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**Item No. 13 on the Agenda : *Uniform Law Review / Revue de droit uniforme*
and other publications**

(memorandum prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Information regarding the Review and other publications</i>
<i>Action to be taken</i>	<i>None</i>
<i>Related documents</i>	<i>Unif. L. R. / Rev. dr. unif. 2004 – Vols 1, 2, 3 and 4, UNIDROIT Principles in English, French and Italian</i>

I – GENERAL OBSERVATIONS

A detailed presentation of the different UNIDROIT publications was contained in the document prepared by the Secretariat in view of the 83rd session of the Governing Council (G.C. (83) 15), with special emphasis on *Uniform Law Review* – its role, content and distribution – as well as a discussion of fundamental issues, in particular with regard to the establishment of a “master plan ... defining editorial policy, brand image and technology, in conjunction with a clear distribution strategy and linked to the Organisation’s scientific and communication policy” (p. 4).

The Secretary-General’s decision taken in early 2005 to place the coordination of all questions related to UNIDROIT publications – including on-line products – in the hands of a single staff member will facilitate the implementation of a global programme, details of which the Secretariat expects to be able to present to the Council at its next session in 2006.

II – UNIFORM LAW REVIEW : RESULTS IN 2004 – OUTLOOK FOR 2005

Uniform Law Review Volume IX (2004) contained a total of 972 pages. Issue 2004-4 featured the consolidated index for 2004 as a whole (reproduced in Annex I included herewith) as well as the consolidated index of the case law summaries reported in 2004 (38 summaries covering nine uniform law instruments). It should be noted in particular that this year, the Review concentrated heavily on the work of UNIDROIT, in particular the *UNIDROIT Principles of International Commercial Contracts*, (see 2004-1 and 2004-2) and the *ALI/UNIDROIT Principles and Rules of Transnational Civil Procedure* (2004-4).

As to 2005, a double issue (1/2) entitled: "*Enhancing Legal Certainty over Investment Securities Held with an Intermediary – The Preliminary Draft UNIDROIT Convention, Related International Initiatives and National Perspectives*" is entirely devoted to UNIDROIT and its activities, and is intended as a key working tool with a view to the start of intergovernmental negotiations next May. The issue will be available by the end of April. The Table of Contents is reproduced in Annex II to this document.

The Secretariat has made good progress with plans to present the entire collection of the Review in an index-based, electronic format. The programming part of the work is now virtually complete, and the prototype will be subjected to meticulous double-checking before being made available on line.

III – UNIDROIT PRINCIPLES 2004

The *Principles* were published in English in June, in French in September, and in Italian in December 2004. Distribution of the Italian version has been entrusted to *Giuffrè Editore*, the other two language versions are being distributed directly by UNIDROIT. The success of the new publication is borne out by the sales figures (by 6 April 2005: 767 English-language copies and 66 French-language copies sold).

The *Principles 2004* have already been translated into Chinese, and translations into the Spanish, Romanian, Korean, Persian and Slovak languages are now in progress.

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| Fabrizio Marrella, <i>La nuova lex mercatoria – Principi UNIDROIT ed usi dei contratti del commercio internazionale</i> , Trattato di diritto commerciale e di diritto pubblico dell'economia Volume XXX, CEDAM, Padova (2003) | 231 |
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| • Jingzhou Tao, <i>Arbitration Law and Practice in China</i> , Kluwer Law International, The Hague / London / New York (2004) | 438 |
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| • Mamadou Koné, <i>Le nouveau droit commercial des pays de la zone OHADA – Comparaisons avec le droit français</i> , Bibliothèque de droit privé, Tome 406, Librairie Générale de Droit et de Jurisprudence – L.G.D.J., Paris (2003) | 440 |
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| • <i>Les introuvables du droit comparé</i> (1993-2003), sous la direction de Louis Vogel, Collection Droit Global/Global Law, Editions Panthéon-Assas Paris II (2004) | 442 |
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| • Poudret J.-F., Besson S., <i>Droit comparé de l'arbitrage international</i> , Bruylant, L.G.D.J., Schulthess, Zurich-Bâle-Genève (2002) | 691 |
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| • Diego P. Fernández Arroyo, <i>Derecho Internacional Privado Interamericano – Evolución y Perspectivas</i> , Universidad Anáhuac del Sur & Miguel Ángel Porrúa Grupo Editorial, Mexico (2003) | 694 |
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| • Alexis Mourre, <i>Droit judiciaire privé européen des affaires</i> , Ets Emile Bruylant, Bruxelles / Forum Européen de la Communication (FEC), Paris (2003) | 697 |
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| • Jorge A. Sánchez Cordero Dávila, <i>Les biens culturels précolombiens – leur protection juridique</i> , L.G.D.J., Paris (2004) (Bibliothèque de droit privé, Tome 404) | 699 |
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| • Fellrath / I. Gazzini, <i>Cultural Property Disputes : The Role of Arbitration in Resolving Non-Contractual Disputes</i> , Transnational Publishers, Inc. Ardsley, New York (2004) | 701 |
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| • <i>Contract Practices under the Cape Town Convention, The Legal Advisory Panel of the Aviation Working Group</i> , Cape Town Papers Series, Vol. I, the Uniform Law Foundation, London (2004) | 703 |
| Charles W. MOONEY, JR | |
| • Grubbs, Shelby R. (eds.), <i>International Civil Procedure</i> , Kluwer Law International, La Haye (2003) | 929 |
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| • Alexandre Court de Fontmichel, <i>L'arbitre, le juge et les pratiques illicites du commerce international</i> , Editions Panthéon-Assas (2004) | 932 |

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• Mark van Hoecke (ed.), <i>Epistemology and Methodology of Comparative Law</i> , European Academy of Legal Theory Monograph Series, Hart Publishing, Oxford / Portland (Oregon) (2004), Hannes RÖSLER	
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NS - Vol. X

2005-1/2

ENHANCING LEGAL CERTAINTY OVER INVESTMENT SECURITIES HELD
WITH AN INTERMEDIARY – THE PRELIMINARY DRAFT UNIDROIT CONVENTION,
RELATED INTERNATIONAL INITIATIVES AND NATIONAL PERSPECTIVES

*VERS UNE SECURITE JURIDIQUE ACCRUE POUR LES TITRES FINANCIERS DETENUS
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