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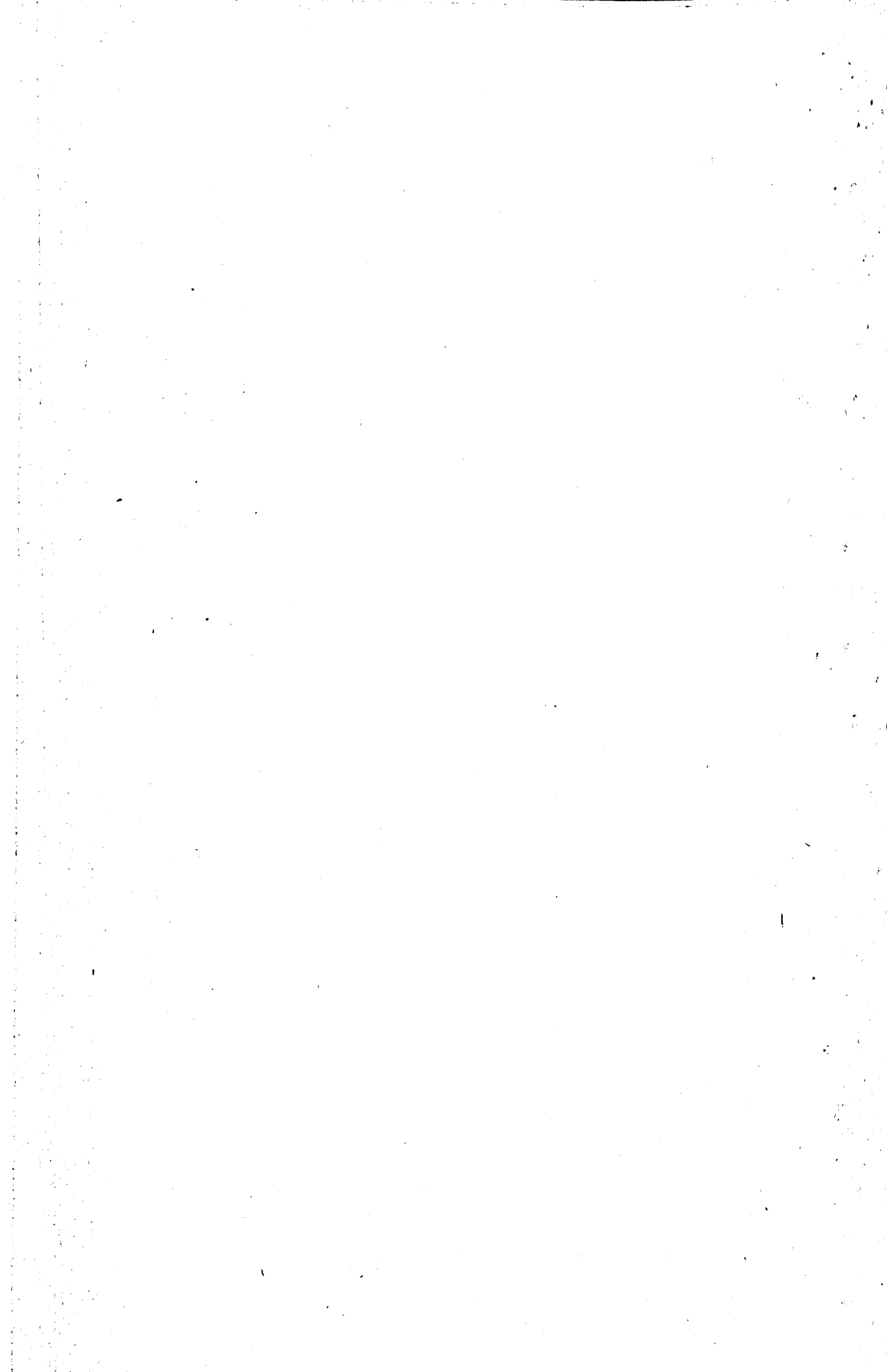
COMMITTEE OF GOVERNMENTAL EXPERTS ON AGENCY AND ON COMMISSION

DRAFT UNIFORM LAW

ON AGENCY OF AN INTERNATIONAL CHARACTER IN THE SALE AND  
PURCHASE OF GOODS

Provisional draft drawn up by the Committee of Experts  
during its second session

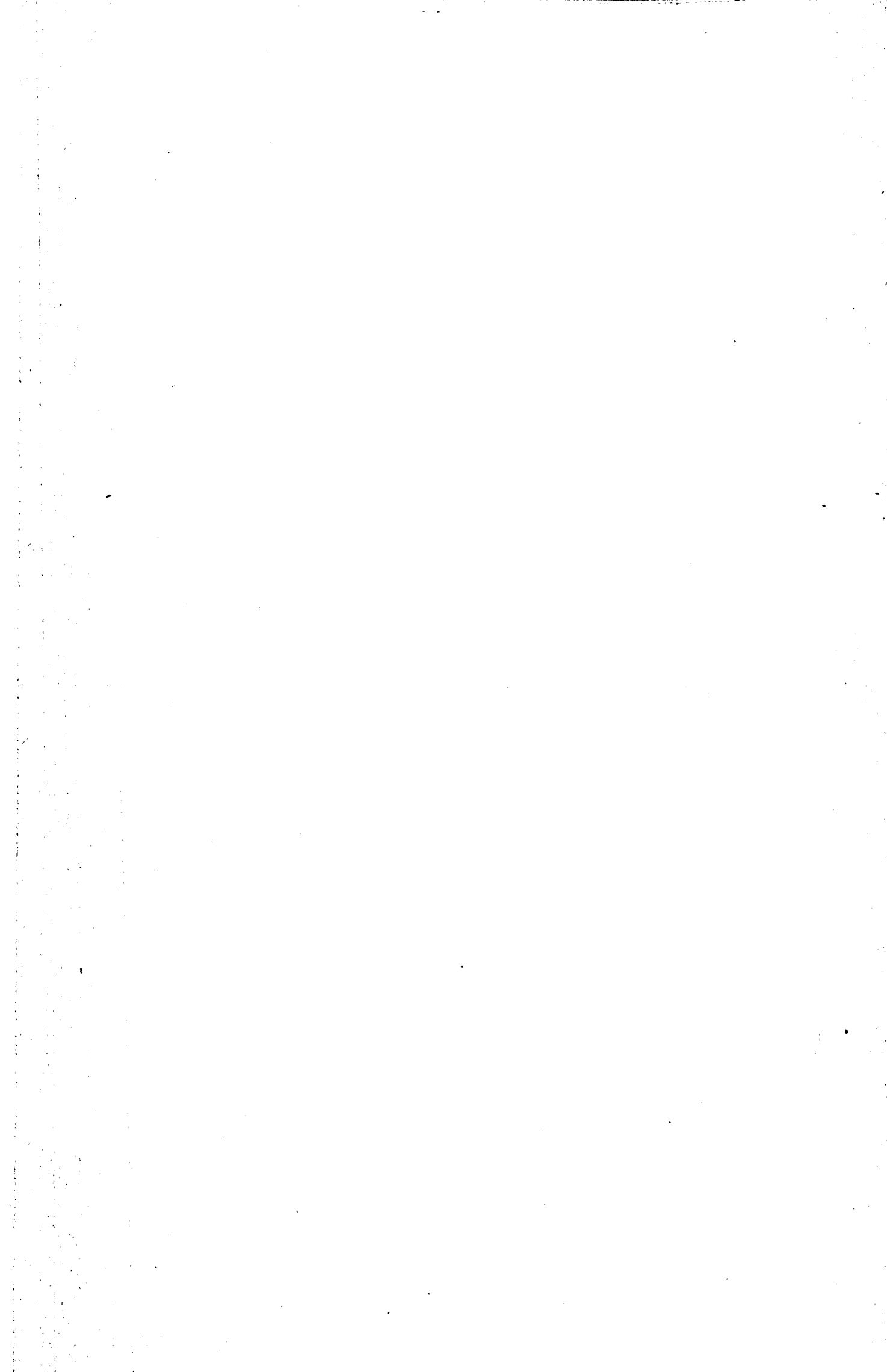
Rome, May 1971



All articles, paragraphs or words in square brackets were expressly reserved by the Committee for further consideration at its next session, together with Articles 30 to 44 which have not been considered at the 2<sup>nd</sup> session.

In order to facilitate the work of the Committee during its next session, the original numbering of the articles of the basic draft (Geneva, December 1970, doc. 47) is provisionally retained.

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## Chapter I

### SPHERE OF APPLICATION AND DEFINITIONS

#### Article 1

1. The present law shall apply to agency relationships for the sale or purchase of goods when two of the three parties, principal, agent, or third party, have their places of business in the territories of different States and

(a) the two States are Contracting States, or

(b) the rules of private international law of the forum lead to the application of the law of a Contracting State.

2. Nevertheless, the provisions of the present law which solely concern the relations between a principal and an agent shall not apply when their places of business are in the same State.

3. When a party has more than one place of business reference to his place of business means that place most closely connected with the relevant transaction.

4. Where a party does not have a place of business, reference shall be made to his habitual residence.

#### Article 2

For the purpose of the present Law, an agency relationship is a relationship that arises when one person, the agent, acts on behalf of another person, the principal, in dealing with a third party, whether he acts in his own name or in that of the principal.

Article 2<sup>bis</sup>

The present law shall not apply to agency relationships arising solely from

- (a) family relationship;
- (b) statutory or judicial authority to act on behalf of a person without full legal capacity;
- (c) the conduct of the business of a corporation, association or partnership by its officers, organs or members.

Article 3

The present Law shall not apply to agency relationships connected with the sale or purchase of:

- (a) stocks, shares, investment securities, negotiable instruments or money;
- (b) any ship, vessel or aircraft, which is or will be subject to registration;
- (c) electricity;
- (d) any goods by auction.

Article 4

The present Law shall apply to agency relationships regardless of the commercial or civil character of the parties or of the contract.

Article 5

In matters governed by the present law, it shall take the place of any rules of law, including the rules of private international law otherwise applicable.

Article 6

Even where the present Law would otherwise apply:

- (a) the parties may choose another system of law to govern their mutual relations;
- (b) the parties may exclude or vary any provision in the present Law which has effect only upon their mutual relations.

Article 7

Even where the present Law would otherwise be inapplicable, the parties may choose it to govern their mutual relations. This choice, however, shall not affect the application of any mandatory provision of law which would have been applicable if the parties had not chosen the present Law.

Article 8

1. The parties shall be bound by any usage to which they have made express or implied reference and by any practices which they have established between themselves.
2. The usages which the parties shall be considered as having made implied reference shall include any usage of which the parties are or should be aware and which in international trade is widely known to, and regularly observed by parties to contracts of the type involved.
3. In the event of conflict with the present Law, such usages shall prevail unless otherwise agreed by the parties.
4. Where expressions, provisions or forms of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning widely accepted and regularly given to them in the trade concerned unless otherwise agreed by the parties.

Article 9

In interpreting and applying the provisions of this Law, regard shall be had to its international character and to the need to promote uniformity in its interpretation and application.

Chapter II

ESTABLISHMENT AND SCOPE OF AGENCY

Article 10

1. A contract of agency is subject to no requirements as to form. It needs neither be constituted in nor evidenced by writing.

2. However, if the law of the State where the agent acts requires:

(a) any special form or formality for or in connection with his authorization, including any requirement relating to registration or publicity; or

(b) any official or other consent necessary for the purpose of enabling the agent to carry out his obligations;

that law shall determine the effect of any failure to comply with any such requirement.

Article 11

1. The authority of an agent may arise from express authorisation of the principal or from an implied authorisation inferred from the conduct of the principal and the circumstances of the case.

2. The agent shall have implied authority to perform all acts reasonably necessary to achieve the object for which the authority was conferred.

Article 12

[deleted; see art. 10]

Article 13

[deleted]



Article 14

1. An agent may substitute another for himself only by the express authorization of his principal, or when he is not in a position to carry out any act which is urgently necessary in the interest of the principal.

2. In cases where substitution is permitted the substitute shall become the direct agent of the principal and the original agent shall be liable to the principal only for lack of care in choosing or in instructing the substitute.

Article 15

[deleted]

Chapter III

RELATIONS BETWEEN THE PRINCIPAL AND THE AGENT

Article 16

1. The principal and agent shall act in good faith in their mutual relations.
2. Without prejudice to the generality of the preceding paragraph:
  - (a) The agent shall not disclose confidential information which he has received by virtue of the agency contract or make use of it for purposes contrary to the interests of the principal.
  - (b) An agent shall not, without having notified his principal, act on behalf of another principal whose interests he knows to be inconsistent with those of the former.
  - (c) The agent shall not, without the consent of the principal, buy on his own account the goods which he is to sell on behalf of the principal nor sell on his own account the goods which he is to buy on behalf of the principal.
  - (d) An agent shall not buy on behalf of one principal goods which he is to sell on behalf of another principal, unless he has the consent of both principals.

Article 17

1. The agent shall be bound to perform what he has undertaken with all the skill and care reasonably to be expected of an agent in the same situation; he shall follow the instructions of the principal.
2. The agent shall keep the principal informed of his operations and shall furnish him with an account, including a financial account, of his operations at reasonable intervals or whenever reasonably requested to do so by the principal.

Article 18

1. The agent shall take care of what has been received by him in his capacity as agent, and the principal may require immediate delivery of everything, including sums of money, which he has a right to claim from the agent.
2. The agent shall do whatever may be necessary to preserve all rights and remedies for the benefit of the principal.

3. When the goods received by the agent are in danger of perishing or so deteriorating in quality while under his control that their value would be materially reduced, the agent, if there is no time to obtain the principal's instructions as to their disposal, shall himself sell the goods or take such other steps with regard to them as the interests of the principal demand.

4. When selling the goods, the agent shall follow the rules relating to sales in cases of necessity prescribed by the law and usages of the place where the goods are situated.

#### Article 19

1. An agent is not liable to the principal for the failure of a seller or purchaser to fulfil his obligations under a contract of sale or purchase unless the agent himself guaranteed their fulfillment.

2. Where he has done so, in the absence of agreement to the contrary, he shall be jointly and severally liable with the seller or purchaser.

#### Article 20

The agent, in the absence of the consent of the principal, shall not grant to a third party buyer or seller credit or time, the right to pay by instalments or other facilities.

#### Article 21

The agent shall have the right to such remuneration and repayment of disbursements as is provided, expressly or impliedly, by the terms of the agency contract. Even where there is no such provision, the agent is entitled to recover disbursements which he has reasonably incurred.

Article 21<sup>bis</sup>

The principal shall give the agent such information and cooperation as is reasonably required to enable the agent to fulfill his obligations.

Article 22

When the agent has not received payment when due from the principal of his commission, disbursements or other sums due in respect of the agency contract, the agent:

(a) may deduct these sums from any amount which he owes to the principal, and

(b) may withhold delivery of goods or other things which he holds on behalf of the principal in connection with the contract. In this situation, the agent may also sell the goods and retain the proceeds on account of the payments due to him, irrespective of the terms of the agency contract, but only after giving reasonable notice to the principal. He shall follow the rules, if any, prescribed for such sales by the law and usages of the place where the goods are situated.

Article 23

Subject to any rights conferred on the agent by the preceding article, the fact that the goods are in the possession of an agent for the purposes of an agency contract shall not, of itself, affect rights  
as between principal and agent in the goods.

Article 24

Where the principal or agent fails to carry out his obligations to the other party without just cause or excuse, he shall, without prejudice to any other available remedies, be liable to pay such compensation to the other party as will place the latter in the same position as he would have been in if the party in breach had fulfilled his obligations.

Chapter IV

LEGAL EFFECTS OF AN ACT CARRIED OUT BY THE AGENT ON BEHALF OF THE PRINCIPAL

Article 25

[When the agent acts on behalf of the principal within the scope of his authority, and when it is apparent that he is acting as an agent, the contract shall directly bind the principal and the other contracting party. Nevertheless, the agent and the third party may agree expressly or by implication, including implication from the fact that the name of the principal is not to be disclosed or from reference to commission agency, that there shall be no direct recourse by the third party against the principal or by the principal against the third party.]

Article 26

[1. If the agent has acted without express authority or has exceeded the limits of his authority, the contract shall not bind the principal to the third party unless:

(a) the authority to enter into transactions of that class may reasonably be inferred from the position the agent holds with the express or implied consent of the principal, or

(b) the principal has otherwise conducted himself in such a way that a third party might consider that the agent was authorized to conclude a transaction of that class.]

[2.] A third party may not found upon such an implied authorization when he knew or ought to have known that the agent had no actual authority or was exceeding his actual authority.]

Article 27

1. When an agent carries out a sale or purchase on behalf of a principal but without disclosing or allowing it to be inferred that he is acting on behalf of a principal, the sale or purchase shall be binding only upon the agent and the person with whom he contracts. Nevertheless, unless and to the extent that the agent and the third party seller or purchaser have expressly or impliedly by reference to commission agency, or otherwise contracted to bind themselves exclusively,

(a) [if it shall afterwards appear to the principal that the agent in concluding the contract was acting within the scope of an authority given to him by the principal,] the principal may himself exercise the agent's rights and claims against a third party seller or purchaser subject to all the defences which such third party may set up against the agent. As soon as he has received notice that the principal intends to exercise the rights and claims of the agent against him, a third party may no longer free himself from his obligations arising out of the contract by dealing with the agent;

(b) [if it comes to the knowledge of the third party that the agent did not conclude the contract on his own behalf,] the third party in case of non-fulfilment of the obligations owed to him by virtue of the contract of purchase or of sale, may himself exercise against the principal the rights and claims arising for his benefit from the contract of purchase or of sale, subject to all defences that the principal may raise against the agent and to all defences which would have been available to the agent. As soon as he has received notice that the third party intends to exercise against him the rights and claims arising for his benefit from the contract of purchase or of sale, the principal may no longer free himself from the obligations of which execution is required of him by the third party by dealing with the agent.

2. Where the principal intends to proceed against a third party seller or purchaser as provided by para. 1 lett. a) or when the third party intends to proceed against the principal as provided by para. 1, lett. b., the principal and the third party shall give notice of that intention to the agent.

3. In the case where a default in the execution of the obligations arising from the contract of purchase or of sale for the benefit of a third party shall arise from the non-fulfilment of the obligations of the principal towards the agent, the agent shall communicate to the third party the name of the principal, unless it follows from the contract of purchase or of sale or from the circumstances at the time of its conclusion that the third party has waived such communication.

4. In the case where the third party seller or purchaser fails to fulfill his obligations to the agent arising from the contract of sale or purchase, the agent shall communicate the name of the third party to the principal.]

Article 28

1. An act carried out by a person purporting to act on behalf of another person, but who acts without authority or who exceeds the limits of his authority, and which, by virtue of this fact, would not bind that other person, may be ratified by that person. On ratification the act produces the same effects as if it had been initially carried out with authority.

2. If a third party either knew or ought to have known of an agent's lack of authority he may not free himself from his obligations under the contract, unless with the consent of the agent before the expiry of the time agreed for ratification or, failing such agreement, before such reasonable time as he may specify. Otherwise, if a third party, unaware of an agent's lack of authority, subsequently becomes aware of that lack of authority, he may either withdraw from the contract or fix a time within which the principal's ratification must be given.

3. Ratification is effective notwithstanding that the act itself could not have been effectively carried out at the time of ratification.

4. If the act has been carried out on behalf of a corporation before its creation ratification shall only be made effective if allowed by the law of the country governing its creation.

5. Ratification is subject to no special requirements as to form; it may be express or may be inferred from the conduct of the principal. Ratification shall take effect when brought to the attention of the third party.

6. The third party may decline to accept a partial ratification.

7. Ratification may not be revoked.]

Article 29

1. [A person who purports to act on behalf of another, but who acts without authority or who exceeds the limits of his authority, shall be liable to pay to the third party such compensation as will place the latter in the same position as he would have been in if the agent had acted with authority or within the limits of his authority.

2. Such an agent however shall not be liable if the third party knew or ought to have known that the agent had no authority or was exceeding the limits of his authority.]

Chapter V

RELATIONS BETWEEN THE PRINCIPAL AND THE CREDITORS OF THE AGENT

Article 30 (1)

As against the principal or the third party or the owner of the goods, the creditors of an agent shall have only those rights in the goods that the agent himself would have against those persons.

Article 31

The provisions of the preceding article shall apply if the thing forming the object of the contract of agency has lost its identity as a result of being mixed with other things hold by the agent. In such case, competing claims will be established on the mass so constituted between persons who have contributed thereto and proportionately to the amount furnished by each one to that mass; in this competition preference shall be given to principals to the extent of the rights mentioned in the preceding articles and, in the case set out at Article . . . ., to purchasers.

Article 32

The rights which the contract of agency causes to arise for the benefit of the principal, may be exercised by him, in preference to other creditors of the agent, on the credits arising from the contract of purchase or of sale against third parties for the benefit of the agent.

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(1) Articles 30 to 44 are provisional. They have not been considered at the second session of the Committee.



Chapter VI

SUCCESSIVE AGENTS

Article 33

Where an agent has made a contract through a sub-agent, the relations between them shall be regulated by the present Law as if the agent were the principal of the sub-agent:

- (a) where the two agents have their places of business, or in default thereof, their habitual residences, in the territories of different States; or
- (b) where the present Law would otherwise apply.

Article 34

Where in an agency relationship governed by the present Law, the agent makes a contract through a sub-agent:

- (a) the principal shall retain his rights against the agent;
- (b) the principal may treat the sub-agent as his own agent;
- (c) the third party shall possess against the principal those rights which he would have possessed if the contract had been concluded directly through the agent.

Article 35

Articles 33 and 34 shall apply to successive agents if more than two agents act as intermediaries in connection with a contract of sale or purchase.

Chapter VII

END OF AGENCY

Article 36

An agency contract is terminated when it has been fully performed by the parties or when they so agree.

Article 37

1. An agency contract is terminated, except as otherwise provided in article 44, by the death of the principal or, where the principal is not a natural person, by its dissolution.

2. It is also terminated, except as otherwise provided in article 44, on the bankruptcy of the principal or when he suffers a total loss of capacity.

3. When the principal has suffered only a partial loss of capacity, an agency contract shall not by that fact alone be terminated; but the powers of the agent shall be limited to those of the principal.

4. The acts of the agent subsequent to the principal's death, dissolution or lack of capacity, total or partial, shall continue to bind the principal's estate in relation to the agent, and to any person with whom he contracts, who is unaware of the death, dissolution or loss of capacity.

Article 38

Notwithstanding the death, incapacity or bankruptcy of the principal, the agent, unless otherwise instructed by the successors or representatives of the principal, shall continue to act as if the contract of agency has not been terminated where damage would otherwise be caused to the principal or to his successors or his estate.

Article 39

An agency contract is terminated :

- (a) by the death of the agent, or where the agent is not a natural person, by its dissolution;
- (b) when the agent loses that capacity which he had at the time he was granted authority; or
- (c) on the bankruptcy of the agent.

Article 40

1. An agency contract shall be terminated on the revocation or renunciation of the contract by the principal or agent, whether or not this is consistent with the terms of the contract. The party revoking or repudiating shall be liable to pay damages for breach of contract or for failure to give reasonable notice.

2. Any restriction in the scope of the contract by either party shall have a similar effect.

Article 41

A revocation, renunciation or restriction shall have effect upon a third party only from the time he has notice of it, except in the following cases :

(a) when the document creating or evidencing the agent's authority has been cancelled by a procedure of invalidation, effective under the law of the State where the agent conducts his business;

(b) when the agent's authority arises solely from his position and he has left  or has been removed from  that position;

(c) when the agent's authority arises solely by reason of the registration or publication of an authorization, and the revocation, renunciation or restriction has been given similar publicity.

Article 42

When the third party knows of the agent's authority only because the agent has made a declaration to that effect, revocation of that authority by the principal shall have effect in relation to the third party as soon as it has been brought to the notice of the agent, even though the third party is unaware of the revocation.

Article 43

The principal and agent shall take all reasonable steps to ensure that third parties are not prejudiced by the revocation, renunciation or restriction of the agent's authority and shall be liable to such parties for any failure to do so.

Article 44

Where the principal has granted to the agent authority to carry out a transaction for the agent's benefit, or for the benefit of a third party, the agency contract may not be revoked or restricted by the principal and shall not be terminated by the death, incapacity or bankruptcy of the principal until the benefit for which the authority was conferred has been secured.

