

UNIDROIT 1989
Study XII - Doc. 51
(Original: English)

U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
=====

PRELIMINARY DRAFT CONVENTION ON THE HOTELKEEPER'S CONTRACT
DRAWN UP BY A SUB-COMMITTEE OF THE GOVERNING COUNCIL

with

Commentary prepared by the Unidroit Secretariat

Rome, September 1989

1. On the occasion of the signing in Brussels, on 25 April 1970, of the Final Act of the Diplomatic Conference on the Travel Contract, the Conference adopted Recommendation No. 3 to the following effect:

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

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 hotelkeepers' liability, with respect to personal belongings brought by travellers, draft that was used as a basis for the European Convention in this field, the general elaboration of the uniform provisions on the hotelkeepers' contract, appears in the UNIDROIT work programme,

Expresses 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 hotelkeepers' contracts, to be subsequently submitted to the Governments for examination and eventual approval."

2. In conformity with the terms of this Recommendation, the Unidroit Secretariat drew up a report containing an analysis of the various problems arising in connection with the hotelkeeper's contract.⁽¹⁾ The report was accompanied by a list of questions for discussion at the first meeting of a working committee which had been established by the Governing Council to prepare uniform rules on the question.

3. Following two meetings held in March 1974 and January 1975 which were chaired by the Austrian member of the Governing Council, Mr R. Loewe, the working committee approved the text of a preliminary draft Convention on the hotelkeeper's contract.⁽²⁾ This draft, together with an Explanatory report prepared by the Unidroit Secretariat, was considered by the Governing Council which, at its 55th session in September 1976, decided that they should be circulated to Governments with a view to the convening of a committee of governmental experts to prepare a draft Convention on the subject.

4. In the course of four sessions held between March 1977 and October 1978 a committee of governmental experts chaired by the French member of the Governing Council, Mr J.-P. Plantard, elaborated a draft Convention on the hotelkeeper's contract. In accordance with the instructions of the Governing Council the Secretariat transmitted the text of the draft Convention to the Governments of the member States of the United Nations together with an Explanatory report prepared by the Secretariat⁽³⁾ and a request for information as to whether Governments would be prepared to participate in a diplomatic Conference for the adoption of the draft Convention. The replies were generally encouraging, although some of them echoed the concern expressed by the hotelkeeping profession at what it saw as the harshness of certain provisions of the draft in its regard.⁽⁴⁾

(1) UNIDROIT 1974, Study XII - Doc. 9.

(2) UNIDROIT 1976, Study XII - Doc. 14.

(3) For the text of the draft Convention and of the Explanatory report, see UNIDROIT 1978, Study XII - Doc. 50.

(4) This concern was expressed in a detailed memorandum submitted to the President of the Institute by the International Hotel Association (IHA) in 1981, the essence of which is reflected in Part II of this document.

5. In these circumstances and given the urgency attached to a number of other items on the Institute's Work Programme, it was decided temporarily to suspend further work on the draft but at its 63rd session, in May 1984, the Governing Council was informed of the fact that on 1 July 1983 the Parliamentary Assembly of the Council of Europe had adopted Recommendation no. 967 requesting the Committee of Ministers to "invite the Governments of member States to give their full support to the work being undertaken in Unidroit relating to an international convention on the hotelkeeper's contract and to take the necessary steps to ensure that an international diplomatic conference to settle this convention should be convened at an early date".

6. As on previous occasions, a difference of opinion emerged in the Governing Council as to the advisability of continuing work on the topic and, after lengthy discussion, the Secretariat was instructed to contact the interested professional bodies and consumer associations with a view to obtaining their reactions to the draft.

7. Following a meeting of a sub-committee of the Governing Council on 14 May 1985 to consider those reactions, a second meeting was held on 9 April 1986 for the purpose of proposing to the Council what action, if any, should be taken in this connection during the triennial period 1987 to 1989. The sub-committee was of the opinion that in its present form the draft Convention on the hotelkeeper's contract was far from being satisfactory and indeed that it offered little prospect of success, given the unjustified imbalance in favour of the guest. It felt however that the subject was an interesting one and that in view of the amount of work which had been put into the exercise it would be regrettable to abandon it at this time. The sub-committee therefore decided to recommend to the Governing Council that it entrust the Secretariat with a revision of the draft Convention, in the light in particular of the 1962 Council of Europe Convention on the liability of hotel-keepers concerning the property of their guests, hereafter referred to as the 1962 Convention,⁽⁵⁾ of the IHA International Hotel Regulations and of the suggestions made by the members of the sub-committee. This text⁽⁶⁾ could then be circulated by the Secretariat to the members of the sub-committee at a further meeting to be held in conjunction with a future session of the Council. The proposals of the sub-committee were endorsed by the Governing Council at its 65th session in April 1986 and it was agreed to maintain the item on the Work Programme for the triennial period 1987 to 1989 without priority.

8. The sub-committee met again on 13, 14 and 16 June 1988, on which occasion it substantially amended the new draft prepared by the Secretariat. The text drawn up by the sub-committee was submitted to the Governing Council at its 67th session and considered by it on 17 June 1988. Although there was insufficient time for the Council to consider the new draft in detail there was broad agreement that it represented a considerable improvement over earlier versions. In these circumstances the Governing Council decided that the 1978 draft and its accompanying commentary, as well as the text established by the sub-committee with an appropriate commentary, be transmitted to Governments on the clear understanding that the new version was not to be considered as a text approved by the Governing Council but as the result of work carried out by the Secretariat and a number of members of the Council at the request of the Governing Council as a whole, in the light of criticism of the earlier draft and of the need to take account of recent developments. The Governing Council also authorised

(5) Cf. Unification of Law, Yearbook 1962, pp. 96-105.

(6) UNIDROIT 1978, C.D. 67 - Doc. 7.

(7) For a concordance of the texts of the 1978 and 1988 versions of the draft, see APPENDIX I.

the Secretariat to reconvene the committee of governmental experts, invitations also being extended to certain non-member States which might have a special interest in the subject to designate observers to attend the session of the committee.

9. With a view to the reconvening of the committee of governmental experts the Secretariat has prepared the present paper which reproduces in Part I on the left hand pages the text of the 1978 draft and on the right the revised text approved by the sub-committee.⁽⁷⁾ The commentary contained in Part II takes as its starting point the text of the draft approved by the sub-committee of the Governing Council and sets out the reasons for the amendments proposed by the sub-committee to the 1978 version. It does not purport to establish a revised Explanatory report on the draft Convention and this paper should therefore be read in conjunction with Study XII -Doc. 50. Appendices II and III contain respectively the texts of the International Hotel Regulations adopted by the IHA Council on 2 November 1981 and of the 1979 International Hotel Convention relative to contracts between hotelkeepers and travel agents concluded between the IHA and the Universal Federation of Travel Agents Associations (the IHA/UFTAA Convention).⁽⁸⁾ Appendix IV reproduces the text of the Annex to the 1962 Convention and APPENDIX V that of Articles 1 and 2 of the Convention itself.

(8) Although this Convention has been denounced by the IHA with effect from 14 June 1987, it does represent a codification of existing practice and its provisions therefore remain of particular interest.

I. DRAFT CONVENTION ON THE HOTELKEEPER'S CONTRACT(*)

(Approved by the committee of governmental experts
at its fourth session in October 1978)

THE STATES PARTIES TO THE PRESENT CONVENTION,

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

HAVE AGREED as follows:

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.

(*) 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 was based on the pattern of other instruments, remained that of the Unidroit Secretariat. The language of these articles would call for substantial revision in the light of more recent developments in the drafting of the final clauses of Unidroit conventions and they are not reproduced below.

I. PRELIMINARY DRAFT CONVENTION ON THE HOTELKEEPER'S CONTRACT
(Text approved by a sub-committee of
the Governing Council on 16 June 1988)

THE STATES PARTIES TO THE PRESENT CONVENTION,

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

HAVE AGREED as follows:

CHAPTER I
DEFINITIONS AND SCOPE OF APPLICATION

Article 1

For the purposes of this Convention:

(1) - "Hotelkeeper's contract" means a contract by which one person, acting on a regular business basis, undertakes for reward to provide another with temporary accommodation and ancillary services in an establishment under his supervision.

2) - "Hotelkeeper" means the person who undertakes to provide accommodation under a hotelkeeper's contract.

(3) - "Guest" means any person who is entitled to occupy accommodation under a hotelkeeper's contract.

(4) - "Accommodation" does not include accommodation provided to the guest:

- (a) on a vehicle being operated as such in any mode of transport; or
- (b) by a non-profit making establishment; or
- (c) by an establishment whose primary aim is not the provision of accommodation.

(5) - "Property" does not include vehicles, any property left with a vehicle, or live animals.

Article 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. However, nothing in this Convention shall affect the respective rights and duties of a hotelkeeper and a travel organiser, that is to say a person who in the course of his business undertakes to provide in his own name for another, for an inclusive price, a combination of accommodation with transportation or any other service.

Article 2

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

CHAPTER II

CONCLUSION AND PERFORMANCE OF THE CONTRACT

Article 3

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

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

Article 4

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

(2) - A hotelkeeper's contract concluded for a period of time defined approximately shall be deemed to be concluded for a determined period. The termination date of such a contract shall be established by reference to the earliest date or shortest time mentioned in the period defined. For the purposes of this provision references to a week are to be taken as seven days and to a month as twenty-eight days.

(3) - A hotelkeeper's contract concluded for an indeterminate period shall be deemed to be concluded on a day-to-day basis. The hotelkeeper or the guest may terminate it by expressing his intention in this regard to the other before midday, or such other reasonable time as may be provided by the hotelkeeper's contract or the regulations of the hotel.

(4) - The guest may be required to vacate the accommodation occupied by him on the day of the termination of the hotelkeeper's contract at such reasonable time as is provided by the contract or by the regulations of the hotel. If no such time is specified, the guest may occupy the accommodation up to 2 p.m.

Article 5

(1) - The hotelkeeper shall be liable to the guest for the damage actually suffered by him to the extent that he fails to provide the accommodation and services 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 3

This Convention applies when 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 4

No form is required for the hotelkeeper's contract.

Article 5

(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 is obliged 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 6

(1) - The hotelkeeper shall be liable for the damage actually suffered by the guest to the extent that he fails to provide the accommodation and services in performance of the hotelkeeper's contract.

(2) - He shall nevertheless be relieved of such 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 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.

Article 7

(1) - A guest who, for the whole or 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) - A guest shall be relieved of liability under paragraph 1 if the hotelkeeper is informed of the cancellation of the reservation not later than twenty-one days before the date on which the accommodation was to be occupied or before the commencement of any such shorter period as may be agreed by the parties to the hotelkeeper's contract.

(4) - Subject to paragraph 3, a guest who fails to occupy the accommodation agreed under the hotelkeeper's contract shall be relieved of liability under paragraph 1 if, within one month of the last day on which the accommodation was to be occupied, he pays to the hotelkeeper an amount equivalent to a percentage of the price of the accommodation and ancillary services provided for in the hotelkeeper's contract, calculated in accordance with the length of the stay in the following manner:

- (a) 70 percent of the price in respect of a stay not exceeding three days;
- (b) 55 percent of the price in respect of a stay of from four to seven days;
- (c) 40 percent of the price in respect of a stay of from eight to fourteen days;
- (d) 30 percent of the price in respect of a stay of from fifteen to twenty-one days;
- (e) 25 percent of the price for a stay of twenty-one days in respect of a stay in excess of twenty-one days.

(5) - A guest who relinquishes the accommodation before the termination of the hotelkeeper's contract shall be relieved of liability under paragraph 1 if, within one month of his departure from the hotel, he pays the hotelkeeper an amount equivalent to a percentage of the price of the accommodation and ancillary services relating to the period after the date of departure during which the guest fails to occupy the accommodation. The amount payable by the guest shall be calculated in accordance with the percentage stipulated in paragraph 4, subject to the substitution of the said period for the length of the stay.

Article 8

(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.

(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 5, 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 right of detention and sale and on the proceeds of such sale.

(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 9

(1) - A 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 10

If the hotelkeeper receives 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 under the hotelkeeper's contract. The hotelkeeper shall return it to the extent that it exceeds the amount due to him under the terms of this Convention. In the absence of any contrary indication by the guest, the advance payment shall, where the guest is in default, be deemed to be a payment under paragraph 4 or 5 of Article 7.

Article 11

(1) - Except in cases where the sum payable to the hotelkeeper is due by a person 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 retain any property of commercial value brought to the premises of the hotel by a guest.

(2) - The hotelkeeper shall not, however, be entitled to retain 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 in the State within whose territory the hotel is situated.

(3) - The hotelkeeper may, after giving adequate and timely notice, cause to be sold the property retained by him up to the amount necessary to satisfy his claim. He shall account appropriately for the balance of the proceeds of the sale in excess of the sums due to him plus the reasonable costs of the sale.

(4) - The internal law of the place in which the hotel is situated shall determine the effects which third party rights may have on the hotelkeeper's rights of retention and sale and on the proceeds of such sale.

(5) - The procedures of the sale shall be governed by the internal law of the place of the 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.

CHAPTER III

LIABILITY OF THE HOTELKEEPER FOR DEATH AND PERSONAL INJURIES

Article 12

(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 act or omission of a third party, 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 any other person.

CHAPTER IV

LIABILITY OF THE HOTELKEEPER FOR LOSS OF OR DAMAGE TO PROPERTY

Article 13

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 14

(1) - The hotelkeeper shall be bound to receive securities, money and valuable articles for safe custody; he may refuse such property only if it is dangerous or if, having regard to the size or standing of the hotel, it is of excessive value 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) - The liability of the hotelkeeper shall be unlimited:

(a) where the property has been deposited with him;

(b) where he has refused to receive property which he is bound to receive for safe custody.

(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.

Article 15

(1) - The liability of the hotelkeeper for property other than that referred to in Article 14 shall not exceed, in respect of any single event, fifty times the charge for the accommodation.

(2) - For the purposes of this article, 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.

(3) - The hotelkeeper may not avail himself of the limitation of liability provided for in paragraph 1 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 18.

Article 16

The hotelkeeper shall not be liable under Article 13 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 17

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 under Article 18.

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 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;

CHAPTER V

MISCELLANEOUS PROVISIONS

Article 18

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 19

(1) - Any agreement concluded by a hotelkeeper with a guest or with any other person shall be void to the extent that it derogates from the provisions of this Convention in a manner detrimental to the guest.

(2) - No stipulation in an agreement between a hotelkeeper and a 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 X

(1) - Any State may, at the time of signature, ratification, acceptance, approval or accession, declare by notification addressed to ... that it will impose greater liabilities upon hotelkeepers than those provided for in this Convention.

- (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 establishments 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

(2) - The declaration referred to in the preceding paragraph may be amended or withdrawn at any time by notification addressed to

II. COMMENTARY ON THE REVISED TEXT OF THE PRELIMINARY DRAFT CONVENTION ON THE HOTELKEEPER'S CONTRACT AS APPROVED BY A SUB-COMMITTEE OF THE GOVERNING COUNCIL ON 16 JUNE 1988

PREAMBLE

1. The text of the preambular provisions was unaltered by the sub-committee of the Governing Council save for one very minor drafting change in the English text.

CHAPTER I

DEFINITIONS AND SCOPE OF APPLICATION

Article 1

2. The principal amendment made to Chapter I by the sub-committee of the Governing Council has been the splitting up of Article 1 of the 1978 version into two articles, the first of which contains a series of definitions while the second seeks to clarify certain aspects of the scope of application of the draft Convention.
3. The first three paragraphs of the new Article 1 correspond in substance to paragraph (1) of the 1978 text. That provision, which sought to offer a comprehensive definition of the hotelkeeper's contract, has been criticised on the grounds that it was unnecessarily complicated and that while defining expressly the "hotelkeeper's contract" it defined only by implication the "hotelkeeper" and the "guest". The effect of the amendment proposed by the sub-committee is to maintain in Article 1 (1) a description of the essential ingredients of the hotelkeeper's contract to be found in the original provision and, in paragraphs (2) and (3), to offer definitions of the "hotelkeeper" and of the "guest" built around, respectively, the undertaking to provide accommodation under a hotelkeeper's contract and the entitlement to occupy accommodation under such a contract.
4. Although the proposed new Article 1 (4) does not seek to define "accommodation" as such, as neither the committee of governmental experts nor the sub-committee of the Governing Council believed this to be necessary, it does specify three cases in which the provision of accommodation will not be regarded as falling under the future Convention. The first of these, which concerns accommodation provided to the guest on a vehicle being operated as such in any mode of transport, was already excluded by Article 20 (a) of the 1978 version. The other two, namely accommodation provided to the guest by a non-profit making establishment or by an establishment whose primary aim is not the provision of accommodation, were contemplated by the 1978 version, although the differences of opinion within the committee of governmental experts were such that Article 24 (1)(a) of that draft only permitted States to exclude the application of the Convention in such cases by way of reservation. The sub-committee was, however, of the opinion that the number of reservations possible under the future instrument should be kept down to a bare minimum and it has therefore proposed the total exclusion of such accommodation in Article 1 (4)(b) and (c).

5. The addition of paragraph (5) represents a change in policy for whereas Article 20 (b) of the 1978 draft simply provided that the expression "property" shall not include live animals, paragraph (5) follows Article 7 of the Annex to the 1962 Convention by extending the exclusion to vehicles and to any property left with a vehicle. It should however be noted that the solution retained in the 1978 draft was accompanied by a reservation clause (Article 24 (1)(d)), permitting States not to apply the provisions of Chapter IV to vehicles or any property left with a vehicle or to attach conditions to such application, while Article 2 (e) of the 1962 Convention provides that notwithstanding the provisions of Article 7 of the Annex Contracting Parties may "apply the rules in the Annex to vehicles, property left with them and live animals, or to regulate the hotelkeeper's liability in this respect in any other way".

6. Once again the sub-committee preferred to lay down a clear rule in the body of the draft without including a specific reservation clause although it should be borne in mind that Article X (1) of the 1988 version offers a general faculty to States to "impose greater liabilities upon hotelkeepers than those provided for in this Convention", a provision which corresponds to Article 1 (2) of the 1962 Convention and which would in effect permit States to bring within its terms many or all of the cases contemplated by both paragraphs (4) and (5) of the revised Article 1.

Article 2

7. The first sentence of this article corresponds textually to paragraph (2) of Article 1 of the 1978 draft, providing as it does that "[t]he hotelkeeper's contract may be concluded between the hotelkeeper and the guest or between the hotelkeeper and a party other than the guest". In other words it establishes the general principle that the future instrument shall apply irrespective of whether the contract is concluded with the hotelkeeper by the guest itself, by a travel agent acting on the guest's instructions, by, for example, an embassy on behalf of a visiting delegation or, as is increasingly common, by a travel organiser offering a package tour which enters into a contract of "allotment" with the hotelkeeper in which circumstances the hotelkeeper has no contractual relations with the guest.

8. The decision of the committee of governmental experts to contemplate such a wide scope of application of the future Convention raised however two issues, the first of these being whether some of its provisions should apply only to hotelkeepers' contracts concluded between a hotelkeeper and a guest and the second whether certain provisions of the Convention should apply to the relations between a hotelkeeper and a party to the hotelkeeper's contract other than the guest.

9. As to the first issue, there has throughout the work on the draft Convention been wide agreement that the absence of contractual relations between the hotelkeeper and the guest should in no way deprive the guest of its rights under Chapters III and IV, concerned as they are with the liability of the hotelkeeper for death and personal injuries and for damage to property. Where some difficulties were seen however was in connection with the application *sic et simpliciter* of certain of the provisions of Chapter II, conclusion and performance of the contract, which will be considered below since it is only in relation to the specific provisions of each article of that chapter that the possible problems can be identified. It is, at this stage, sufficient perhaps to recall that the sub-committee of the Governing Council endorsed the general approach of the committee of governmental experts by making provision for the application, in principle, of the totality of the future Convention to the relations between the hotelkeeper and the guest irrespective of whether the guest is a party to the hotelkeeper's contract.

10. With regard to the second issue, it was recognized from the outset that any future Convention on the hotelkeeper's contract should refrain from interfering with the contractual relations between the hotelkeeper and travel organisers which are usually regulated on the basis of general conditions. This principle found expression in Article 1 (3) of the 1978 draft which limited the application of the Convention "to relations between the hotelkeeper and the guest", except where the Convention provides otherwise. These exceptions were contained in Article 6 (6) relating to cases of cancellation, no-show or premature departure of the guest, although the rules established by paragraphs (1) to (5) of that article could be excluded or derogated from by agreement of the parties to the contract, and in Article 21 (2), according to which: "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". It might however be argued that this provision is not a genuine exception. As will be seen below, the sub-committee of the Governing Council did not retain paragraph (6) of Article 6 in its redraft of the article (now Article 7) while the substance of Article 21 (2) has been incorporated in the new Article 19 (1).

11. The sub-committee recognized however the need to safeguard the contractual arrangements between hotelkeepers and travel organisers against any unintended interference by the prospective Convention and to this end the second sentence of the new Article 2 has been worded as follows: "However, nothing in this Convention shall affect the respective rights and duties of a hotelkeeper and a travel organiser, that is to say a person who in the course of his business undertakes to provide in his own name for another, for an inclusive price, a combination of accommodation with transportation or any other service."

12. The sub-committee appreciated that by making specific reference in the contract to a travel organiser some definition would be required. Since however this is the only provision in the whole of the revised draft Convention in which the travel organiser is mentioned, it was agreed to include the definition, which is constructed from language to be found in Article 1 of the draft Directive of the Commission of the European Communities on package holidays, in the body of Article 2 itself.

Article 3

13. This article corresponds to Article 2 of the 1978 draft, stating as it does that the Convention will apply when the premises in which the accommodation is to be provided are situated within the territory of a Contracting State.

14. At the request of a small number of delegations the committee of governmental experts had decided in 1978 to permit States to make a reservation in this respect (Article 24 (1)(b)), to the effect that the Convention would apply when the hotel was situated on the territory of a State other than that in which the guest has its habitual residence. The members of the sub-committee however saw no justification for drawing a distinction between guests founded on their place of residence and did not therefore include this possibility for a reservation in the new Article X which replaces the former Article 24.

CHAPTER II

CONCLUSION AND PERFORMANCE OF THE CONTRACT

Article 4

15. This article corresponds to Article 3 of the 1978 draft, which laid down the principle that a hotelkeeper's contract is concluded only when one party expressly accepts the offer made by the other. This rule was adopted by the committee of governmental experts which believed that it was important to state expressly the general principle so as to make it 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. In this connection, it should be borne in mind that it was precisely that solution which was to be found in Article 4 of the original preliminary draft prepared by the working committee which had provided that: "Failure by the hotelkeeper to reply to a request [for accommodation] shall be considered as acceptance, unless the guest has expressly requested a reply".

16. Criticism was expressed by one member of the sub-committee of the Governing Council of the requirement that for a hotelkeeper's contract to be concluded, one party must "expressly" accept the offer made by the other, since in his view it did not correspond to actual practice. It was however recognized that the deletion of the word "expressly", while constituting a compromise between the 1978 solution and that recommended by the working committee in 1976, would do little more than restate a generally accepted principle of the law of contract and in these circumstances the sub-committee deemed it preferable to delete the provision as a whole.

17. Article 3 (2) of the 1978 version, which provided that the hotelkeeper's contract "need not be evidenced by writing and shall not be subject to any requirements as to form", was based on similar provisions to be found in a number of international instruments. The sub-committee however took the view that it was unnecessary to make any specific reference to writing and it therefore proposed that Article 4 contain a single sentence worded as follows: "No form is required for the hotelkeeper's contract". This provision should not, however, be misunderstood for if one party expressly requires, for example, confirmation in writing of the other party's acceptance of its offer, then it would seem that the question of whether the contract has been concluded should be determined by the general principles of the applicable law governing the formation of the contract.

Article 5

18. The sub-committee of the Governing Council suggested no changes to the text of this article, formerly numbered Article 4 in the 1978 version. It should however be recalled that the point has been raised in connection with paragraph (4) that in some jurisdictions, in particular in North America, a hotelkeeper cannot require a guest to leave a hotel simply on the ground that the agreed period for the provision of accommodation has expired. Clearly, the acceptance of paragraph (4) would be incompatible with this practice and an alternative has been suggested under which the guest would not be under an obligation automatically to relinquish the accommodation at the end of the hotelkeeper's contract although it would be liable to the hotelkeeper for any compensation payable by the latter to other guests under Article 6 as a result of the guest's failure to vacate that accommodation.

19. The application of the provisions of this article to contracts concluded between a hotelkeeper and a person other than a guest would not seem to be objectionable in principle although its practical value is questionable as it is extremely unlikely that an organised travel contract would contemplate occupation by the guest of accommodation for an indeterminate period.

Article 6

20. Subject to a very few minor drafting changes, the text of this article corresponds exactly to that of Article 5 of the 1978 version.

21. It might nevertheless be worth recalling that a suggestion has been made by one of the professional associations that Article 6 should only come into operation when the guest has a guaranteed payment reservation or an advance deposit reservation. It should however be noted that the practice of calling for an advance payment is, in respect of commercial hotels, more common in North America than in other continents, in particular Europe, and that while it is true that Article 7 of the first Part of the IHA Regulations provides that the hotel may ask for full or partial pre-payment, Article 5 of the same Part of those Regulations does not subject the hotelkeeper's liability in the event of over-booking or failure to procure alternative accommodation to the condition of the guest's having provided an advance payment or a guarantee of payment. The sub-committee however considered that the question of advance payments should be examined in connection with Article 10 of the revised draft.

22. What is perhaps of more importance is how far the provisions of Article 6 should apply when the guest has no contractual relations with the hotelkeeper. If the contract has been concluded with the hotelkeeper by a travel organiser who is not acting as an agent of the guest, or indeed of the hotelkeeper, it would normally be against the travel organiser that the guest would turn in the event of the hotelkeeper's failing to provide the agreed accommodation. It is however possible that the organiser would be unable to meet its liability towards the guest and in such circumstances a case could perhaps be made out for granting a direct right of action to the guest against the hotelkeeper who has received payment of sums due from the travel organiser under the travel contract. Suppose however that the hotelkeeper has not received payment, either in whole or in part, from the travel organiser and has in consequence concluded a subsequent agreement with another travel organiser. If the meaning of Article 6 (1) is that the hotelkeeper would in such a case be liable to the guest for what is in effect the travel organiser's failure to perform, this might seem to be a rather curious result.

23. This question was considered by the sub-committee and it may be that the substitution of the words "in performance of the hotelkeeper's contract" for "under the hotelkeeper's contract" would meet the difficulty in that the hotelkeeper would not be liable to the guest in the event of failure by the travel organiser to make an advance payment to the hotelkeeper because in such cases the hotelkeeper would be under no duty to perform. The point is, from a practical point of view, a not unimportant one and might merit further consideration.

Article 7

24. There can be little if any doubt that Article 6 of the 1978 draft, now Article 7, is the article which aroused most hostility on the part of the hotelkeeping profession. At the same time it underwent

probably the most substantial amendment by the sub-committee of the Governing Council. In order to facilitate understanding of the changes to the article proposed by the sub-committee, a few words may be in order regarding the general philosophy and structure of the article and the reasons for the hotel-keepers' antagonism towards it.

25. What Article 6 of the 1978 draft did was in the first place to affirm the liability of the guest towards the hotelkeeper for any damage actually suffered by the latter as a consequence of the guest's failure, for the whole or part of the period stipulated, to occupy the accommodation agreed under the hotelkeeper's contract (paragraph (1)) and secondly to impose an obligation on the hotelkeeper to take all reasonable steps to mitigate such damage (paragraph (2)), for example by reletting the accommodation to another guest.

26. Those provisions proved to be mainly uncontroversial and indeed correspond to generally accepted principles of law. What was innovatory was the system established by paragraphs (3), (4) and (5), the combined effect of which was:

- (1) to limit the compensation payable to the hotelkeeper to an amount based on a percentage of the price of the accommodation and ancillary services provided for in the contract, to be calculated in function of the number of days for which the contract was concluded up to a maximum of seven, after which no compensation was due (paragraph (3)) and
- (ii) to disallow any compensation to the hotelkeeper in the event of the guest's informing it of the cancellation of the reservation within a certain period before the date on which the accommodation was to be accepted, that period depending upon the length of the stay (paragraph (4)) or, in the event of the guest's informing the hotelkeeper of its intention to relinquish the accommodation within a certain period before the day of departure, that period being determined by the length which the contract still had to run.

27. Finally, as mentioned above, paragraph (6) provided that the article should apply to relations between a hotelkeeper and a party to the hotelkeeper's contract other than the guest unless the parties to the contract had otherwise agreed.

28. Paragraphs (3) to (5) met with considerable opposition from the IHA in its written submissions to the Unidroit Secretariat which may be summed up as follows:

(1) the effect of paragraph (3)(a) and (b) could be to entitle the hotelkeeper to compensation which would not meet its loss in full, thereby encouraging clients to reserve hotel accommodation with no serious intention of occupying it and to break their contracts at will;

(2) the provisions of paragraph (4) fail to take account of the fact that over 90% of clients make reservations in city hotels and 100% in resort hotels, a situation which would render it impossible for hotels to relet accommodation (especially whenever large groups whose accommodation had not been reserved by a travel organiser are involved) if the provisions on cancellation contained in paragraph (4) were to be maintained; the result would be that hotels could no longer operate profitably in the absence of resort to heavy overbooking, especially in city hotels, by accepting reservations for many more rooms than they could provide - as many as the average number of rooms cancelled under the terms set out in sub-paragraphs (a) to (c) of paragraph (4) - with the unavoidable consequence that on days with fewer than average cancellations not all clients who had reserved accommodation would obtain it;

(3) a situation would thus be created in which the client's certainty of enjoying the accommodation it had reserved would be seriously diminished while the hotelkeeper would be exposed to the risk of having to pay compensation under Article 5;

(4) while the objections to the provisions of paragraph (4) also apply to those of paragraph (5), the position of the hotelkeeper would here be even worse since no client wishing to spend a vacation in a certain hotel would be willing to be put on a waiting list and to obtain accommodation only in the event of the premature departure of guests who had concluded hotel contracts for a number of weeks; it would therefore be well-nigh impossible for the hotelkeeper to make up the loss caused by such premature departure;

(5) the combined effect of the provisions of Article 6, paragraphs (3) to (5) would be to give a unilateral right of withdrawal to one party which would be in contradiction with fundamental principles of equity.

29. Against these arguments it should be recalled that a large majority of delegations to the committee of governmental experts endorsed the limitation placed on the compensation payable by the guest and in some cases its exemption from liability, firstly because in practice hotelkeepers rarely claim the full amount due from the guest in respect of the period covered by the contract, secondly because the existence of a limitation on the compensation would encourage the hotelkeeper to avoid loss by reletting the accommodation and last, but not least, because the provisions in question answered the growing demand for consumer protection. In reaching its decision the committee did not fail to give consideration to the special problems associated with the prejudice 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 however 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 any diplomatic Conference for the adoption of the draft Convention.

30. In weighing up the arguments and while coming to the conclusion that Article 6 of the 1978 draft tipped the balance of the scales unfairly against the hotelkeeper, the sub-committee nevertheless noted that Articles 39 to 42 and 51 to 55 of the IHA/UFTAA Convention did indeed contemplate the possibility of reservations being cancelled by the travel agent without payment of compensation or with compensation restricted to a certain amount. The minimum period of notice necessary to avoid payment of compensation in respect of individual contracts was 30 days before the date of arrival in high season in what are described in Article 39 as "mainly tourist type hotels" and the maximum compensation due for each client whose reservation is cancelled the equivalent of the cost of services ordered for a three night stay for stays of three nights or over in high season irrespective of the type of hotel. The IHA/UFTAA Convention was, however, more severe in respect of the travel agent in cases of premature departure or no-show where the hotelkeeper was in principle entitled to compensation for the damage actually suffered (Article 42).

31. In these circumstances the sub-committee decided to maintain the basic structure of the article, namely affirmation of the guest's liability for breach of contract and of the hotelkeeper's duty to take reasonable steps to mitigate its loss, application of a ceiling on damages payable to the hotelkeeper and recognition in limited cases of the guest's right of unilateral withdrawal.

32. To this end it proposed the retention of paragraphs (1) and (2) without any amendment although a number of radical alterations were suggested to the remainder of the article. Thus, the new Article 7 (3) would substantially reduce those cases in which a guest failing to occupy the accommodation would be relieved of liability under paragraph (1), such relief being confined to those cases where "the hotelkeeper is informed of the cancellation of the reservation not later than twenty-one days before the date on which the accommodation was to be occupied or before the commencement of any such shorter period as may be agreed by the parties to the hotelkeeper's contract". The period of twenty-one days represents a substantial departure from the 1978 draft under which it was possible for no damages to be due even if notice of cancellation reached the hotelkeeper no later than midday on the day on which the accommodation was to be occupied (Article 6 (4)(a)) and in accordance with which the guest would in any circumstances be relieved of liability if notice of cancellation was given seven days before the date on which the accommodation was to be occupied.

33. The new Article 7 (4) corresponds to the former Article 6 (3) and likewise increases the burden on the guest since with the exception of a stay of only one or two days, which would normally affect only commercial hotels with a rapid turnover, the limitation amount calculated on the percentage of the price of the accommodation in relation to the length of the stay has been substantially increased although it should be stressed that the figures proposed by the sub-committee were only offered as an indication of a possible solution to the committee of governmental experts.

34. The problem of the premature departure of the guest has been dealt with in the new Article 7 (5) and an entirely new approach adopted. As apposed to Article 6 (5) of the 1978 draft, which allowed for total relief from liability of the guest in certain circumstances, on condition that it gave advance warning to the hotelkeeper, Article 7 (5) provides that a guest "who relinquishes the accommodation before the termination of the hotelkeeper's contract shall be relieved of liability under paragraph (1) if, within one month of his departure from the hotel, he pays the hotelkeeper an amount equivalent to a percentage of the price of the accommodation and ancillary services relating to the period after the date of departure during which the guest fails to occupy the accommodation. The amount payable by the guest shall be calculated in accordance with the percentage stipulated in paragraph (4), subject to the substitution of the said period for the length of the stay". If the guest fails to make such payment then it is implicit that it will be liable in damages to the hotelkeeper, without limitation, for any loss the latter suffers as a consequence of its failure to relet the accommodation on the same conditions.

35. Finally in connection with Article 7, it should be noted that the sub-committee proposed the deletion of the former Article 6 (6) according to which the provisions of the article as a whole would, in the absence of contrary agreement, apply to relations between a hotelkeeper and a party to the hotelkeeper's contract other than a guest. This decision is in line with the second sentence of Article 2 of the text approved by the sub-committee but the question still remains of whether, as a matter of policy, a guest who has no contractual relations with the hotelkeeper should be liable under Article 7 or whether any compensation due to the hotelkeeper should be payable by the person who actually concluded the hotelkeeper's contract in accordance with the law applicable to the contract.

Article 8

36. The text of this article corresponds almost word for word to that of Article 7 of the 1978 draft. The article has been the subject of criticism as being unnecessary and vague, it having been suggested in particular that the test of reasonableness in paragraph (1), especially when applied to a regulation of the hotel, could be a source of potential dispute and that the concept of serious or persistent breach in paragraph (2) might be relied upon by a capricious guest or hotelkeeper to "wipe out virtually every obligation under the Convention". The sub-committee nevertheless favoured its retention for the reasons which had led the committee of governmental experts to decide upon its inclusion, in particular that the hotelkeeper's contract is in many respects atypical and that to a far greater degree than is the case with most other contracts its satisfactory performance depends as much upon the social behaviour of the parties as on the performance of purely legal obligations.

37. Apart from purely minor drafting changes, the only amendment proposed by the sub-committee to the articles involves the deletion of the words "having regard to all the circumstances and to the usual practice" at the end of paragraph (1) which it saw as being redundant in the light of the test of reasonableness applied to the behaviour of the hotelkeeper and the guest and to the regulations of the hotel.

Article 9

38. The sub-committee of the Governing Council made no changes to the text of Article 8 of the 1978 draft (now Article 9). However, from a conceptual standpoint, a difficulty might be seen in the present drafting in those situations where the accommodation has been procured for the guest under a contract to which it is not a party. If no contract exists between the hotelkeeper and the guest it is not easy, at least for some legal systems, to see how a hotelkeeper's contract could be terminated by the guest under Article 9. The question is probably a terminological one which could be addressed in any future consideration of the draft Convention.

Article 10

39. Of the three amendments proposed to this article (formerly Article 9), one, the addition of the words "under the hotelkeeper's contract" at the end of the first sentence, may be seen as merely a matter of clarification. However the deletion of the words "by the guest" in the first line of the 1978 draft has the effect of broadening the scope of the provision to cover cases where payment has been advanced by a person other than the guest. The language would, in particular, encompass hotelkeeper's contracts concluded, for example, by an embassy and in theory also contracts concluded with the hotelkeeper by a travel organiser although the practical effect would seem to be nil in the latter case in view of the wording of the second sentence of the new Article 2.

40. The other change to the article involves the addition to the 1978 version of a second sentence worded as follows: "In the absence of any contrary indication by the guest, the advance payable shall, where the guest is in default, be deemed to be a payment under paragraph (4) or (5) of Article 7."

41. Finally, in connection with this article, it may be recalled that the sub-committee considered, but rejected, a Secretariat proposal to add a new paragraph to the effect that: "Notwithstanding the provisions of paragraph (1) of this article, the hotelkeeper may retain as a non-refundable deposit an advance payment equivalent to the price of one day's accommodation and ancillary services as provided for in the contract".

42. This proposal was made in the light of a fairly widespread practice in some parts of the world of the hotelkeeper requiring such a payment as a condition for accepting a reservation.

Article 11

43. No important changes of substance were made to this article, formerly Article 10, by the sub-committee of the Governing Council, although it should be noted that at the end of paragraph (2) the words "in the State within whose territory the hotel is situated" have been added. This, like most of the other amendments to the article, takes account of the language of Article 10 of UNCITRAL's draft Convention on the liability of operators of transport terminals in international trade, which developed out of Article 5 of Unidroit's preliminary draft Convention on operators of transport terminals (OTT's) and which was itself based on Article 10 of the 1978 version of the draft Convention on the hotelkeeper's contract.

CHAPTER III

LIABILITY OF THE HOTELKEEPER FOR DEATH AND PERSONAL INJURIES

Article 12

44. In its written observations on this article, (Article 11 in the 1978 draft), the IHA confined itself to the following comments on paragraphs (1) and (4):

"This article seems to provide that the hotelkeeper should be responsible any personal injuries to a guest occurring while he is staying at the hotel, and compensate for such injuries, regardless of whether injuries were caused by the hotelkeeper or by any other person.

This seems to extend the objective liability customary for goods belonging to the guest and brought into the hotel in an extraordinary way.

In no other trade would the proprietor of the premises be liable for injuries to clients caused by third parties. The person who committed the injury is of course liable.

A regulation as proposed in Article 11, (1) and (4) might have far-reaching consequences should the hotelkeeper be liable for injuries to a client or a number of clients inflicted by any criminal entering the hotel without the consent of the hotelier, or even by force.

If he cannot prove, and this might turn out to be quite difficult, that he had exercised the care which the circumstances called for, why should the hotelkeeper be required to compensate the guest in full, if the loss or damage results from the fault of a party other than the guest? (11.4). Why should not the party responsible compensate?

We think it would be an injustice to impose such a liability on the hotelkeeper; we furthermore think that this would be a discrimination against the hotelkeeper and the whole hotel industry."

45. The sub-committee of the Governing Council gave careful consideration to these remarks but felt obliged to recall that liability in respect of injury suffered by a guest as a result of the act or omission of a third party will not be incurred by the hotelkeeper under paragraph (1) if the injury "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". It is furthermore to be noted that paragraph (1) leaves open the question of the burden of proof so that it will be up to the court to apply the normal rules governing evidence in cases of personal injury or death, by placing the burden either on the guest to prove fault or on the hotelkeeper to prove that he was not at fault, or again by invoking no presumption but simply reaching its decision on the balance of the evidence.

46. In these circumstances the sub-committee left the text of the article virtually unchanged, the only modification of substance being the substitution in paragraph (4) of the words "act or omission" for "fault". The effect of this amendment would seem to be marginal in view of the hotelkeeper's duty under paragraph (4) to compensate the guest in full, subject of course to a right of recourse under paragraph (5), in cases where the act or omission of a person other than the guest was the cause of the loss or damage suffered by the guest.

CHAPTER IV

LIABILITY OF THE HOTELKEEPER FOR DAMAGE TO PROPERTY

47. As is well-known, the provisions of this chapter are to a very large extent based on those of the 1962 Convention, which was itself influenced substantially by a Unidroit draft approved by the Governing Council on 5 October 1934. It should, when considering the relations between the 1962 Convention and the 1978 Unidroit draft, be recalled that the former is in force between Belgium, Cyprus, France, the Federal Republic of Germany, Ireland, Italy, Luxembourg, Malta and the United Kingdom, and that one of the criticisms levelled against the 1978 draft by the IHA was that it departed in some important respects from the provisions of an international Convention which was already widely applied. It has however been pointed out that, notwithstanding the differences between the two texts, it is incorrect to speak of incompatibility since the 1962 Convention lays down in effect only minimum standards of liability, Article 1, paragraph (2) providing that "Each Contracting Party shall nevertheless remain free to impose greater liabilities on hotel-keepers".

48. At a meeting held in April 1986, a sub-committee of the Governing Council considered the provisions of Chapter IV in some detail. It requested the Unidroit Secretariat to bring about a greater rapprochement between those articles and the corresponding provisions to be found in the Annex to the 1962 Convention and it was such a redraft of Chapter IV which was submitted by the Secretariat to the meeting of the sub-committee of the Council held in June 1988.

Article 13

49. Article 13 of the 1988 version of the draft Convention corresponds word for word to Article 12 of the 1978 draft.

Article 14

50. This article corresponds to Article 13 of the 1978 draft and, with some rearrangement, it takes over almost word for word the language of Article 2 of the Annex to the 1962 Convention. Two principal criticisms were indeed levelled against the text approved by the Unidroit committee of governmental experts. The first of these related to Article 13 (1) of the 1978 draft (now Article 14 (1)) in respect of which it was pointed out that Article 2 (2) of the Annex to the 1962 Convention permits the hotelkeeper to refuse securities, money and valuable articles not only if they are dangerous or cumbersome but also if, having regard to the size or standing of the hotel, they are of excessive value, and it was suggested that if clients travel with property of excessively high value they should use bank safes, as hotel safes are neither built nor installed for the deposit of high value property. In the light of these observations the sub-committee decided to reintroduce the third exception to the hotelkeeper's duty to accept property tendered for deposit.

51. The sub-committee also decided to replace the principle of limited liability contained in Article 13 (3) by that of unlimited liability to be found in Article 2 (1) of the Annex to the 1962 Convention. It is perhaps somewhat surprising that the hotelkeeping profession has preferred the solution to be found in the 1962 Convention on this point although it should be recalled that Article 2(d) of that instrument allows Contracting States to exercise the option to permit hotelkeepers, in cases where neither intent nor fault tantamount to intent is involved, to limit their liability in cases where property has been deposited with them by an agreement with the guest signed by him and including no other terms, on condition however that liability may not be reduced to an amount which is less than that provided in the relevant legislation enacted in pursuance of the Convention. It must however be stressed that this option is one open to Contracting Parties and not, as the written submissions of the IHA seem to suggest, directed to hotelkeepers with the consequence that it is questionable whether the amendment of Article 13 (3) will indeed reduce the insurance burden on hotelkeepers to the extent which they seem to expect. With a view to harmonising the provisions of the draft Unidroit Convention with those of the 1962 Convention, the Secretariat made provision for the reservation contemplated by Article 2(d) thereof but the sub-committee rejected such a solution which it saw as reducing the degree of uniformity which it was one of the main objectives of the future Convention to bring about.

52. It should however be noted that Article 14 (2) of the 1988 version maintains the right for the hotelkeeper included in Article 13 (2) of the 1978 draft, but lacking in Article 2 (3) of the Annex to the 1962 Convention, to examine the property tendered to him for safe custody.

Article 15

53. The three paragraphs of the revision version of this article correspond respectively to Articles 14, 15 and 16 of the 1978 text. The principal change introduced in paragraph (1) of Article 15 is to replace the limitation amount of a multiple of one hundred times the charge for the accommodation to one of fifty times that charge, which the sub-committee considered to be reasonable in the light of the evolution of prices (see Article 2(a) of the 1962 Convention).

54. Although the IHA has drawn attention to the fact that the 1978 draft departed from the 1962 Convention in that it failed on the one hand to make provision for a fixed sum limitation on the hotelkeeper's liability as an alternative to one based on a multiple of the charge for the accommodation and on the other that it did not allow for the reduction by one half of that amount in respect of any single article, the sub-committee maintained the principle contained in Article 14 of the 1978 version by providing for only one limitation amount, and this for the reasons set out in the Explanatory report on that draft. As to the first point, the sub-committee rejected the idea of adopting a fixed sum liability (3.000 gold francs in accordance with Article 1 (3) of the Annex to the 1962 Convention), partly because of the difficulty of establishing a satisfactory unit of account and partly because experience has shown that such limits are quickly eroded by inflation, while no support was forthcoming for the idea of introducing the complicating factor of a second limitation for individual items of property, although it should be recalled that the exception contained in the reservation clause to the 1962 Convention (Article 2(b)) of a limitation amount equivalent to a minimum of 50 times the daily charge for the room has now become the standard rule in accordance with Article 15 (1) of the text approved by the sub-committee (see paragraph 53 above).

55. Although Article 15 of the 1978 version (now Article 15 (2)) was criticized by the IHA on the ground that it did not make it sufficiently clear that the "highest daily charge for the accommodation" must be taken as referring to that occupied by the guest, the sub-committee did not share this difficulty, given the language of the second sentence which, by speaking of occupation, would seem to identify the accommodation in question. The only amendment to the former Article 15 was one of a consequential character given the reintroduction of the principle of the unlimited liability of the hotelkeeper in respect of property received by it for safe custody. A similar amendment was necessary in respect of paragraph (3) of Article 15 (formerly Article 16) in which connection it should be noted that the reference to "any person for whom he [the hotelkeeper] is responsible" has been completed by a reference to Article 18 (formerly Article 19) which identifies the persons for whom the hotelkeeper is liable under the prospective Convention and the circumstances in which it will incur such vicarious liability.

Article 16

56. This provision corresponds word for word to Article 17 of the 1978 version which itself gave rise to no adverse comment.

Article 17

57. Apart from the reference *in fine* to Article 18 of the revised draft, the language of Article 17 corresponds precisely to that of Article 18 of the draft approved by the Unidroit committee of governmental experts and its substance to Article 5 of the Annex to the 1962 Convention. Although the provision gave rise to no comment by the hotelkeeping provision, it was criticized by the Chairman of the sub-committee of the Governing Council who saw its effect as being to transform the hotelkeeper's strict liability into one for negligence if the guest failed to 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". In his view the article should be deleted or at least qualified in such a way as to alter the basis of the hotelkeeper's liability only in those cases where the guest's failure to give notice actually causes

prejudice to the hotelkeeper. In some cases the hotelkeeper would already be aware of the situation, for example because there had been a series of thefts in the hotel, and it was difficult to see how in such situations the guest's failure to give prompt notice of the loss, which would in many cases be difficult, for example when travelling from one city to another over a short period of time, could justify a change in the liability regime. The provision was all the more questionable as the notion of "reasonably possible" was open to wide divergencies in interpretation by judges.

CHAPTER V

MISCELLANEOUS PROVISIONS

Article 18

58. This provision takes over textually the language of the former Article 19 of the 1978 version. It should however be recalled that a suggestion had been made by hotelkeeping circles that a second paragraph should be added to the effect that: "The hotelkeeper shall not be liable for the acts of independent contractors provided that the hotelkeeper has exercised reasonable diligence to provide safe premises for the guest". The main thrust of this proposal would seem to be directed to Article 12 as it would usually, although not invariably, be the case that an independent contractor would perform activities, such as lift maintenance or the provision of food, which are more likely to result in death or personal injury than in damage to, or loss of, property. In the absence however of any agreement substantially to amend Article 12, the sub-committee did not deem it appropriate to include the proposed paragraph in the text of Article 18.

Article 19

59. In its formulation as approved by the committee of governmental experts in 1978 (Article 21) this article met with considerable criticism from the IHA which found it "difficult to take seriously" the proposals made therein "for persons living in a democratic constitutional state". It should however be recalled, and the committee of governmental experts was very much aware of this fact, that a provision similar to that contained in paragraph (1) is not uncommon in international private law conventions governing relations between professionals and consumers, for example Article 31 (1) of the CCV Convention. Moreover the restrictions placed on the hotelkeeper's freedom of contract under paragraph (2) as approved by the committee of governmental experts were limited to attempts to derogate from the provisions of the draft Convention in respect of his liability to the guest and, in view of the very considerable support expressed for the provisions of Article 21 by a large majority of governmental delegations in the committee of experts, the sub-committee of the Governing Council believed that the article should be retained. It was however of the opinion that in the light of the language of the second sentence of the new Article 2 to the effect that nothing in the Convention shall affect the respective rights of a hotelkeeper and a travel organiser, the former paragraph (2) of Article 21 could be deleted with the effect that the scope of paragraph (1) might be extended to cover contracts concluded between a hotelkeeper and a person other than the guest and that the former paragraph (3) of Article 21 would become paragraph (2) of Article 19 of the 1988 version.

CHAPTER VI

FINAL CLAUSES

Article X

60. This provision replaces Article 24 of the 1978 draft. As indicated above in this paper (see paragraphs 4, 6, 14 and 51 above), the sub-committee of the Governing Council was of the belief that the number of reservations contained in the text approved by the committee of governmental experts was excessive. It therefore proposed the deletion of sub-paragraphs (a), (b) and (d) of Article 24 (1). The omission of sub-paragraph (a) involved the consequential deletion of paragraph (2), two provisions which had caused especial difficulty to the IHA.

61. As regards the former Article 24 (1)(c), which permitted a Contracting State to enter a reservation that it would set limits of liability at higher levels than those referred to in Article 13 or 14 or set no limits, the sub-committee of the Governing Council preferred to adopt the solution to be found in Article 1 (2) of the 1962 Convention with the consequence that Article X (1) of the revised draft provides that "Any State may, at the time of signature, ratification, acceptance, approval or accession, declare by notification addressed to ... that it will impose greater liabilities upon hotelkeepers than those provided for in this Convention".

62. Paragraph (2) of Article X corresponds to the former Article 24 (3) relating to the amendment or withdrawal of any declaration made under Article X (1).

APPENDIX I

CONCORDANCE OF TEXTS

1978 version
(committee of governmental experts)

1988 version
(sub-committee of the Governing Council)

Article 1 (1)

Article 1 (1)
{ Article 1 (2)
Article 1 (3)
Article 2

Article 1 (2) }
Article 1 (3) }

Article 2

Article 3

Article 3

Article 4

Article 4

Article 5

Article 5

Article 6

Article 6

Article 7

Article 7

Article 8

Article 8

Article 9

Article 9

Article 10

Article 10

Article 11

Article 11

Article 12

Article 12

Article 13

Article 13

Article 14

Article 14

Article 15 (1)

Article 15

Article 15 (2)

Article 16

Article 15 (3)

Article 17

Article 16

Article 18

Article 17

Article 19

Article 18

Article 20 (a)

Article 1 (4)

Article 20 (b)

Article 1 (5)

Article 21

Article 19

Article 24

Article X

INTERNATIONAL HOTEL REGULATIONS

Text adopted by the IHA Council
2 November 1981 - Kathmandu (Nepal)



Introduction

The International Hotel Industry published its first Hotel Regulations 60 years ago. Since then these regulations have been revised several times. Because, however, of the expansion of international tourism in the last 20 years, a new formulation is essential.

I Objectives

The International Hotel Regulations aim to codify the generally accepted international trade practices governing the contract of hotel accommodation. They inform the guest and the hotelkeeper of their mutual rights and obligations. The Regulations are designed to serve as a complement to the provisions stipulated by the National Law in relation to the terms of the contract, they apply when such a Law does not include specific provisions concerning the contract of hotel accommodation.

II Contracting Parties

A person staying in a hotel may not necessarily be a contracting party, the contract of hotel accommodation may have been concluded on his behalf by a third party. In these regulations the term "customer" means the individual or legal person having concluded a hotel reservation contract who is responsible for payment. The term "guest" means the individual who is intending to stay or is staying at the hotel. The International Hotel Regulations govern relations between the hotelkeeper and any customer or guest, except travel agents, to whom the detailed regulations of the IHA/UETAA International Hotel Convention apply, if the National Law permits it.

FIRST PART: CONTRACTUAL RELATIONSHIP

Article 1: Contract of accommodation

Under the contract of accommodation, the hotelkeeper is obliged to provide accommodation and additional services for the guest. The services shall be deemed to be the normal services of the hotel according to the hotel category, including the use of such rooms and such facilities as are normally provided for the general benefit of guests. The customer is liable to pay the price agreed. The terms of the contract are governed by the category of the hotel, the National Law or Hotel Regulations (if any), the International Hotel Regulations and the House Rules which must be shown to the guest.

Article 2: Form of contract

The contract is not subject to any prescription as to form. It is concluded when one party accepts the offer of the other party.

Article 3: Duration of contract

The contract can be agreed for a definite or an indefinite period. When a contract is made for an approximate period, the shortest duration will be taken as the agreed period. The contract of accommodation ends at midday on the day after the arrival of the guest, unless a contract for more than one day has been requested and accepted. Any contract for an indefinite period shall be considered as being for one day. In such case, notice expiring at midday on the following day may be given by either party to terminate the contract. Notice given to the guest by the hotel shall be regarded as having been given to the customer.

Article 4: Performance of the contract

The hotelkeeper and the customer are obliged to respect the terms of the contract.

Article 5: Non performance of the contract

In the event that the contract is not, or not completely performed, the defaulting party must fully compensate the other party for his loss. The injured party is under the obligation to mitigate the loss.

If the hotelkeeper cannot perform the contract, the hotelkeeper should endeavour to find alternative accommodation of an equivalent or superior standard in the same locality. Any additional cost deriving therefrom must be met by the hotelkeeper. In case of default the hotelkeeper shall be liable to pay compensation.

Article 6: Termination of the contract

Except where the National Law or National Trade Practice provides otherwise, no contract can be terminated before its complete performance unless both contracting parties mutually agree.

Article 7: Payment

The hotel can ask for full or partial pre-payment. If the hotel receives from the customer 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 hotel shall return money paid in advance to the extent that it exceeds the amount due, unless it has been stated to be a non-refundable deposit.

Bills are due on presentation. Unless stated otherwise there is no obligation on the hotel to accept cheques, coupons or credit cards or other means of non cash payment.

Payment should be made in the appropriate national currency unless the hotel otherwise requests.

Article 8: Breach of contract

Any serious or persistent breach of the contractual obligations will entitle the injured party to terminate the contract immediately without notice.

SECOND PART: OTHER OBLIGATIONS

Article 1: Liability of the hotelkeeper

The liability of the hotelkeeper depends on the National Law. In the absence of any provisions of the National Law, the provisions of the European Convention of 17 December 1962 should apply.

The liability for property belonging to the guest is usually limited except when the hotelkeeper or his employees are at fault.

The liability of the hotel to accept valuables in deposit shall depend on the size and standing of the hotel.

Liability for valuables can be limited reasonably if the guest has been informed in time.

The hotelkeeper is not liable for cars or their contents.

Article 2: Liability of the guest/customer

The guest and the customer are liable to the hotelkeeper for any damage caused to persons, building, furnishing or equipment, if the fault is attributable to them.

Article 3: Retention of guest's property

The hotel shall, as guarantee for payment of any amounts due to him, have the right to retain and ultimately to dispose of any property of commercial value brought to the premises of the hotel by a guest.

Article 4: Behaviour of guest

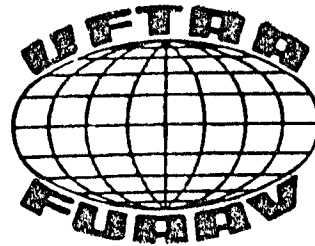
The guest shall behave in conformity with the hotel custom and the house rules of the hotel where he is staying. Serious or persistent breaches of the house rules entitle the hotel to terminate the contract immediately without notice.

Article 5: Domestic animals

If a guest wishes to bring with him a domestic animal to the hotel he is under a duty to ensure, before introducing it, that this is permitted by the house rules of the hotel.

Article 6: Occupation and vacation of rooms

Unless otherwise stipulated, rooms which have been reserved for a guest must be ready at 2 p.m. and rooms of guests leaving the hotel must be vacated by noon.



1979 IHA - UFTAA CONVENTION

F.U.A.A.V.
1, Rue Defacqz - Bte 1
1050 BRUXELLES- Belgique
Tel.: (2) 537 03 20
Télex : 61 808 uftaa b
Télégramme : FEDINTER

A.I.H.
80, Rue de la Roquette
75011 PARIS - France
Tel.: (1) 4700 84 57
Télex : 280 492 aih-iha
Télégramme : INTERASSO PARIS

1979 IHA/UFTAA CONVENTION

INTERNATIONAL HOTEL CONVENTION
RELATIVE TO CONTRACTS
BETWEEN HOTELIERS AND TRAVEL AGENTS

PART ONE

PREAMBLE

The signatories, in pursuance of article 53 of the 1970 Hotel Convention have amended this Convention in the light of developments in professional practice.

Consequently, the signatories declare that the rules which follow are in conformity with professional practice regarding hotel contracts.

Art. 1. SIGNATORIES

The signatories are :

on the one hand, the International Hotel Association (hereafter referred to as I.H.A.) which has its registered office at 80, rue de la Roquette, 75011 Paris ;

and, on the other hand, the Universal Federation of Travel Agents' Association (hereafter referred to as U.F.T.A.A.) which has its registered office at 163 rue Saint-Honoré, 75001 Paris, and General Secretariat at rue Defacqz 1, 1050 Brussels.

Art. 2. OBLIGATIONS OF THE SIGNATORIES

The signatories undertake :

- to intervene with National Associations concerned to ensure that the clauses of the Convention are complied with at international level,
- to recommend their respective members and the enterprises which belong to them to give preference, when concluding hotel contracts, to those under the jurisdiction of the other signatory.

Art. 3. SCOPE OF THE CONVENTION

The Convention is intended to govern contracts - known as Hotel Contracts - between travel agents and hoteliers who have explicitly undertaken to adhere to it or who implicitly conform to it by customary practice.

If any articles of the Convention were to be found to be in conflict with national laws (among others "anti-trust laws") or international laws, the signatories acknowledge that such articles would not have effect.

Art. 4. EXCLUSIVELY INTERNATIONAL CHARACTER OF THE CONVENTION

The Convention shall apply to hotel contracts of an international character concluded between a hotelier and a travel agent whose establishments are situated in different countries.

Art. 5. AUXILIARY AND COMPLEMENTARY ROLE OF THE CONVENTION

- a) the Convention shall apply whenever no private contract has been concluded between the hotelier and the travel agent,
- b) it shall also apply in order to complement the dispositions of a private contract in respect of any provisions not included therein.

Art. 6. SUBSIDIARY ROLE OF THE CONVENTION

The signatories express the wish that the Convention shall serve as a directive for the solution of disputes between hoteliers and travel agents, whether privately or in legal practice and arbitration.

Art. 7. AT NATIONAL LEVEL

The signatories recommend that conventions applicable only at national level concluded between National Associations of the same country take the principles given in this Convention as a basis.

PART TWO

HOTEL CONTRACTS

TYPES OF HOTEL CONTRACT

Art. 8. The Convention governs two types of Hotel contract :

- 1. Contracts for individual clients,
- 2. Contracts for Group clients.

CHAPTER ONE

RULES COMMON TO THE TWO TYPES OF CONTRACT

A. - FORMATION OF THE HOTEL CONTRACT :

- Art. 9. a) All hotel contracts shall be initiated by a reservation request from the travel agent to the hotelier.
- b) Any reservation request not submitted in writing shall be confirmed in writing (letter, telegram, telex, computer, etc..)
- c) Every reservation request shall specify the services to be supplied. The prices of these services can be specified in the document itself. In this case, the travel agent will guarantee payment only to the extent of the amount stipulated.
- Art. 10. a) The hotel contract shall be considered definitive, subject to the provisions of article 11 a), only when the reservation request has been accepted by the hotelier.
- b) Such acceptance shall take the form of a written document (letter, telegram, telex, computer, etc..) referring explicitly to the reservation request and quoting the prices of the services ordered.
- c) Such confirmation shall be effected immediately or at the latest within three days of receipt of the order by the hotelier.
- d) Should the travel agent require a telegraphic reply, he must employ the "Reply Paid" system.
- Art. 11. ADVANCE PAYMENTS :
- a) The hotelier shall have the right to require an advance payment (earnest money or guarantee deposit) as a condition of his acceptance of the order.
- Any such advance payment shall always be treated as a guarantee deposit, except when the hotelier has stipulated that it constitutes earnest money (definition in Appendix I).
- If the hotelier has requested an advance payment, the conclusion of the hotel contract shall be considered definitive only on payment of this amount or when proof of payment has been produced.
- b) The hotelier shall acknowledge receipt of the advance payment not later than 24 hours thereafter.
- c) The advance payment is customarily equivalent to the price of the services ordered (room, meals, etc..) for a one night stay in low season and for a three nights' stay in high season.

Art. 12. RESERVATION DOCUMENTS :

- a) ACCEPTANCE OF THE VOUCHER :
- The hotelier shall have the right to request either prepayment or partial payment in advance. If he does not do so, he is committed to acceptance of the voucher.
- The travel agent recognizes the voucher as a guarantee of payment to be honoured in accordance with the provisions of and within the time limits laid down in the Convention.

b) THE SIMPLE VOUCHER :

The services to be specified in this document shall include amongst others dates of arrival and departure and shall relate to normal hotel services only (room and meals).

c) THE "FULL CREDIT" VOUCHER :

The issue of this type of voucher, which covers an extension of normal hotel services, shall be subject to specific agreement between the hotelier and the travel agent. Commission payable shall however be subject to the principles laid down in article 17 (room and meals).

B. - PAYMENT DUE TO THE HOTELIER

Art. 13. The prices quoted by the hotelier to the travel agent for services specified in the hotel contract shall in no circumstances be higher than those quoted in the hotel tariff for direct customers, regardless of whether the bill is paid by the travel agent or directly by the client. When special rates have been agreed to by the hotelier, he shall not have the right to require payment in excess of the agreed rates.

Art. 14. The hotelier shall be required to abide by the rates agreed upon by contract. In the event of price changes a 30 days period of adjustment shall be left before new rates shall come into effect. Such price changes however shall not affect confirmed reservations.

Art. 15. The services payable by the travel agent shall be those specified in the reservation document forwarded to the hotelier.

Art. 16. a) The travel agent having concluded the hotel contract shall be responsible for payment of the bill except when it has been agreed that the bill shall be paid directly by the client.

b) The bill shall be paid within the time-limits agreed upon or, in the absence of contractual provisions, within 30 days of receipt of the bill. Beyond this time-limit, the amounts due shall be subject to interest at the rate of 1% per month in respect of overdue payment and a levy of 5% of the initial amount of the debt to cover collection costs.

c) In the case of stays of long duration, the travel agent can be required to pay the hotelier during the course of the stay for services already provided.

d) In cases where the travel agent has reserved hotel services for which payment is to be effected directly by the client, the hotelier shall be obliged to guarantee the agent's commission. With this in view the hotelier shall be free not to accept credit cards for such direct settlements.

C. - PAYMENT DUE TO THE TRAVEL AGENT

Art. 17. THE PRINCIPLE OF COMMISSION :

Any hotel contract falling within the scope of the Convention shall give rise to payment by the hotelier to the travel agent of a percentage of the prices for the services provided (room and meals). The hotelier shall pay such commission solely to travel agents, to the exclusion of any other contracting partners.

Art. 18. The rate of commission shall be fixed by mutual consent of the contracting parties. The signatories to the Convention note that it is usually 10 % on rates exclusive of tax and service charges.

Art. 19. a) Commission shall be payable for any extension of stay agreed to by the hotelier or for reservations effected by the client during his stay for a future period.
b) Any further occupancy of the hotel premises by the client during the course of the same journey, shall be considered as an extension of stay, following a break in occupancy provided that this break did not exceed 30 days.
c) However, no commission shall be due for a period in excess of 60 days, including any extension, for the same client.

Art. 20. The hotelier shall deduct from his total bill the amount of the commission due to the travel agent.

Art. 21. a) In the event of direct payment of the bill by the client, the hotelier shall pay the commission owing to the travel agent within 30 days of the client's departure.
b) In the event of cancellation within the time limit stipulated in a contract or in the Convention and when prepayment has been effected, the hotelier shall refund this amount within 30 days of the cancellation.
c) Beyond this time limit, the amounts due shall be subject to interest on overdue payments, in accordance with article 16 b).

D. - CANCELLATIONS

Art. 22. a) Principle of confirmation in writing :
All cancellations shall be in writing and dated (registered letter, identified telex ...).
b) Any verbal or telephonic cancellation made by the travel agent shall be subject to confirmation in writing by him.
If the cancellation is to take effect from the date of the verbal communication, the written confirmation must refer expressly to it. Any written document received from the hotelier, referring to the verbal cancellation, shall dispense the travel agent from reconfirming in writing.
c) The terms and time limits governing total or partial cancellation of the hotel contract, together with the amount of any compensation due in the event of late cancellation, are covered by special provisions for each type of contract.

E. - GENERAL RECIPROCAL OBLIGATIONS

1. OBLIGATIONS ARISING OUT OF THE CONVENTION :

Art. 23. The travel agent undertakes to provide the necessary full and detailed information concerning the services requested.

Art. 24. The services provided by the hotelier to the travel agent's clients, in accordance with the hotel contract (whether for individuals or groups) shall be of the same quality as those provided by the hotelier under the same conditions to his direct clients.

Art. 25. The hotelier shall keep the reserved accommodation available for clients from 2 p.m. on the day of arrival until noon on the day of departure.

Art. 26. For any reservation accepted and confirmed in due form, the hotelier shall be obliged to respect his contractual commitments. If he fails to do so, he shall be required to indemnify the travel agent for the loss actually suffered.

Exceptionally and should this possibility be provided for at the time of acceptance of the reservation and provided that the agent is informed three weeks in advance, the hotelier may place clients in the nearest equivalent or superior hotel, the agent having no right to claim compensation solely for such substitution.

Any price difference to be borne by the hotelier.

Art. 27. The compensation payments provided for in article 26 shall be effected within 30 days of the application submitted by the travel agent.

Art. 28. In the event of the travel agent having deposited a security specified as being earnest money as defined in Appendix I, the hotelier shall be required to reimburse double this amount, within the same time-limit. Failure to effect payment within the 30 days shall give rise to payment of interest in respect of overdue accounts and to the levy to cover collection costs as stipulated in article 16 b).

Art. 29. PRINCIPLE OF EXONERATION FROM LIABILITY IN THE EVENT OF FORCE MAJEURE

Whenever one of the parties to the hotel contract finds it impossible to fulfil his obligations owing to a case of force majeure, that is - "circumstances that were unforeseen, irresistible and beyond his control" he shall be exonerated from his obligations without having to pay compensation.

Art. 30. When the hotelier or travel agent finds himself unable to fulfil his obligations, for reasons of force majeure or otherwise, he shall be required to notify the other party immediately, by all means at his disposal, in order to limit the damages.

Art. 31. If there is a difference of opinion between the contracting parties in a case where force majeure has been invoked, they shall try to reach an amicable settlement.

In the event of failure to reach such a settlement, they can refer the case to the Arbitration Committee mentioned in article 59 of the Convention.

2. OBLIGATIONS BASED ON PROFESSIONAL ETHICS :

Art. 32. The hotelier shall refrain from enticing the travel agent's client, by any method whatsoever, to become a direct client.

Art. 33. Even if a travel agent has applied simultaneously to different hoteliers for offers of reservation, he shall refrain from concluding several hotel contracts for the same stay by a client, with a view to cancelling at a later date, in accordance with the provisions of the Convention, those he decides not to accept.

- Art. 34. An hotel contract shall not under any circumstances be made subject to the conclusion of an advertising contract between the contracting parties.
- Art. 35. The hotelier shall be obliged to give the travel agent exact information concerning the category, location and quality of services of his hotel.
- Art. 36. The travel agent shall be obliged to respect - vis-à-vis his client - the information supplied by the hotelier in pursuance of article 35.
- Art. 37. In dealings with their clients, the hotelier and travel agent shall refrain from making any statement that would cast doubt upon the quality of services provided by the other contracting party or that could damage his professional reputation.

CHAPTER TWO

CONTRACTS FOR INDIVIDUAL CLIENTS

- Ar-. 38. DEFINITION :
- The contract for individual clients is that concluded for clients who do not benefit from group conditions.
- Art. 39. CANCELLATIONS - TIME-LIMITS
- In the absence of contractual conditions to the contrary, the minimum periods of notice that shall be observed by the travel agent to notify the hotelier of cancellations are as follows :
- a) in places where and when there is obviously a considerable demand for accommodation :
 - the same period of notice as for clientele acquired directly but at the latest up to the day before the date of arrival.
 - b) in mainly tourist type hotels :
 - 30 days before the date of arrival, in high season,
 - 14 days before the date of arrival, in low season.
- Art. 40. Cancellations notified after the above-mentioned time-limits shall give rise to compensation.
- Art. 41. The compensation due can be fixed contractually for each client whose reservation is cancelled as follows :
- a) the equivalent of services ordered for a 1 night stay for any stay of less than 3 nights,

- b) The equivalent of services ordered for a 1 night stay for stays of 3 nights or over in low season,
- c) The equivalent of services ordered for a 3 nights stay for stays of 3 nights or over in high season.

Art. 42. a) In the event of a premature departure or of non-utilization of services ordered, the travel agent shall compensate the hotelier for the loss actually suffered, except in those cases where the premature departure or non-utilization of services is due to the hotelier not having furnished such services.

If the advance payment made by the travel agent is not sufficient to cover the full amount of the bill, the hotelier shall have the right to collect the balance of his bill directly from the client.

These provisions shall be applicable if it is common practice to act thus towards clients acquired directly by the hotel.

b) In the case of no-show, that is, non-arrival of a client whose reservation has not been cancelled, even late, and concerning whom there has been no notification of late arrival, the travel agent shall be required to compensate the loss actually suffered by the hotelier. However, in the event of late cancellation or notification article 41 remains applicable. The hotelier shall inform the travel agent immediately of any case of no-show.

c) The compensation shall be payable within 30 days. Beyond this time-limit, the amounts due shall be subject to interest and to the levy to cover collection costs as provided for in article 16 b).

Art. 43. a) The travel agent shall not have the right to charge his clients prices in excess of those quoted to him on a commissionable basis.

b) Reservations expenses can however be charged to the client, separately from the hotel bill.

CHAPTER THREE

CONTRACTS FOR GROUP CLIENTS

Art. 44. DEFINITION :

A number of persons travelling together, considered by the travel agent and hotelier as an entity, to which the hotelier grants special rates and conditions fixed on a contract basis shall be considered group clients. The services shall be specified in one single reservation document and one confirmation, each of these documents specifying identical services for each client and a total charge presented in a single bill.

Art. 45. Group rates as taken up in hotelier's confidential tariffs shall no longer be binding for groups of less than 16 participants or in the absence of a tour guide, responsible participant or local handling agent.

- Art. 46. The travel agent shall send the hotelier the rooming list at least 14 days (two weeks) before the date of arrival of the group; he will assume full responsibility for any difficulties which may arise if he does not respect this obligation.
The hotelier, however, shall inform travel agent in case he has not received the rooming-list at least 14 days prior to arrival.
- Art. 47. In any case where article 26 §2 is applied to a group, the hotelier shall reaccomodate all members of the group in the same hotel.
- Art. 48. PAYMENT CONDITIONS :
Payment conditions are normally stipulated in private agreements.
In the absence of any such agreement they shall be as follows :
- 50 % of the order 30 days before arrival.
- final settlement before departure.
- Art. 49. The hotelier is recommended to offer free services to one representative of the travel agent (courrier, guide, driver, group leader, etc..) accompanying a group of at least 15 travellers. The hotelier may also offer free services to an additional representative for each additional 20 persons.
- Art. 50. Neither the travel agent nor the hotelier shall divulge to travellers the price given in the hotel contract.
- Art. 51. CANCELLATION :
In the absence of agreement to the contrary, the minimum notice to be given by a travel agent when notifying an hotelier of cancellation shall be :
- for cancellation of more than 50 % of participants, 21 days before the agreed date of arrival,
- for cancellation of less than 50 % of participants, 14 days before the arrival date.
- Art. 52. Cancellations made after the time-limits given above shall give the right to compensation.
In the case of a reservation made and accepted less than 14 days before arrival article 53 a) shall in any case apply.
- Art. 53. The compensation due can be fixed contractually for each client whose reservation is cancelled:
a) at an amount fixed in advance,
b) in the absence of such agreement, at 2/3 of the amount of the order cancelled on the basis of the conditions and special rates quoted in the contract.
- Art. 54. In the event of late arrival, the meals not taken and the services not provided shall give rise to compensation amounting to 2/3 of their value, on condition that the travel agent's representative has done everything possible to inform the hotel of this late arrival.

- Art. 55. In the event of no-show, the provisions relating to individual clients shall apply.
- Art. 56. The hotelier who fails to fulfil his obligations or fails to provide the equivalent, shall pay compensation, the amount of which shall not exceed the actual loss suffered by the travel agent nor be less than the amounts given in article 53.
- Art. 57. Compensation payments shall be payable within 30 days of request. Beyond this time-limit, interest on overdue payments and the levy to cover collection costs will be added in accordance with article 16 b).

PART THREE

Art. 58. INTERPRETATION OF THE CONVENTION :

The I.H.A./ U.F.T.A.A. Liaison Committee, which is made up of delegates appointed to it by each of the two signatory Federations shall alone be competent to interpret the provisions of the Convention.

The Liaison Committee meets at least twice a year.

Requests for interpretation from a hotelier or a travel agent with regard to a dispute can be referred to this Committee.

Art. 59. SETTLEMENT OF LITIGATION :

- a) Any dispute arising from the application of the Convention may be submitted for conciliation and arbitration to the I.H.A./U.F.T.A.A. Liaison Committee.
- b) In case of an agreement by both parties to submit their dispute to arbitration the most diligent party shall serve its international Federation a request for arbitration, and shall send it all the necessary documents.
- c) The Federation referred to in this way shall draw up two copies of a compromise of which each of the parties shall sign a copy which it shall then send to its international Federation.
- d) The arbitration procedure is set out in the "Arbitration Regulations" annexed to the Convention.

Art. 60. DURATION AND CANCELLATION OF THE CONVENTION :

The Convention shall remain in force for two years. It shall be renewed by tacit agreement on the expiry of each two-year period, unless one of the signatory parties declares his intention of terminating it at the end of the current period, by registered letter, at least six months before the end of the said period.

The signatory parties will reach agreement to adapt the Convention by amendments taking account of changes in the professional practices which it codifies and confirms.

Art. 61. DATE OF THE CONVENTION :

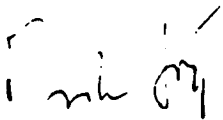
The Convention has come into force to 15 June 1979 following its adoption by the two signatories.

However, hotel contracts made previously to 1 January 1979 will follow the prescriptions of the 1970 Convention until they have been carried out in full, even for all contractual services performed after this date.

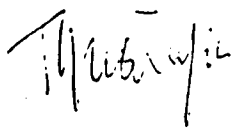
In witness whereof representatives of INTERNATIONAL HOTEL ASSOCIATION and UNIVERSAL FEDERATION OF TRAVEL AGENTS' ASSOCIATIONS have signed the present Convention in Buenos Aires on October 8, 1979.

Done in the French and English languages, both texts being equally authentic, in two copies which shall remain deposited respectively at the I.H.A. and U.F.T.A.A. Secretariats.

For I.H.A. :



Dr. Gustav LOTZ,
President

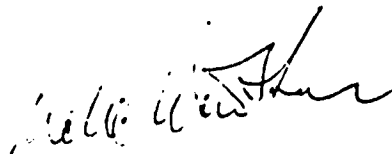


Robert SQUARCIAFICHI,
Chairman
Travel Agencies Committee

For U.F.T.A.A. :



Osmond F.W. PITTS,
President



Helle WINTHER,
Chairman
Hotel Working Group

APPENDIX 1

CONVENTIONARY DEFINITIONS

In the application of the 1979 Hotel Convention, the following terms shall be used with the meaning given below, even if this meaning differs from a meaning in use in national private law.

ADVANCE PAYMENT :

According to the wishes of the parties, the advance payment requested by the hotelier may be either earnest money or deposit of a security.

DEPOSIT OF A SECURITY :

Payment in advance of a part of the total price by the travel agent to the hotelier. This will be deducted from the hotel bill or is to be returned if the hotel contract is cancelled according to the rules.

EARNEST MONEY :

In French law the term earnest money (arrhes) means : contractual compensation, which is not repayable if the contract is cancelled by the fault of the person who paid the earnest money, and which is to be paid back double if the contract is cancelled by the fault of the person who received the earnest money.

The signatory parties state that this is the meaning they give to the term "earnest money" (arrhes). When the parties to the hotel contract give to the advance payment (dealt with in article 11 of the present Convention) the meaning stated above, the provisions of the 1979 Hotel Convention with regard to compensation shall not be applicable.

GROUP TRAVELLERS :

A number of persons travelling together, considered by the travel agent and the hotelier as an entity, to which the hotelier grants special rates and conditions.

HIGH SEASON :

(see "Low Season")

HOTEL :

Shall be considered as hotels all accommodation establishments affiliated to the I.H.A. either directly or through a national association, and those so designated in accordance with the national legislations of the countries in which they are situated.

HOTEL CONTRACT :

Contract by which a hotelier makes an undertaking with a travel agent to provide hotel services to a traveller who is a client of the said travel agent.

HOTEL TARIFF :

List of the prices of the various services provided by the hotel separately or jointly, published officially for travellers.

INDIVIDUAL TRAVELLERS :

Clients who do not benefit from special "group conditions".

LOW SEASON :

Defined by local practice - subject to special contracts according to conditions prevailing in the local market.

TRAVEL AGENT :

All individuals or corporate bodies (companies) so designated in accordance with the legal provisions of their country or by the national association or the international Federation concerned, and whose work consists in particular of reserving rooms and other services in hotels to accommodate travellers.

VOUCHER :

A voucher is a document issued by a travel agent by which he undertakes to pay the hotelier for hotel services rendered to the agent's client. Such services or their maximum value shall be mentioned on the voucher. In case of non-utilization of all hotel services mentioned on the voucher, the agent's undertaking is limited as laid down in article 42 of the Convention.

A copy of a voucher can also be used as reconfirmation.

APPENDIX 11

ALPHABETICAL LIST OF THE TERMS USED WITH REGARD TO HOTEL CONTRACTS

Accommodation outside the establishment	Art. 26
Advance payment	Art. 11 - 28 - App I(Def)
Application of the Convention	Art. 3 - 4
Arbitration	Art. 59 - App III(Rules)
Billing	Art. 15 - 16
Cancellation - procedure	Art. 22
- notice	Art. 39 Indiv trav.
Collection costs	Art. 51 Group trav.
Commission - level	Art. 16b) - 28 - 42c) - 57
- payment	Art. 18 - 19
Compensation - payment	Art. 20 - 21
- amount	Art. 27 - 40 - 42b) - 52 - 57
Confirmation	Art. 41 Indiv. trav.
Date of the Convention	Art. 53 Group trav.
Deposit of a security	Art. 10
Double reservations - forbidden	Art. 61
Duration and cancellation of the Convention	Art. 11 - 28 - App I(Def)
Earnest money	Art. 53
Extension of stay	Art. 60
Failure to carry out the contract	Art. 11 - 28 - App III(Rules)
Force majeure	Art. 19a)
Hotel	Art. 42 - 54 - 55 - 56
Hotel tariff	Art. 29 - 30 - 31
Interest	Art. App I(Def)
Interpretation of the Convention	Art. 14 - App I(Def)
Late arrival	Art. 16b) - 28 - 42c) - 57
No-show	Art. 58
Occupation of rooms - lenght of stay	Art. 54
Overdue payment	Art. 42b) - 55
Payment conditions	Art. 25
Payment due to the hotelier	Art. 16b)
Payment due to the travel agent	Art. 48
Payment of the bill	Art. 13 - 15 - 16
Premature departure	Art. 17 - 18 - 19
Price modification	Art. 16
Publicity (subsidiary publicity contract forbidden)	Art. 42a)
Quality of services	Art. 14
	Art. 34
	Art. 24

Representative of the travel agent- free services

Reservation

Respecting prices

Rooming-list

Settlement of litigation

Travel Agent

Travellers - individual
 - groups

Turning aside clientele

Voucher

Art. 49

Art. 9 - 23

Art. 43a)

Art. 46

Art. 6 - 59

App. 1(Def)

Art. 38 to 43

Art. 44 to 57

Art. 32

Art. 12 - App 1(Def)

APPENDIX III

ARBITRATION RULES

Recourse to arbitration is becoming more widespread. Travel Agents and hoteliers can derive important advantages therefrom for the settlement of international disputes. By resorting to arbitration by an international body fully conversant with the specific usages of their profession, they have at their disposal an efficacious and rapid means of settling their disputes. In this way, they avoid the often lengthy and onerous formalities involved in international court proceedings. Such advantages make it uncumbent upon the IHA/UFTAA Liaison Committee to encourage members and registered agencies to avail themselves of the arbitration services which it places at their disposal.

1. - PERMANENT ARBITRATION BODY :

The IHA/UFTAA Liaison Committee is equally composed of representatives of Travel Agents and Hoteliers. The arbitrators are chosen from representatives of the two professions. Personalities from professional or legal circles can also be appointed arbitrators.

2. - ARBITRATION PROPOSAL :

With a view to the settlement of a dispute, an arbitration proposal can be made either by the IHA to one of its members, or by UFTAA to one of its Registered Agencies.

3. - ARBITRATION REQUEST :

The party wishing to resort to the IHA/UFTAA Liaison Committee arbitration should submit its request, either to the IHA Secretariat General or to the UFTAA Secretariat General.

This request must in particular include :

3. 1. names, description and addresses of the parties ;
3. 2. statement of the claimant's claims ;
3. 3. agreements entered into correspondence exchanged between the parties and all other documents or information likely to establish the rights and obligations of the parties and the circumstances of the dispute.

4. - ACCEPTANCE BY THE RESPONDENT :

4. 1. The Secretariat General shall forward a copy of the request to the respondent.

With his acceptance of the request for arbitration, the respondent shall forward to the Secretariat General, as early as possible, his grounds of defence, any propositions he may wish to make, and all documents together with all information likely to support his defence.

4. 2. A copy of the reply shall be forwarded to the claimant for this information.

5. - REGISTRY :

The Secretariat which receives the request for arbitration shall serve as the registry during the arbitration proceedings.

6. - CHOICE OF ARBITRATORS :

6. 1. Arbitrators are chosen taking into consideration :

- their professional competence in the type of dispute to be settled ;
- their nationality, so that they are not of the same nationality of the two parties to the dispute.

6. 2. They are appointed by the registry, and are four in number : two representatives of Travel Agencies and two representatives of Hotels.

7. - COMPILATION OF THE FILE :

It is the responsibility of the registry to compile the file in the case for the arbitrators.

8. - ARBITRATION AGREEMENT :

8. 1. The arbitration agreement is the agreement whereby the parties definitely undertake to settle their dispute by arbitration.

8. 2. This agreement, indicating the arbitrators appointed and the matter subject of the dispute is forwarded to each of the parties to the dispute.

8. 3. Furthermore, each party shall receive a copy of the pleadings supplied by the opposite party, indicating his grounds of claim or defence, (means of defence foreseen in article 4.1.).

8. 4. The agreement, duly signed and dated by both parties shall be returned to the registry as speedily as possible.

9. - CHALLENGE OF ARBITRATORS :

9. 1. At the stage of signature of the agreement, the parties have the right to challenge the arbitrators.

The only grounds for challenge are those listed hereafter :

- relationship or association with one of the parties ;
- an arbitrator having an interest in the case ;
- fundamental enmity with one of the parties ;
- previous connection with the dispute as an arbitrator.

9. 2. In the event of the replacement of a challenged arbitrator, a new agreement shall be submitted for signature by both parties.

10. - EFFECT OF THE ARBITRATION AGREEMENT :

When the parties have agreed to resort to the arbitration of the IHA/UFTAA Liaison Committee, they thereby undertake to abide by the present rules.

11. - SUBMISSION OF THE FILE TO THE ARBITRATORS :

11. 1. On receipt of the agreement signed by both parties, the registry transmits the same to the arbitrators, together with the file prepared for them.

11. 2. The parties are advised of the date of transmission of documents.

12. - PLACE OF ARBITRATION :

The arbitration shall take place at the Secretariat which serves as Registry.

13. - PROCEDURE BEFORE THE ARBITRATORS :

The rules applicable to the procedure before the arbitrators shall be those arising from the present rules and, where the rules are silent, the rules of procedure of the place of arbitration.

14. - REPLACEMENT OF AN ARBITRATOR DURING THE PROCEEDINGS :

In the event of the death or illness of an arbitrator, the Registry shall appoint a replacement, without its being necessary to recommence the proceedings.

15. - CONSIDERATION OF THE CASE BY THE ARBITRATORS :

15. 1. The arbitrators proceed to consider the case by all appropriate means. They can appoint one or more technically or juridically competent experts defining their mission in advance and requesting reports on the points in dispute.
15. 2. The arbitrators make their decision on basis of the documents unless one of the parties seeks a hearing.
15. 3. At the request of one of the parties or of their own volition, the arbitrators can call upon the parties to appear before them ; they shall advise the Registry, which will convoke the parties.
15. 4. The parties shall appear either in person or by duly appointed representatives.
15. 5. When the parties put forward new claims or counter claims before the arbitrators, they are bound to present the same in writing. Unless the party against whom the claim has been made agrees, the arbitrators have no power to take cognisance thereof.

16. - ARBITRAL AWARD - TIME LIMIT :

The arbitral award giving reasons following the consideration of the case by the arbitrators, shall be made within three months of the agreement having been passed to the arbitrators. For preliminary examination purposes however, this period can be extended by one month.

17. - AWARD RECORDING A SETTLEMENT :

If the parties reach an agreement before the arbitrators, the fact is established by an arbitral award setting out the settlement.

18. - FAILURE OF THE ARBITRATORS TO AGREE :

18. 1. In the event of a division of opinion, the arbitrators prepare a document setting out such disagreement. They shall be called upon to set out in writing their distinct and reasoned opinions, either in the same or in separate reports.
18. 2. By this same decision, they shall appoint an umpire.

19. - PROCEDURE BEFORE THE UMPIRE :

19. 1. The umpire is bound to make his decision within one month of the day of his acceptance unless this time limit is extended by the act of appointment.

19. 2. He may not make his decision before having consulted the divided arbitrators who shall meet for this purpose.

19. 3. The umpire shall make his decision in accordance with the opinion of one or the other of the divided arbitrators. No reasons need be given for his decision.

20. - MAKING THE AWARD :

The arbitral award is deemed to be made at the place of arbitration and on the day of its signature by the arbitrators.

21. - NOTIFICATION OF THE AWARD TO THE PARTIES :

The award having been made, the Registry shall send to the parties a copy of the text signed by the arbitrators.

22. - FINAL AND ENFORCEABLE CHARACTER OF THE AWARD :

22. 1. The award is final.

22. 2. By submission of their dispute to the arbitration of the IHA/ UFTAA Liaison Committee, the parties undertake to carry out the award promptly and waive all means of recourse which may waive.

23. - DEPOSITING OF AWARDS :

The original texts of all awards made in accordance with the present rules shall be deposited both at the IHA Secretariat General and at the UFTAA Secretariat General.

24. - DECISION IN RESPECT OF THE COSTS OF THE ARBITRATION :

In their award, the arbitrators, in addition to the decision on the substance of the dispute, shall, wherever necessary, make a decision on the costs of the arbitration, and shall decide which party shall be responsible for their payment or in what proportion they shall be borne by the parties.

Should the occasion arise, the costs of arbitration shall include :

- administrative expenses ;
- arbitrators' fees ;
- experts' fees, in the event of expertise ;
- arbitrators' travelling expenses.

Annex to the 1962 Council of Europe Convention on the Liability
of Hotel-keepers concerning the Property of their Guests

ARTICLE 1

1. A hotel-keeper shall be liable 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.
2. Any property
 - (a) which is at the hotel during the time when the guest has the accommodation at his disposal;
 - (b) of which the hotel-keeper or a person for whom he is responsible takes charge outside the hotel during the period for which the guest has the accommodation at his disposal; or
 - (c) of which the hotel-keeper or a person for whom he is responsible takes charge whether at the hotel or outside it during a reasonable period preceding or following the time when the guest has the accommodation at his disposal;
 shall be deemed to be property brought to the hotel.
3. The liability shall be limited to the equivalent of 3,000 gold francs.
4. The gold franc mentioned in the preceding paragraph refers to a unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred.

ARTICLE 2

1. The liability of a hotel-keeper shall be unlimited:
 - (a) where the property has been deposited with him;
 - (b) where he has refused to receive property which he is bound to receive for safe custody.
2. A hotel-keeper shall be bound to receive securities, money and valuable articles; he may only refuse to receive such property if it is dangerous or if, having regard to the size or standing of the hotel, it is of excessive value or cumbersome.
3. A hotel-keeper shall have the right to require that the article shall be in a fastened or sealed container.

ARTICLE 3

- A hotel-keeper shall not be liable in so far as the damage, destruction or loss is due:
- (a) to the guest or any person accompanying him or in his employment or any person visiting him;
 - (b) to an unforeseeable and irresistible act of nature or an act of war;
 - (c) to the nature of the article.

ARTICLE 4

The hotel-keeper shall be liable and shall not have the benefit of the limitation on his liability laid down in paragraph 3 of Article 1 of this Annex where the damage, destruction or loss is caused by a wilful act or omission or negligence, on his part or on the part of any person for whose actions he is responsible.

ARTICLE 5

Except in any case to which Article 4 of this Annex applies, the guest shall cease to be entitled to the benefit of these provisions if after discovering the damage, destruction or loss he does not inform the hotel-keeper without undue delay.

ARTICLE 6

Any notice or agreement purporting to exclude or diminish the hotel-keeper's liability given or made before the damage, destruction or loss has occurred shall be null and void.

ARTICLE 7

The provisions of this Annex shall not apply to vehicles, any property left with a vehicle, or live animals.

1962 Council of Europe Convention on the Liability
of Hotel-keepers concerning the Property of their Guests

Article 1

1. Each Contracting Party undertakes that, within twelve months of the date of entry into force of the present Convention in respect of that Party, its national law shall conform with the rules on the liability of hotel-keepers concerning the property of their guests set out in the Annex to this Convention.
2. Each Contracting Party shall nevertheless remain free to impose greater liabilities on hotel-keepers.
3. Each Contracting Party shall transmit to the Secretary-General of the Council of Europe the official text of any legislation concerning the matters governed by the Convention. The Secretary-General shall transmit copies of the texts to other Parties.

Article 2

Each Contracting Party retains the option:

- (a) notwithstanding the provisions of paragraph 3 of Article 1 of the Annex, to limit the liability of the hotel-keeper to at least 100 times the daily charge for the room;
- (b) notwithstanding the provisions of paragraph 4 of Article 1 of the Annex, to limit the liability in respect of any one article to an amount which is not less than the equivalent of 1,500 gold francs or, where the preceding paragraph of this article applies, to a minimum of 50 times the daily charge for the room;
- (c) to adopt the rule laid down in paragraph 2 of Article 1 of the Annex only in respect of property which is at the hotel;
- (d) notwithstanding the provisions of Article 6 of the Annex, to permit hotel-keepers to reduce their liability, in cases to which paragraph 1(a) of Article 2 or Article 4 of the Annex apply, not being cases where intent or fault tantamount to intent is involved, by an agreement with the

guest signed by him and containing no other terms; the liability of the hotel-keeper may not, however, be reduced to an amount which is less than that provided in the relevant legislation enacted in pursuance of this Convention;

(e) notwithstanding the provisions of Article 7 of the Annex, to apply the rules in the Annex to vehicles, property left with them and live animals, or to regulate the hotel-keeper's liability in this respect in any other way.

UNIDROIT 1990
Etude XII - Doc. 52
(Originaux: anglais/
français/allemand)

U n i d r o i t

INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

OBSERVATIONS DES GOUVERNEMENTS ET DES ORGANISATIONS INTERESSEES
RELATIVES A L'AVANT-PROJET DE CONVENTION SUR LE CONTRAT D'HOTELLERIE
ETABLI PAR UN SOUS-COMITE DU CONSEIL DE DIRECTION

(Australie, Finlande, Japon, République démocratique allemande,
République fédérale d'Allemagne, Suède, Suisse,
Bureau européen des unions des consommateurs,
Association internationale de l'hôtellerie)

Rome, juillet 1990