

EXPLANATORY REPORT

I. — GENERAL REMARKS

A. — THE ECONOMIC AND SOCIAL ROLE OF THE TRAVEL AGENT

Although for nearly a century (1850-1950) the travel agency business seemed to be a marginal activity, serving a well-to-do minority or people who were obliged to travel, like emigrants for instance, its economic and social role has undergone a complete change.

For many reasons, which have been the subject of special study in organisations more directly concerned by this socio-economic phenomenon, travel in general and tourist travel in particular has assumed tremendous importance.

This trend has promoted the travel agent from the minor role of selling transport or accommodation to the vital one of promoter of the tourist industry.

The travel agent's clients are no longer a privileged class; not only are there more of them, but they come from every walk of life, so much so, indeed, that the travel agent has even been described as the « legal adviser » as well as the « travel adviser » of his client.

Again, whereas travel agents used to sell the tickets which the big companies agreed to supply them with, the relationship between the two sides is nowadays more equal and there is more harmonisation in such relationship.

Finally, tourist recipient countries are relying more and more on the collaboration of travel agents, which is proof enough of their invaluable role: they can decide to « launch » a seaside resort just as designers decide to launch a fashion, with all the economic and cultural, but in any case always peaceful, implications of such an enterprise.

In short, from being a simple intermediary, a business agent with a greater or lesser stake, the travel agent has become a contractor in the domain of tourism and his role will become increasingly important as travel becomes ever more popular.

B. — THE TRAVEL AGENT AND THE LAW

Legal studies on this new type of business and on its position in private law, are few in number (1).

This will surprise none but the layman. Law is usually content to lag behind actual trends, waiting for them to achieve a certain maturity and stability before giving them the suitable legal framework which can assist their harmonious development.

Now that travel agencies have, as it were, definitely left the category of the small craftsman for that of a major international industry operating in the public interest, UNIDROIT's Working Committee feels that the time has come to establish a proper legal framework.

In doing this, the Committee based itself on the following arguments:

(1) It has been possible to consult the following specialised publications and articles:

Pierre Couvrat, *Les agences de voyages en Droit français*, University of Poitiers 1965.

Klatt-Fisher, *Die Gesellschaftsreise*, Carl Heymanns Verlag 1961.

Klatt, *Die Reisedienstleitung*, Carl Heymanns Verlag 1962.

Klatt, *Fremdenverkehrsrechtliche Entscheidungen*, Fall I, Carl Heymanns Verlag 1965.

André Poplimont, *Petite étude sur les activités économiques des agences de voyages et leur position juridique dans le monde*, unpublished.

René Rodière, *La responsabilité des agences de voyages*, Recueil Dalloz, 1958.

G. Romanelli, *Rivista del diritto della navigazione*, 1959, I, pp. 255 et seq.

Alfredo Robles Alvarez de Sotomayor, *El contrato de Viaje combinado (« El forfait »)*, in « Cuadernos monográficos », Instituto de Estudios Turísticos, Madrid 1966.

Vittorio Vitale, *Sulla natura giuridica del contratto di crociera turistica*, in *Rivista del diritto della navigazione*, 1938, I, pp. 97 et seq.; *Sul contratto di crociera turistica*, *Ibid.*, 1939, II, pp. 263 et seq.; *Contratti per crociere turistiche*, in *Giurisprudenza comparata di diritto commerciale, marittimo, aeronautico, industriale e d'autore*, 1942, VIII, pp. 138 seq.

Jean-Pierre Wiswald, *Les agences de voyages*, University of Lausanne 1964.

Paul C. Wohlmuth, *The Liability of Travel Agents*, in *Temple Law Quarterly*, Vol. 40, No. 1, Fall 1966.

1. — *The travel agency business is highly complex.*

Traditionally the travel agent played the role of intermediary, which consisted mainly in obtaining for his clients tickets for every type of transport as well as reserving accommodation, arranging participation in excursions and sightseeing tours, obtaining tickets for various entertainments, etc.

Imperceptibly, to this secondary activity has been added a primary activity, namely the organisation of journeys and sojourns.

Such journeys or sojourns were in the beginning organised at the request of a client, then gradually travel agents started preparing them in advance and offering them to the public. The latter type of journey, known as the « package tour » — although tours organised at the request of one client are usually just as much « package » transactions — is what set the travel agents firmly on the road to success.

Moreover, organising travel agents do not confine their activities to organising. Often they themselves perform one or more of the services which, taken as a whole, make up the journey or sojourn. Thus it frequently happens that having organised a tour, a travel agent himself charts a plane to take his clients somewhere, then puts them up at his own hotel, where they will enjoy various facilities, again run by himself, making excursions in his cars or coaches, etc.

Such diversity of activities naturally cannot fail to be reflected in the legal position of the travel agent, especially as he often combines activities on his own account with activities as intermediary.

It is fairly easy to define the travel agent's legal position when he is only acting as intermediary even if, in that capacity, he is conducting combined operations; his capacity as « agent » will be easily recognised, unless one complicates matters too much by asking whether he is the agent of the client or of the supplier...

Moreover, there will be no great difficulty if the travel agent himself performs one of the services composing the journey, such as transport, for example: his legal position will then be defined according to the functions he was exercising at the time of the accident giving rise to a legal dispute with his client.

But what happens when the travel agent gives the client an undertaking to organise a tour in the course of which he himself will pass from the role of intermediary to that of supplier of a given service or, even worse, if he confines himself solely to organising the tour and engages third parties — hotelkeepers, carriers, etc. — for the actual execution?

If some kind of damage occurs, either in transit or in the place of accommodation, must the travel agent bear the liability even if he is not also the carrier or hotelkeeper?

If so, what should be the extent of such liability?

In the event of loss of luggage, would the dispute be settled as if there existed a contract of carriage between the parties?

Where the client complains about the accommodation, is the travel agent liable within the framework of a hotel contract?

In short, the travel agent and the client conclude a single contract by means of which the former undertakes, against remuneration, to provide the latter with a tour complete in every detail.

In view of the all-embracing nature of this contract, is it necessary in the event of dispute to cut it up into its component parts or, on the contrary, maintain from the legal point of view that unity which it undoubtedly has from the economic point of view?

In addition, supposing it were possible to have recourse to the rules of law governing the various operations as revealed by splitting up the contract between travel agent and client, what rules should apply when liability for the damage can be attributed to the travel agent as an organiser who has not made the proper preparations for a tour, for example by failing to ensure link-up between different means of transport or by reserving a hotel room for the wrong date?

The precise definition of the nature of the contract is therefore a problem that the judge cannot avoid and he must be able to solve it by means of easily accessible rules.

Is he able to do this?

2. — *The travel agency business is not yet governed by existing private law.*

We are obliged to admit that many of the above questions are left unanswered by the existing rules of law.

Contrary to what is happening as regards the status of the travel agent in public or administrative law, which is coming to be recognised in a growing number of countries, there exists no legislation, either national or international, in the sphere of private law specifically applicable to travel agencies.

Even where, as in Switzerland, there is a law on the contract of agency, this does not cover the notion with which we are now dealing.

The Spanish « Reglamento de Agencias de Viajes » of 26th February 1963, although it is somewhat scrappy and fails to define the nature of the corresponding contracts, does however contain certain elements making it possible to define the relationship between the travel agent and his client.

There seems to have been so far only one attempt to draw up general regulations: in France, where the travel agency contract should eventually be treated like a contract of forwarding agency of passengers. In any case, these regulations are still in the draft stage.

3. — *Case-law relating to the travel agency business is inconsistent.*

Up to now there is not much relevant case-law, from which it may be supposed that disputes are usually settled amicably and only come before the courts when considerable sums are at stake.

At the moment, judges' decisions vary considerably, although they all have two points in common in that, on the one hand, they tend to regard the contract between the organiser of a journey and his client as single and indivisible and, on the other, they show that there is a desire to compensate the latter by seizing every opportunity for rendering the organiser liable for the proper execution of the journey.

French, Belgian and Italian case-law all follows a similar pattern. Here the basic notion at first was that of the travel agent being legally considered as a carrier.

Since the contract relating to the organisation of a tour generally makes provision for carriage, the courts ruled that it was a contract of carriage, with the duty of warranty for adequate results that that implies for the travel agent.

Later the courts adopted the notion of the travel agent acting « as agent » (« mandataire ») considering that only the contract of agency (« mandat ») could put a single label on the whole complex relationship between the parties. The travel agents themselves were delighted with this solution since it enabled them to draft contractual clauses exonerating themselves from all liability. They were forgetting, however, that a « mandataire » is responsible for every fault however small and that clauses rejecting liability are not valid in the event of wilful misconduct or gross negligence.

There is no need to say that the courts were quick to find evidence of wilful misconduct or gross negligence in cases where there had hitherto been a tendency to see only a minor negligence.

The transformation from carrier to agent was disadvantageous to the travel agent in yet another respect : an agent does not enjoy the limitation of liability usually accorded to the carrier by international Conventions or national laws.

The latest development in case-law in these three countries is that the courts admit that whether the tour organiser is defined an agent or a carrier such qualification is equally unsatisfactory.

When the travel agent does something more than linking two parties by selling transport tickets or accommodation vouchers, when he does more than provide transport in his own vehicles, when he undertakes personally to organise a certain tour comprising all the necessary service in exchange for a lump sum payment, whether he performs the services himself or whether he gets third parties to do so, the travel agent is concluding a new type of contract which, on account of its complexity, is a contract « sui generis ».

In a word, the contract between the travel agent and his client is unique, but the courts of law are becoming increasingly reluctant to define it further. This does not improve the travel agent's legal position because the courts hold that as regards the execution of this new type of contract, the role of the travel agent resides precisely in the fact of having experienced and competent contacts and correspondents, and of acting in such a way that, thanks to their experience and connections, the services they have promised are duly provided.

Consequently, the travel agent has a duty of warranty for adequate results upon which there is no limitation whatsoever.

At this point we find ourselves close to case-law and doctrine in the United States.

The liability of the American travel agent may be of an extra-contractual nature. When that is so the courts expect a professional person such as a travel agent to have special experience and exercise special care in safeguarding the interests of his clients.

Apart from this liability there is, in the United States as in Europe, the problem of defining the relationship between the travel agent and his client : the unique structure of the tourist industry and the fact that existing legal concepts cannot be adapted to fit business practice make it impossible to use any existing framework.

It therefore seems as if application of the completely inadequate « agency » principles will have to be abandoned in favour of a contractual relationship of a new type under which the travel agent will be obliged to do everything required of him, whether expressly or

implicitly, by the contract, the burden of liability in the event of any fault being committed by him being all the greater because he is a professional.

Moreover, the American courts, too, use every possible means to render inoperative in the majority of cases any exemption clauses denying liability of travel agents inserted by them in their documents.

The rejection of non-liability clauses, severity in assessing the conduct of the professional travel agent and the obligation imposed on the latter to do everything required of him, even if only implicitly, by the contract, all these point to a warranty for adequate results, although no one dares to openly qualify this obligation as such, and that without limitation of the compensation that may be payable to the victim.

Is it not possible that American case-law will go even further?

On the basis of a judgment of the Supreme Court of Alabama which placed a warranty for adequate results (strict liability) on the supplier of services, American doctrine suggests that the American courts might wonder whether it is fitting that the travel agent should be liable for the bad execution of a tour to a lesser extent than the retailer who is liable for the bad condition of products which he sells in their original wrapping and the condition of which he has not been able to examine.

II. — DESIRABILITY, PURPOSE, SCOPE AND CONTENT OF AN INTERNATIONAL CONVENTION

1. — The *desirability* of an international Convention on the activities of travel agents will not be questioned by those who have had the patience to follow the first part of this report.

Noting the confusion at present surrounding questions related to the legal position of travel agents, Mr. Irwin Robinson, writing in the 22nd August 1967 issue of the American trade journal, « Travel Weekly », admitted that travel agents were paying out thousands of dollars every year to placate clients who had been victims of real or imagined loss or damage. In conclusion, the article called for steps to be taken to eliminate the element of uncertainty which was so harmful to the business.

And what about the client who, having suffered some loss or damage, discovers once the charm of his travels has worn off, that there are a number of possible guilty parties, but that it is impossible to find out who will compensate him, to what extent he will be compensated, nor even in what court he should bring proceedings for compensation?

Only by means of a law is it possible to impose balanced solutions taking into account the interests of all concerned and making the position perfectly plain.

2. — The *purpose* of an international Convention should be confined to regulating the relationship between travel agent and client, leaving aside any links with third parties providing services.

Where, for example, there is a dispute between the travel agent or his client and the carrier or hotelkeeper, such a dispute can usually be solved by application of the rules of commercial law, either national or international, including usages, such as exist in connection with hotelkeeping.

In any case, supposing there were even a need for international rules, for example, governing the hotel trade, a Convention on travel agencies would not be the right place for them and might on the contrary reduce the chances of introducing rules specifically governing travel agencies and their relationships with their clients.

3. — The *scope* of an international Convention on the private law status of travel agents should, on the other hand, be as wide as possible.

Whereas the absence of any specific legislation is of itself likely to render the drafting of an international Convention more difficult, technically speaking, owing to the absence of formal bases for the new text, the same fact should encourage States to establish the greatest possible uniformity on the greatest possible number of points, by means of compulsory clauses which cannot be contracted out by the parties.

That is why the Convention should extend to tours carried out on national territory as well as across national borderlines.

The Convention should also govern all the activities of travel agents, whether they are acting as intermediaries or as direct organisers, to the extent however that such general rules do not run the risk of conflicting with national or international rules, for that would render their adoption more difficult if not impossible.

4. — The *content* of the international Convention should be decided in the light of economic and commercial needs and with due regard for the social trends discernible in court judgments and in the writings of specialised authors, so as to present a text which strikes the best possible balance between the interests of the travel agents and of their clients, thus safeguarding the general interest.

III. — ARTICLE-BY-ARTICLE COMMENTARY

I. — SCOPE OF THE CONVENTION

Article 1

Article 1 contains the definitions.

(a) The draft Convention creates a new type of contract, the « travel agency contract », concluded between the client and either an intermediary travel agent or an organising travel agent.

(b) A clear distinction is made between the activities of the two categories of travel agents :

The *intermediary travel agent* is the classic type of travel agent.

All he does is to link up the client and the third parties who are to provide certain separate services such as transport, lodging, insurance, etc. It may happen that the intermediary travel agent obtains a completely organised tour for his client; however the organisation will not have been done by him but by another travel agent — an organising travel agent.

The contract in such cases is an « intermediary travel agency contract » which, concerning simple services, is on the whole a simple contract.

The *organising travel agent* is in quite a different position.

He is not being asked by this client to provide him a single specified service but to organise a journey, choosing the most suitable types of transport and accommodation and taking advantage of the best terms available on behalf of such client, who seldom will not be in a position to give precise instructions in this regard especially as the best travel and accommodation conditions are often trade secrets.

Thus the client buys a ready-prepared item of trade without having to concern himself with its component parts and it would not enter his head to conclude contracts directly with a series of carriers, hotelkeepers, restaurateurs, guides, chauffeurs, etc., all far distant and unknown to him.

In such cases the travel agent concludes with his client a complex contract which resembles no other type of contract. This is the « organising travel agency contract », concerning which the draft Convention establishes a special set of rules.

It goes without saying that since the travel agent's activities can take two such totally different forms, the corresponding legal position is in each case quite different. The definitions proposed in the draft emphasise this fundamental distinction.

(c) The definition of the organising travel agency contract shows that the contract must concern the organisation of a journey or sojourn comprising several services. There must be some linking-up process between not less than two separate services, even if they are of the same nature.

On the one hand, it is impossible to speak of « organisation » without suggesting the bringing together of at least two distinct elements and, on the other hand, it was necessary to exclude from the scope of the Convention those persons who perform a single service, for example, carriers and hotelkeepers.

However, a person who provides motorised transport and combines this service with the provision of a meal in transit or of any other mode of transport, is providing an organised journey within the meaning of the Convention.

Under the intermediary travel agency contract, on the contrary, the travel agent obtains for his client a separate service to be performed by a third party, with a view to carrying out a journey or sojourn. Thus he will issue tickets for various modes or means of transport, vouchers for hotel accommodation or restaurant meals, etc.

But he may also obtain for his client, still in his capacity as intermediary, a journey or sojourn organised by another travel agent, the organising travel agent or « tour operator ».

It may be asked whether it was necessary to deal with this type of contract in the Convention.

The fact is that the travel agent who, acting as intermediary, sells his clients an organised tour or a travel ticket is generally first and foremost acting as representative of the travel agent who organised the tour or of the carrier. It is therefore a question of the relationship between the travel agent and persons providing services, a matter which we have deliberately left outside the scope of the Convention.

What, then, is the *raison d'être* of the intermediary travel agency contracts ?

First of all, this is the contract which places the travel agent under an obligation towards his client whenever he is acting on behalf of that client. Thus when the travel agent reserves a hotel room or a theatre ticket for his client he is usually the representative neither of the hotelkeeper nor of the theatre management but solely of the client. Moreover, when the travel agent, as official agent of the X airline or the Z railway company, issues his client with an X or Z ticket he will always in practice be acting as representative of his client who will either have expressly requested an X or Z ticket or will have relied on his travel agent to find him the most suitable method of transport.

It is easy to see, however, that the existence of such a two-way representation may lead to conflicting interests. But that is an additional reason for defining the obligations of the travel agent towards his client and for protecting the latter should such circumstances arise.

(d) The Convention applies not only to travel agents, whatever their specialised field of activity, but to all persons who undertake to provide another with the services mentioned in paragraphs 2 and 3 of Article 1. It was essential that persons making the same undertaking as professional travel agents should bear the same responsibilities, whether or not this was their main business and whether or not they did so on a professional basis.

This provision obviously does nothing to diminish obligations which may result from administrative regulations, making the activities covered by the Convention subject to licence, for example.

(e) It is, however, stipulated that to come within the scope of the Convention contracts must be concluded in return for payment, with the object of making a profit. It was deemed advisable, however, to avoid the description « profit-making » for fear of leaving outside the scope of the Convention a series of organisations known as « non-profit-making » or « non-commercial » organisations by reason of their social, cultural or other aims, although such aims by no means prevent them from taking part in transactions intended to yield a profit.

Payment is to be understood as meaning any kind of remuneration whatsoever: in cash or in kind or in the form of benefits of any kind, even indirect benefits.

For example, an employer may organise a study tour for his management personnel; this would be subject to the Convention by reason of the indirect benefit the employer would derive in this way from extending the experience of his staff.

On the other hand, there exist student associations which organise journeys or sojourns for their members strictly at cost price. Since they draw no benefit, direct or indirect, from such activities, they would not be subject to the Convention.

(f) The word « traveller » is to be understood as meaning any person who benefits from an undertaking mentioned in paragraphs 2 and 3 of Article 1, whether such person is a direct party to the contract or whether another person has contracted on his behalf.

(g) Finally, a « person » within the meaning of the Convention may be a physical person, a corporate body or any other recognised legal entity.

Article 2

Article 2 specifies the scope of the Convention.

(a) In view of the special nature of the travel agency business, which is mainly international, and the absence of specific national legislation, it is advisable to seek the widest possible measure of unification without making a distinction between the purely national activities and the international activities of travel agents.

It should be remembered that in recipient tourist countries, local travel agents may sell purely national circuits not only to foreigners visiting the country but also to foreign travel agents who may incorporate them in their own organised tours. This makes it even more important to standardise the regulation applicable to travel agencies.

The Working Committee was accordingly of the opinion that the Convention should apply equally to national and international services. And if that could not be achieved, the Committee felt that it should be left to the Diplomatic Conference to allow Contracting Parties to make reservations with regard to contracts the execution of which would not involve any passage of frontiers. In that event the Committee hoped that the Convention would however be considered as a model law for the regulations governing such contracts.

(b) There remained to decide what should be the criterion of applicability of the Convention.

The Warsaw Convention, the Brussels Convention on the carriage of passengers by sea, the draft Convention on the Contract for the International Carriage of Passengers and Luggage by Road (C. V. R.), as well as the draft Convention on the Contract of Forwarding Agency of Goods use the point of departure and the point of destination as criteria of applicability.

In the present draft Convention the point of departure and that of eventual destination very often happen to be the same, so that the Committee decided to take as the territorial criterion the place where the travel agent has his principal place of business or his customary residence or where he was « operating ».

If, therefore, the travel agent has his principal place of business in a contracting country, the contract which he concludes through the intermediary of a branch office situated in another country — even if it is a non-contracting country — is nevertheless subject to the Convention.

Vice-versa, if the travel agent's principal place of business is not situated in a contracting country but the branch office through which the contract was concluded is so situated, the Convention is still applicable because the travel agent, when concluding the contract, was operating in a contracting country.

The wording used in the first paragraph of Article 2 has been carefully chosen to avoid as far as possible difficulties arising from application of the law of the place of conclusion of the contract in the event of the contract having been made by correspondence.

(c) The Committee wished to make the general nature of the Convention clear on another point: that of the domicile and the nationality of the parties and their object in concluding the contract.

These considerations are totally irrelevant. Article 2, paragraphs 2 and 3, states that the Convention is applicable whatever the object of the journey, be it tourism, business, migration, or whatever.

It is therefore applicable to emigrants, to workers obliged to sojourn in a country other than their home country. However, where special provisions even more favorable than those embodied in the Convention happen to be applicable, naturally the people who were intended to benefit thereby must be allowed to do so. Several countries in fact, introduced extremely detailed and strict provisions in favour of emigrants in the 19th century.

2. — GENERAL OBLIGATIONS UNDER THE TWO TYPES OF TRAVEL AGENCY CONTRACT

Article 3

Article 3 reiterates, *mutatis mutandis*, the obligations which, in accordance with general principles of law, are incumbent upon all who manage another's affairs: duty to safeguard his interests,

inform him, follow instructions received, maintain discretion regarding his business, take care in the choice of third parties employed to perform some services, repay any sums paid in excess.

Article 4

Article 4 imposes parallel obligations on the traveller, who must not only facilitate the task of his travel agent but in addition see to it that nothing on his side interferes with the latter's duties, for example he must not cause delays at frontiers by failure of having the proper visa, by infringing currency regulations or by non-compliance with some other requirement such as vaccination.

3. — THE ORGANISING TRAVEL AGENCY CONTRACT

The organising travel agency contract is dealt with in Article 5 to 15 of the draft Convention.

Articles 5, 6 and 7

Articles 5, 6 and 7 concern the evidence of this type of contract and, in order firmly to establish the legal position, oblige the organising travel agent to issue the traveller with a written document, the ticket.

The ticket is a part of current practice in the travel agency business and its importance is the greater in that there is a growing tendency for the contract with which we are concerned to become a unilaterally stipulated contract imposed on the client. This form of contract has two advantages: first of all it makes for rationalisation, so that it is easy matter to sell journeys or sojourns even by correspondence and secondly it standardises the contractual relationship between travel agent and client.

Without interfering with such a convenient form of contract it is nevertheless necessary to subject it to strict regulations in order to be fair to both parties.

That is to be one of the principal aims of this Convention, as is evidenced by this requirement that the travel agent should issue the client with a ticket bearing his signature or official stamp and defining as precisely as possible the extent of the obligations on each side.

It will be noticed that Article 6, paragraph 1 (n), contains the « paramount » clause extending the scope of the Convention. Similar clauses have been inserted in several texts prepared by UNIDROIT.

The Committee wished to reduce formalities to the minimum. For that reason Article 6, paragraph 2, provides that in so far as programmes containing the information required in this Article are available to the public — and this is often the case where tours organised in advance are concerned — the ticket may merely refer to the relevant programme.

In the case of a journey or sejour organised at the request of the client, it is the plan of the journey drawn up by the organising travel agent in the form of an estimate which, upon acceptance by the client, becomes documentary evidence of the contract.

In a word, it matters little exactly what form the ticket takes. It may even be a booklet with detachable pages such as travel agents frequently use.

In the case of a group journey, the list of travellers may also be attached as an appendix, whereupon it becomes an integral part of the ticket.

On the other hand, in view of the importance of the ticket, especially for the traveller, Article 7 provides that the organising travel agent shall bear the consequences in the event of there being no ticket or a ticket not prepared in due form; he then forfeits the benefit of provisions of the Convention relieving him of liability or limiting his liability.

Article 8

Article 8 grants the traveller the right to be replaced by another person.

It was necessary to grant this faculty by an express provision, owing to the fact that this type of contract is normally strictly personal.

However, such substitution is subject to three conditions : it must not be prohibited by the contract; it must be permitted by provisions governing the services to be carried out within the framework of the contract; and, finally, the organising travel agent must have all his expenses refunded.

Articles 9 and 10

Articles 9 and 10 deal with the fairly frequent situations where one or other of the parties to the contract desires to cancel the journey that was to have been arranged.

Article 9

Article 9 concerns cancellation of the organising travel agency contract by the traveller.

Such cancellation is allowed on condition that all expenses incurred by the organising travel agent are reimbursed and provided that the traveller pays him in addition, in compensation for loss of profit on the cancelled part of the contract, a lump sum fixed at 10 or 20 % of the price agreed in the contract.

This form of lump sum compensation, which is customary in the business, is an extremely practical arrangement in that not only are the parties aware in advance of what will be the consequences of cancellation of the contract, but the difficulties of calculating damages for breach of contract and the legal proceedings which ensue are thereby obviated. These advantages more than make up for the minor inconvenients that may be criticised in a system of lump sum compensation.

The expenses to be refunded to the organising travel agent include not only sums owing by him to third parties such as carriers, hotelkeepers, etc., following cancellation, but his own general expenses, including those commonly designated in French as « frais de constitution de dossier » (agent's own administrative expenses).

The rates of 10 % and 20 % correspond to the profit which the travel agent is assumed to make on the organisation of an individual journey or sojourn, on the one hand, or a group journey or sojourn, on the other. This is not payable in the event of *force majeure*, nor when the traveller has given fifteen days notice, which should give the travel agent time to find a replacement, nor when such a replacement has been found in spite of shorter notice.

The total amount payable to the organising travel agent as a result of cancellation — expenses plus compensation for loss of profit — may in no circumstances exceed the price agreed in the contract for the organisation of the journey or sojourn cancelled by the traveller.

The notion of a group journey or sejour can in practice cover two quite different types of situation : the travellers may form themselves into a group before applying to the organising travel agent, or they may be grouped by the latter.

The term « group journey or sojourn » employed in the Convention applies to either type of group, the fact of there being a group formed in any way whatsoever being expressly mentioned on the ticket, as required by Article 6, paragraph 1 (k).

Article 10

Article 10 concerns cancellation of the organising travel agency contract by the travel agent.

It is a fact that among the general conditions imposed nowadays by travel agents there is usually a clause enabling them to cancel the contract unilaterally without compensating the traveller.

Although such a provision seems somewhat high-handed, it is simply intended as a precaution in the event of there being an insufficient number of participants in a collective journey or sojourn, where the extremely advantageous price quoted depends on a minimum number of inscriptions.

Seen in this light the clause becomes perfectly justiciable and its deletion would certainly inhibit the initiative of travel agents and probably deal a fatal blow to popular moderate priced travel.

This would be both uneconomic and anti-social.

However, it must be made plain that this is the particular risk against which the travel agent wishes to protect himself, and the clause in present use, couched in general terms, must therefore be replaced by a more precise form of words.

This is the object of Article 10 of the draft Convention, which gives the organising travel agent the right to cancel the contract solely in cases where he has been unable to obtain the minimum number of inscriptions specified on the ticket in accordance with Article 6, paragraph 1 (k), and provided he gives the traveller at least ten days' notice.

As long as the traveller is duly warned in this way, the organising travel agent may cancel the contract without paying compensation.

Article 11

Article 11 concerns the price agreed in the organising travel agency contract.

As stipulated in Article 6, paragraph 1 (1), it is in keeping with the nature of the contract that the price should be all-inclusive.

Moreover, it is in keeping with the nature of the contract and with business practice that the price should be not only all-inclusive and agreed in advance, but also that it should be a lump sum quotation. That is how the newly-coined expression « package tour » came into being.

In actual fact, the general conditions of travel agents often contain a clause enabling them to raise the agreed price, for example to meet a rise in the cost of services.

The Committee, whilst emphasising the basic principle that the pre-arranged inclusive price was a lump sum quotation, nevertheless agreed to go along with business practice by allowing the contract to mention the possibility of a price increase in two specific cases; fluctuating rates of exchange and a rise in the tariffs of the suppliers of services.

There are good grounds for adopting this course, for an intransigent attitude might force organising travel agents to push up their prices, perhaps unduly, in order to protect themselves against possible changes in rates of exchange or the cost of services.

An increase in price may even be justified by a rise in the tariffs of services performed by organising the travel agent himself. It is necessary, however, that he should not be alone in raising his charges; it should be a sufficiently widespread movement to appear as a general increase in tariffs.

Paragraph 2 protects however the traveller against a price increase exceeding what might reasonably be expected (10 %) by giving him the right to cancel the contract in that eventuality.

Articles 12, 13 and 14

Articles 12, 13 and 14 deal with the liability of the organising travel agent.

Article 12

Article 12 lists the persons for whom the organising travel agent is liable.

This provision is similar to one inserted in most of the texts prepared by UNIDROIT. It will be observed that the organising travel agent is liable not only for his agents and servants but also for his representatives, that is, in particular, « retail » travel agents selling to the public the tours which he has organised.

Nothing is changed as regards the burden of proof. It is the traveller who must prove that the person causing the loss or damage is an agent, servant or representative of the organising travel agent and that such person was acting in the course of his duties.

In this connection, however, the travel agent should be more careful than hitherto owing to the fact that many courts accept the so-called « theory by appearances » (undisclosure).

Article 13

Article 13 relates to direct liability.

(a) The organising travel agency contract makes it incumbent upon the travel agent to organise a journey or sojourn, that is to say, plan it, prepare it and see that it is carried out.

It happens fairly often, however, that the organiser of a journey or sojourn also undertakes to perform some part of it by means of his own vehicles, his own hotels, etc.

(b) Paragraph 1 renders the organising travel agent directly liable for anything he may do himself (or through the intermediary of his agents, servants or representatives) without making any distinction between occurrences related to organisation and those related to the performance of the journey or sojourn.

The distinction reappears, however, in the succeeding paragraphs when it is a question of establishing the circumstances of the organising travel agent's liability.

It will be noticed that the organising travel agent is liable in particular for loss or damage caused « in connection with » services specified in the contract. Here the Committee wished to make it plain that there was an obligation to make good not only loss or damage occasioned by the performance or non-performance of the services specified in the contract, but also loss or damage caused by

anything connected with these services (for example : illness caused by refreshments not specified in the contract but normally served during a journey by air; a fall caused by a hole in a stair-carpet in the traveller's hotel).

(c) Paragraph 2 defines the organising travel agent's duty with regard to organisation. He may be liable if he fails to organise the journey or sojourn, if the various services comprising it are badly linked together, if he neglects to provide one of the specified services or if the service is provided but falls short of the client's expectation as regards comfort or amenities.

Here is not the performance of the services which is called in question but their conception or the way they are combined, and that is the responsibility of the organiser as such.

One of the most knotty problems to solve was whether the travel agent, as organiser, had a duty of warranty for adequate results or simple liability for negligence.

The formula proposed is that to be found in Article 15 of the draft Convention on the forwarding agent contract.

It takes a middle road maintaining the principle of the liability of the organising travel agent based on wrongful action, although if the travel agent disclaims liability on the ground that the cause lies elsewhere (war, strikes, uprisings and any unforeseeable circumstance or *force majeure*) he must prove that this is the case.

The organising travel agent may only be held liable for a wrongful act or default that would not have been committed by a diligent member of the profession.

This formula seems to reconcile the interests of all concerned : it respects the rights of the traveller, who is especially vulnerable when journeying abroad, and it avoids placing an undue burden on the organising travel agent, who after all faces a considerable degree of risk and whose position is in that respect somewhat similar to that of the forwarding agent.

The system has the further advantage of being similar to that adopted by the Warsaw Convention on carriage by air (Article 20, 1), by the supplementary C. I. V. Convention (Article 2) and by the draft C. V. R. Convention (Article 12).

With regard to what persons should be entitled to claim against travel agent and what should be their respective rights, the Committee decided however to follow the Warsaw Convention (Article 24) rather than the C. V. R. draft (Articles 13 to 18) and leave this question outside the framework of this Convention.

The compensation payable by the travel agent is limited to the amount of the loss or damage, though it may not exceed certain ceiling figures tentatively proposed by the Committee, to be finally settled by the Diplomatic Conference.

(d) Paragraph 3 governs the case where the organising travel agent (or person employed by him) performs one of the services making it possible to carry out the journey or sojourn.

Where such travel agent incurs liability during the performance of a transport service, for example, there is no special reason for waiving the provisions which fix the liability of an ordinary carrier. A simple rule referring to these provisions is therefore sufficient to render the organising travel agent who performs a transport service liable in the same way as any carrier who might find himself in similar circumstances.

In the same way, the legal position of the organising travel agent who accommodates his clients in his own hotel will be exactly the same as that of an ordinary hotelkeeper.

Article 14

Article 14 governs liability resulting from the actions of a third party.

(a) A journey or sojourn may require the intervention of a third party, when the organising travel agent calls on a hotelkeeper, carrier, guide or the manager of some kind of entertainment to perform one of the services comprising the journey or sojourn which he has organised and which he is not carrying out himself.

Where that is the case the draft Convention decides that the organising travel agent is « answerable » for the loss or damage caused to the traveller during execution of the contract, under exactly the same conditions and with the same limitations as if he had actually carried out the service himself.

(b) This conception is incompatible with the provisions almost invariably included in the general conditions of travel agents, whereby the latter maintain that they are only acting as intermediary between the client on the one hand and the suppliers of services on the other, and that they are accordingly not liable for a wrongful act or default committed by those suppliers.

It is possible to object to the proposed system on theoretical or on practical grounds, or on grounds of equity.

Theoretically speaking, liability for a wrongful act or default committed by a third party is exceptional in existing legal systems.

Practically speaking, such liability for a wrongful act or default on the part of a third party will incite the clients to take action against the organising travel agent rather than apply directly and solely to the person who performed the services and whose wrongful act or default caused the loss or damage.

Finally, from the point of view of equity, is it right that the traveller who books through a organising travel agent should be in a more favourable situation than if he had organised his own journey or sojourn ?

(c) Considered from the theoretical and practical point of view, the liability of the organising travel agent for the wrongful acts or default of persons to whom he entrusts the execution of the contract can be deduced from the above-mentioned tendency of the courts, to make the travel agent liable for loss or damage suffered by the traveller. Plenty of legal arguments are to be found in case-law and in legal doctrine, for example comparison with the ordinary responsibilities of the contractor or vendor, to whom courts and authors sometimes assimilate travel agents.

The travel agent finds himself in the worst possible situation precisely when the courts consider him to be the « intermediary », which is what he likes to be called.

The intermediary is always liable for his management and it is all the easier to make the travel agent liable since he is a salaried professional whose non-liability clauses are not usually accepted by the courts.

Experience shows that the travel agent is nearly always rendered liable for the actions of others, not directly but in a roundabout way: his personal liability as intermediary may be incurred by reason of having made a bad choice of the person directly responsible, and this liability of the travel agent has no limit.

A Convention opposed to a solution — however questionable it may be — with such a strong sociological base would have no chance of success.

The Committee wanted to be fair to all concerned and that is why it was decided to make the organising travel agent liable, while at the same time defining his legal position and enabling him to measure his risk accurately.

It follows from Article 14, paragraph 1, that the organising travel agent, contrary to the situation obtaining at present, will never be more liable than the person who committed the wrongful act.

His liability will first of all be precisely defined by the rules laid down in the Convention of Warsaw and the Hague, the supplementary C. I. V. Convention, the Brussels Convention on the carriage of passengers by sea, soon by the C. V. R., etc., and other rules prescribed by law and which cannot be contracted out, concerning the service involved in the loss or damage.

In those fields where there exist no such rules of law, for example in the hotel business, the travel agent will be justified in availing himself of valid non-liability clauses stipulated by those who carry out the services comprising the journey or sojourn.

Finally, in so far as the liability of the third party, resulting in liability of the travel agent, is not limited by application of the rules mentioned, Article 14, paragraph 2, provides in any event for limitation of the organising travel agent's risk.

Thus defined and limited, what is the nature of the organising travel agent's liability ?

This is made clear in paragraphs 3 and 4 of Article 14 which :

(1) grant the organising travel agent who has compensated the traveller a right of recourse against the third party who performed the service;

(2) allow the traveller to retain his right of direct recourse against such third party.

In other words, the liability imposed on the organising travel agent amounts to a compulsory guarantee, so that the effect of Article 14 is to make him liable only in respect of his bad choice.

Not only does the Convention define and limit the organising travel agent's liability, but it does this in such a way that a normally diligent travel agent, who takes care to choose reliable and solvent subcontractors, runs absolutely no risk since his right of recourse enables him easily to recuperate whatever compensation he may have to pay out to his client.

(d) The objection that the traveller will be more favourably treated under the Convention than if he had organised his own journey or sojourn is obviously untenable.

First of all, there are a number of journeys or sojourns which the traveller is incapable of organising himself on the same favourable terms. He can never on his own account obtain the means of transport, the hotels, the entertainments and especially the prices that only the organising travel agent can offer. He is therefore quite often obliged to use the travel's services as intermediary.

In any case, the client who goes to an organising travel agent does so precisely because he hopes that it will be a surer method than relying on his own efforts.

That he should be deceived in this belief would not only be indefensible on the legal and social plane, it would be serious error from the commercial point of view. The organising travel agent's importance will in the long run be measured by the services he can offer, among them an assurance that its contractual duties will be fully honoured.

The draft Convention, whilst protecting the position of the client, endeavours not to leave out of account the legitimate interests of the travel agent.

Article 15

Article 15 concerns the traveller's liability : he is liable vis-à-vis the organising travel agent for any prejudice occasioned abnormal conduct.

4. — THE INTERMEDIARY TRAVEL AGENCY CONTRACT

Articles 16 to 22

The intermediary travel agency contract is dealt with in Articles 16 to 22 of the draft Convention.

Article 16

Article 16 establishes the legal position of the intermediary travel agent.

Here the travel agent is seen in his traditional role as representing either the client or the supplier but in any case concluding his contracts directly in the name of the traveller and the suppliers of services.

The rules laid down in the Convention are perfectly compatible with the draft uniform law on agency in private law matters in international relations prepared by UNIDROIT (U. P. L. 1961, St./XIX, Doc. 43), both as regards constitution of the agency and its effects.

Articles 17 and 18

Articles 17 and 18, relating to evidence of the contract, correspond to the parallel provisions contained in Articles 5, 6 and 7 regarding the organising travel agency contract.

When the intermediary travel agency contract concerns a journey or sojourn organised by a third party (organising travel agent), it is in fact a question of an organising travel agency contract concluded directly between the organising travel agent and the client through the good offices of the intermediary.

Adequate evidence of the intermediary travel agency contract will therefore be provided by the ticket required under Article 5, issued by the intermediary and mentioning his role in the transaction.

When the contract concerns separate services, adequate evidence of the contract is provided by the handing over of documents relating to these services, bearing the travel agent's stamp, together with details of the sum paid for each service and the paramount clause to appear on these documents or on some other commercial document.

Here too the travel agent will bear the consequence of violating his obligations, with this difference that the intermediary travel agent who fails to respect the requirements regarding an organised journey or sojourn will be considered as being the organising travel agent.

This provision consecrates the « theory of appearances » (undisclosure).

Article 19

Article 19 permits cancellation of the contract by the traveller, on condition that he pays any sums due to the organising travel agent, in accordance with Article 9, or to the various suppliers of services, where the contract concerns separate services.

In addition the traveller must refund to the intermediary travel agent any other expenses, including « the agent's own administrative expenses ».

On the other hand, the intermediary travel agent receives no compensation for loss of profit.

It emerged from the discussions on this article that the intermediary travel agent's position in relation to the suppliers was very variable.

If he « sells » a tour organised by a third party he is paid by the latter on a commission basis. In the event of cancellation by the traveller, the third party will pay the commission out of the sums awarded to him under Article 9, so that no special compensation needs to be provided for the intermediary travel agent.

If he « sells » travel tickets or hotel vouchers, various systems are adopted. The carrier may pay the travel agent his commission even if the contract of carriage is cancelled, or cancellation may mean that the travel agent receives no payment whatsoever.

The Committee felt that it was impossible to govern all the possible situations, for they depended too much on the relationship between the intermediary travel agent and his suppliers and should consequently be solved within the framework of that relationship — a matter outside the scope of the Convention.

Articles 20 to 22

Articles 20 to 22 deal with the liability of the intermediary travel agent.

Article 20

Article 20 lists the persons for whom the intermediary travel agent is liable. This is the parallel provision to Article 12 relating to the organising travel agent.

Article 21

Article 21 fixes the liability of the intermediary travel agent. He is liable for any wrongful act or default committed in his capacity, the burden of proof lying with the traveller and the maximum compensation payable being 10,000 francs.

Article 22

Article 22 limits the direct liability of the intermediary travel agent. As a simple intermediary, the travel agent cannot be held responsible for the non-performance or inadequate performance of services specified in the contract.

The draft Convention makes provisions for one exception to this basic principle, however, in cases where the intermediary travel agent has actually chosen the person who is to perform a service.

The Committee considered that in such cases the intermediary travel agent should be liable for the person chosen, but only in so

far as he might be notoriously insolvent or notoriously incompetent. Thus the intermediary travel should refrain from advising his client to use an airline run by a financially unsound company, not properly covered by insurance.

This is the object of Article 22, paragraph 2, with the consequence that in this particular case the liability of the intermediary travel agent is not limited in accordance with Article 21, paragraph 2, but becomes subject to the provisions of Article 14 concerning the organising travel agent.

The liability by reason of a bad choice is the same for both organising and intermediary travel agent.

5. — COMMON PROVISIONS

Articles 23 to 28

Provisions common to the two types of contract are contained in Articles 23 tot 28.

Article 23

Article 23 defines the value of compensation by reference to the gold franc used in the most recent Conventions.

Article 24

Article 24, relating to the calculation of compensation and interest, is based on Article 9, paragraphs 1 and 2, of the supplementary C. I. V. Convention, whilst its third paragraph corresponds to Article 6, paragraph 1, of the Brussels Convention on the carriage of passengers by sea and Article 38 of the draft C. V. R. Convention. It should be noted that interest is payable only on compensation for loss or damage and not on sums which the travel agent must refund in accordance with Article 3, paragraph 2, (e).

Article 25

Article 25, relating to extra-contractual claims, takes account of the fact that certain legislations permit such proceedings even

between the parties to a contract. It follows the Warsaw Convention (Article 24, 1), the Brussels Convention (Article 10, 1), the supplementary C. I. V. Convention (Article 12) and the draft C. V. R. Convention (Article 33).

Article 26

Article 26 deals with the position of persons for whom the travel agent is liable, allowing them to benefit from the same rules of liability as the travel agent himself; the total amount of compensation payable on any grounds whatsoever may not exceed the absolute limits laid down in the Convention.

A similar provision is to be found in Article 25 A of the Warsaw Convention; as amended by the Hague Protocol, in Article 12 of the Brussels Convention, in Article 12 of the supplementary C. I. V. Convention and in Article 35, paragraphs 1 and 3 of the C. V. R. draft.

Article 27

Article 27 deals with wilful misconduct and gross negligence, either on the part of the travel agent himself or on the part of persons for whom he is liable. Following a fundamental principle of law, no exoneration or limitation of liability may be allowed in such cases.

Although the supplementary C. I. V. Convention (Article 8) mentions simply wilful misconduct and gross negligence, the present draft Convention uses a paraphrase taken from Article 34 of the C. V. R. draft which attempts to analyse more precisely notions which might receive divergent interpretations in different countries and even in different courts of the same country. Incidentally, Article 25 A of the Warsaw Convention as amended by the Hague Protocol and Article 7 of the Brussels Convention use another paraphrase : « done with intent to cause damage or recklessly and with knowledge that damage would probably result ».

Article 27, paragraph 2, states that in assessing the actions of the travel agent or a person for whom he is liable the definitions contained in this article shall be superseded by those contained in the rules referred to in Article 13, paragraph 3, where applicable, at least where such rules cannot be contracted out.

Article 28

Article 28 reserves the matter of liability of a third party the traveller retaining all his rights and means of recourse against third parties regardless of the liability of the travel agent — whether organising or intermediary — as defined in the draft Convention.

6. — LEGAL PROCEEDINGS

Articles 29 tot 32

Legal proceedings to which contracts subject to the Convention may give rise are dealt with in Articles 29 to 32.

Article 29

Article 29, relating to jurisdiction, is based on Article 38 of the draft Convention on the contract of forwarding agency and on the latest version of Article 41 of the C. V. R. draft.

However, the Committee considered that apart from the courts of contracting countries designated by the parties the only other courts to have jurisdiction should be those of the country where the defendant has a place of business or his customary residence.

Moreover, the Committee decided not to insert provisions on the enforcement of judgments and payment of security for costs such as appear in other Conventions and draft Conventions.

Article 30

Article 30 deals with arbitration which is only authorised if the clause providing for it *in advance* stipulates application of the rules laid down in the draft Convention.

This provision does not, however, prevent an arbitration tribunal from applying other rules, where recourse to arbitration is agreed upon *after* the incident which is the subject of dispute.

Article 31

Article 31 governs the period of limitation for legal proceedings. It is based on Article 17 of the supplementary C. I. V. Convention and Article 42 of the C. V. R. draft.

A uniform period of one year, two in the event of a death, would seem to be adequate.

On the one hand, Article 32, number 1, provides the traveller with a wider range of possibilities when the travel agent personally performs services specified in the contract.

On the other hand, when the services are performed by a third party, the traveller still retains the right to bring an action against the third party in accordance with the rules governing such services (Article 14, paragraph 4, and Article 28).

Finally, the fact that the period of limitation for proceedings against the travel agent is the same as or shorter than that for proceedings against carriers by air, sea, road or rail under the Warsaw Convention, the Brussels Convention, the draft C. V. R. Convention and the supplementary C. I. V. Convention, respectively, will facilitate the settlement of disputes between traveller and travel agent, by making it easy for the latter to exercise his right of recourse against the third party bound to perform the services specified in the travel agency contract.

Under paragraph 5 of this Article the suspension and interruption of the period of limitation are subject to the provisions governing these matters in the law of the State of the court where the proceedings are brought, that is to say excluding the rules of private international law of this State.

Several members of the Committee proposed, however, that only the substance of Article 31, paragraph 1, should be retained, the timelimit being final. If this proposal were to be adopted the period of limitation would not be extended in the event of a traveller's death, and the matter of what rules should apply to the proceedings would be left to the law of the court seized of the case.

Article 32

Article 32 contains certain special provisions for the case where the travel agent is liable for the non-performance or imperfect performance of services specified in the contract.

Under the first paragraph of the article, when an organising travel agent personally performs a service governed by special rules prescribed by law and which cannot be contracted out, the whole matter of jurisdiction and procedure shall be settled by these rules, even if they are incomplete in certain respects, there being no possibility of having recourse to the provisions of Articles 29 to 31 of the draft. The object of this is to simplify and clarify the legal position which might otherwise be governed wholly or partially by contradictory coercive rules of law.

When the service in respect of which the organising or intermediary travel agent is liable is performed by a third party, Articles 29 and 31 are applicable to any proceedings brought against the travel agent, subject to the provision in paragraph 2 of this Article, stating that the travel agent may require that the third party be joined in the proceedings, in accordance with the law of the court seized of the case, settling this matter.

Some members of the Committee proposed that this Article be either totally deleted or that only paragraph 1 be retained.

7. — NULLITY OF STIPULATION CONTRARY TO THE CONVENTION

Article 33

The extent of applicability of the Convention is dealt with in Article 33.

This Article makes it plain that the provisions of the Convention are of a compulsory nature and cannot be contracted out, and they may therefore not be infringed by contractual clauses designed to impair their compulsory effect.

8. — FINAL PROVISIONS AND PROTOCOL OF SIGNATURE

The Working Committee had not examined the question of the final provisions of the Convention, the elaboration of such provisions being left to the Diplomatic Conference.

It has, however, deemed it opportune to prepare a Protocol of Signature, which deals with compulsory insurance. This matter was raised by a member of UNIDROIT's Governing Council, in the course of the debate on the preliminary report on the present draft Convention.

There is no doubt about the wisdom of dealing with this matter, especially since in the countries where travel agencies now have a public law status their operation has frequently been made conditional upon the constitution of a surety or guarantee fund. The introduction of compulsory insurance would in effect mean bringing an existing practice into general use.

The Committee considered, however, that it was necessary to avoid creating obstacles by placing too strict obligations upon States. The scope of the Protocol is therefore confined to the obligation to consider the possibility of introducing insurance to cover the liability of travel agents as defined in the Convention.

Draft final clauses

(Preamble)

The States Parties to the present Convention,

Noting the development of tourism and its economical and social role,

Recognizing that it be necessary to draw uniform provisions on this matter,

Have agreed as follows :

Article (a)

(Settlement of disputes)

Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention, which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Article (b)

(Signature)

This Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency, until 31 December 1971.