention to vehicles and property left with them so that the provision reads 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". From a purely drafting standpoint, the English text is not perhaps as clear as it might be and with a view to avoiding any ambiguity it might be preferable to add the phrase "that it will" before the words "attach conditions to such application".

Articles 25 and 26

183. These provisions, which are modelled closely on those of Articles XIV and XV of the 1973 Washington Convention providing a Uniform Law on the Form of an International Will, have been introduced at the request of certain States which considered their inclusion to be desirable, or indeed even indispensable, on internal constitutional grounds, for their becoming parties to the future Convention.

Article 27

184. This article makes provision for the possibility of the calling of a Conference for the revision or amendment of the Convention and for the consequences of a State's becoming a party to it after such revision or amendment.

185. One delegation pointed out that the 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."

186. The Committee took note of this suggestion but in view of the limited consideration it was able to give to the draft final clauses prepared by the Secretariat, it felt that it could do no more than request the Secretariat to record the proposal in the Explanatory Report on the future Convention.

Article 28

187. This article reproduces provisions which are commonly found in international instruments regarding the effects of denunciation of the Convention by a Contracting State.

Article 29

188. This article provides for the designation of the Depositary Government and lists its functions. It also indicates the original languages of the Convention which the Secretariat has proposed should be the four in which international private law Conventions are most frequently drafted, namely English, French, Russian and Spanish. This is, however, no more than a proposal and a final decision on the question can only be taken at a later stage closer to the convening of the Diplomatic Conference for the adoption of the draft Convention.

189. Finally, it should be noted that if the proposal set out in paragraph 185 above for the rewording of Article 27 were to be adopted, it would be necessary to amend paragraph 2 (f) of Article 29 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."

Figure 1. Schematic representation of the experimental design. The subjects were divided into two groups: the control group (CG) and the experimental group (EG). The CG was divided into two subgroups: the control group (CG) and the control group (CG). The EG was divided into two subgroups: the experimental group (EG) and the experimental group (EG). The CG and EG were compared for the effect of the intervention on the outcome variable.

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COMITE D'EXPERTS GOUVERNEMENTAUX

COMMITTEE OF GOVERNMENTAL EXPERTS

Ce Comité a tenu quatre sessions à Rome

1. Du 28 mars au 1 avril 1977
2. Du 12 au 16 décembre 1977
3. Du 17 au 21 avril 1978
4. Du 23 au 31 octobre 1978

The Committee held four sessions in Rome

1. From 28 March to 1 April 1977
2. From 12 to 16 December 1977
3. From 17 to 21 April 1978
4. From 23 to 31 October 1978

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