

REGULATION AND THE NATURE OF POSTAL AND DELIVERY SERVICES

edited by

Michael A. Crew

Graduate School of Management
Rutgers University
Newark, New Jersey, U.S.A.

and

Paul R. Kleindorfer

The Wharton School
University of Pennsylvania
Philadelphia, Pennsylvania, U.S.A.



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THE FUTURE OF THE UNIVERSAL POSTAL UNION

James I. Campbell Jr.

The skies above the valiant battalions of postal troops have been unsettled by the volleys fired against them by the private couriers, intent on blasting them away.

A.C. Botto de Barros¹

Above all, any government activity almost at once becomes "moral." No longer is it viewed as "economic," as one alternative use of scarce resources of people and money. . . . The absence of results does not raise the question, Shouldn't we rather do something differently?

Peter F. Drucker²

1. Introduction

Not many years ago, a friend of mine in the international courier industry used to arouse considerable admiration among his domestic colleagues by discoursing with great feeling on the difficulties of doing business in the territory of the "wily upu." It would usually take some time for his audience to realize that he was referring not to an obscure Amazonian tribe but to the Universal Postal Union. Indeed, to be honest, neither my friend nor his listeners were any too clear on the distinctions between the two.

In fact, outside of a handful of postal officials, the UPU is little known and little understood. Yet, the UPU occupies a critical role in the development of the international economy, for it shapes the rules for the delivery of international goods and services. As Fred Smith, founder of Federal Express and one of the rare philosophers of the express industry, has pointed out, "The distribution revolution is almost as profound as the computer revolution It is the symbiotic relationship between improved information management systems and modern logistics systems which is fueling the continued, remarkable creation of jobs."³ That is, the modern economy is powered by *interdependent* advances in the processing of information

and the distribution of goods. These twin improvements are changing fundamentally the patterns of global production and consumption.

Founded in 1874, the Universal Postal Union is the second oldest inter governmental organization in the world. Today, the UPU includes virtually all nations among its members. It is neither as menacing as some couriers imagine, nor as sacred as some postal traditionalists insist. The UPU was established to accomplish particular economic tasks. But times are changing, and there is a consensus among the few *cognoscenti* that the UPU must change as well. There is, however, no common vision of the future of the UPU. Most importantly, there is an unfortunate under appreciation of the issues involved among the larger community of users, carriers, and governments that depend upon and are ultimately responsible for the international infrastructure.

In the last twenty or so years, the nature of international delivery service has evolved rapidly. With the introduction of cheap, widespread jet air transportation, it has become possible to transport documents and small parcels around the world as quickly as between points within a single country. The international telephone and telex have made it possible to coordinate collection and delivery on a worldwide basis, an ability greatly enhanced by the introduction of powerful and inexpensive computers. These new capabilities have been built into the operations, and expectations, of all types of industries. The "global village" is placing new demands on international delivery systems.

International private express services sprung up in response to these new possibilities and diverse demands. They provide closely coordinated and carefully monitored collection, transport, and delivery of shipments, and "end to end" service from sender to addressee. The "couriers" were originally a handful of young men and women with no experience in the established fields of international post and air freight. Nonetheless, by responding flexibly to new technologies, the young couriers established themselves in a small, specialized niche between these two traditional industries.

Like a pebble dropped in a still pond, the *operational logic* of international express service sent out ripples across the whole of international transport, to areas where the couriers never intended to venture. Traditionally, both international postal and international air freight systems were organized into distinct collection, transport, and delivery operations. At either end of an international transaction, collection and delivery services were performed by wholly different undertakings. In between, airlines provided air transport as a byproduct of passenger transport. Neither collector, nor transporter, nor deliverer was able or willing to coordinate the provision of the end to end service. The success of the couriers—now, "express" companies—has now called into question this tripartite separation of functions in all fields of international transportation services. It is not so much that the couriers themselves are posing these questions. What the couriers have done is to lay bare for all to see the possibilities of applying new technologies to the provision of an international transport.

While technology has been revolutionizing the way international commerce is

conducted, a rising tide of "deregulation" has swept across traditional regulatory barriers. The thrust of this movement has been not to eliminate all governmental guidance but to adapt policy to the insights of economics and the needs of users. The customer has become king.

These currents have now reached the long tranquil shores of the UPU. In May 1992, the UPU convened an extraordinary ministerial level conference to discuss the future of the Union. This meeting was preceded by special task forces at the UPU which looked at questions never asked before: Can the postal administrations obtain better international express service by retaining private carriers than by doing the service themselves? Should private companies be admitted to the UPU? Which of the traditional services provided by the UPU and the postal administrations can be better provided by private companies or by joint ventures between postal administrations and private companies? Should the UPU be restructured?

This paper reviews the origin and functioning of the Universal Postal Union in a manner that the general reader will, I hope, find enlightening without being overwhelming. Based on this review, I attempt to identify logical and reasonable implications for the future of the UPU.

2. Origin and Premises of the UPU

The concept of a public delivery service goes back to the Middle Ages. In the twelfth century, inexpensive paper (as opposed to parchment) was introduced. Enterprising Venetian merchants of the fourteenth century organized private courier systems to deliver commercial documents, ultimately extending their reach into the German hinterland. The Renaissance saw, after centuries of repression, the reemergence of a European-wide exchange of ideas. Trade fairs which moved from town to town generated correspondence among merchants carried by private messengers; an extensive merchant post spread throughout the Hanseatic League of Northern Europe. Monasteries and universities, notably the University of Paris, organized international messenger systems to support their foreign students and facilitate the circulation of ideas. In the fifteenth century, the invention of a printing press with moveable type accelerated the dissemination of knowledge. The fifteenth and sixteenth centuries also saw the emergence of nation states in France and England, which soon began their own governmental messenger systems.⁴

At this time, a "postal" system was a series of "posts," or relay stations, located at regular intervals along the road. At post stations horses were kept and riders lodged. Postal routes were extended freely across Europe by both private and governmental messenger systems. For example, the University of Paris sent messengers to all parts of Europe, including England and Scotland. The French monastery of Benedictine de Cluny dispatched mounted couriers to Spain and Poland. Similarly, the English post office picked up mail in Brussels, and the Swedish post office collected mail in Hamburg. One of the most extensive postal systems was operated by the Taxis group on behalf of the Hapsburg Empire. To meet the rising demand, international postal routes were established in the same

way that a large company might today establish a series of hotel rooms around the world where its executives can rest and catch up on information from the home office.

Gradually these international postal routes were forbidden by newly formed national governments for what we would call "national security" reasons. In 1464, Louis XI of France restricted the messengers of the University of Paris and took over their post stations. His original intention was to reserve the system of posts for royal dispatches, although within twenty years correspondence of the aristocracy was being carried as well. In 1591, Queen Elizabeth I of England decreed that only royal messengers could carry international letters. Her purpose was to assert a monopoly over the right to communicate with foreigners, not simply a monopoly over the (nonexistent) business of carrying the letters.

These national security measures soon restricted the passage of all foreign messengers, including those that traveled at the behest of a foreign government. Hence, international mail from Country A in transit across Country B to Country C was required to be entrusted to postal administration B. To this end, an inter-governmental agreement was negotiated between A and B. One of the earliest examples was an agreement between the Spanish and the French posts in 1601 whereby the French agreed to carry Spanish mail across France to Italy. According to this agreement, the French post duly received the mail from a Spanish messenger at the Spanish border and delivered it to a *Spanish* messenger at the Italian border, from which point both Spanish and French postmen traveled together to Rome to deliver the mail.

After the eighteenth century, international postal service in Europe was restricted to the exchange of mail between national postal monopolists in accordance with bilateral postal treaties. Then, in 1840, Rowland Hill's famous reforms, introduced in England and soon copied around the world, led to a greatly enlarged demand for both domestic and international service. More international postal traffic meant more treaties, and more variations among treaties. To put order to multiplying international relations, a conference was convened in Paris in 1863 attended by fifteen nations. Although the conference endorsed a number of standard principles, uniform principles embodied in separate agreements proved inadequate to the task. In 1874, in Berne, Switzerland, representatives of twenty European countries, the United States, and Egypt concluded the first multilateral postal treaty and founded the "General Postal Union." Other nations joined quickly, and the arrangement was renamed the "Universal Postal Union."

Even now, a consideration of the deliberations at the first UPU Congress in Berne is instructive. The key accomplishment of the Berne Congress was probably its firm recognition of a right of transit for all international mail; that is, by international treaty, each nation was obligated to transport across its territory mail that originated in one foreign country and was destined for a second foreign country. At the same time, however, the most acrimonious discussion in Berne concerned the subject of "transit fees," i.e., what postal administrations should charge each other for this service. This controversy highlights the interesting point

that a national monopoly over international postal transport did not affect all postal administrations equally. Postal administrations in the middle of a region were geographically placed to exact monopoly rents from postal administrations on the perimeter. They were successful in doing so; the controversy was resolved by agreement on relatively high transit fees.

Next, the Berne conferees easily agreed to deliver each other's mail without charge. No doubt this was an appropriate solution at the time. The flow of letters was about the same in both directions between any pair of countries, and the burden of international monetary payments was, I imagine, quite significant at that time. The third major issue taken up was simplification and harmonization of postage rates. A number of delegates wanted to impose the philosophy of Rowland Hill on the international post, i.e., rates as low and as uniform as possible. Unlike in matters of transport and delivery, however, postal administrations were not dependent upon each other for the setting of prices to customers. Although the conference endorsed the goal of cheap and uniform international postal rates, it agreed to a rule with so many exceptions as to allow each postal administration to set its own prices.

As this brief history makes clear, the *raison d'être* of the UPU was to ameliorate the restrictions on international postal routes interposed by the national postal monopolies. International private and public postal services flourished so long as they could establish post houses in different countries to meet the needs of commerce. While international messenger services operated on a small scale compared to modern commerce, they were sufficient to give birth to the first public postal services, the forerunners of today's postal administrations. National postal monopolies—initiated by monarchs for national security reasons—compelled postal administrations to hand over mail to each other for international transport and delivery. International treaties replaced commercial considerations as the governing framework for cross border delivery services. The UPU developed out of a need to standardize the resulting patchwork of treaties, primarily in order to resolve thorny problems surrounding transit mail transported by intermediate postal administrations to destination postal administrations. Today, the close relationship between the UPU, the national postal monopolies, and the coordination of international procedures has become so taken for granted as to be almost forgotten.

3. The UPU and Its Functions

3.1. Institutional development

Since the Berne conference, the UPU has grown to include 168 member countries. Nineteen subsequent general conferences or "Congresses" have been convened, usually every five years, to revise and reenact the Universal Postal Convention. For the first seven decades, the UPU remained essentially a set of common rules with a small secretariat to keep the records and accounts for transit fees. From time to time, new services were introduced, such as special delivery and parcel post. Prior to World War II, however, the secretariat was supervised by the

Swiss government, always headed by a Swiss, and never included more than two dozen employees.⁵

Since the end of World War II, the UPU—like other international bodies—has undergone a series of transformations that has left it far more complex and political. In 1947, a permanent Executive Council⁶ was established to direct the work of the UPU between Congresses and maintain liaison with the United Nations. In 1957, a permanent technical committee, the Consultative Council for Postal Studies (CCPS), was added.⁷ In 1964, the Convention was completely revised around a separate, permanent Constitution.⁸ In 1974, the Director General of the International Bureau became an elected official of the UPU instead of a staff appointment of the Executive Council, and oversight of the International Bureau by the Swiss government was ended, adding a greater political dimension. In 1989, the Executive Council was given limited legislative authority for the first time.

Meanwhile, the commercial aspects of the UPU have become more significant and more commercially partisan. In 1969, the UPU introduced "terminal dues" payments for delivery of international mail, substantially raising the financial implications of the Union's work. In 1979, postal administrations were first authorized to intercept "re-mail,"⁹ as a means of protecting each other's home markets. The 1984 Hamburg Congress urged governments to use the monopoly against private express companies.¹⁰ By 1989, the Washington Congress was preoccupied with restraining competition not only between private companies and postal administrations but also among postal administrations (i.e., by means of re-mail). In the fall of 1991, the UPU found itself riven by debates over whether to attack, or support, or ignore a new joint venture between five postal administrations and a private courier.

Table 1. Organization of the UPU			
Body	Function	Membership	Meetings
Congress	Legislate acts; appoint DG, EC, CCPS; 5 yr budget, strategy.	168 national delegations usually headed by postal adms; govt role varies.	Every 5 years; next 1994 (Seoul).
Executive Council (EC)	Legislate Detailed Regs; contact customs, airlines; annual budget; prepare Congress.	40 countries, postal adms only (non voting, non postal observers allowed).	Once per year (spring); committees meet more often.
Consultative Council for Postal Studies (CCPS)	Technical studies and standards; training programs for developing countries.	35 countries; postal adms only (same as EC).	Meets once per year (fall) but committees meet more often.
International Bureau (IB)	Secretariat to EC, CCPS, Congress.	Head, Director General (DG)	Permanent offices, Berne.

Legally, the Universal Postal Union is an inter governmental organization, not an organization of postal administrations. Its major acts are binding upon member countries and available as legal justification before national courts and other governmental authorities.¹¹ As summarized in table 1, the UPU consists of four bodies: the Congress, the Executive Council, the Consultative Council for Postal Studies, and the International Bureau. The supreme authority is the Congress, which meets every five years. In Congress, member countries are represented by "plenipotentiary" delegations consisting of both postal and governmental officials; their relative influence varies from country to country. The Executive Council is a committee of 40 postal administrations that manages the Union between Congresses. The CCPS undertakes technical studies and assists developing countries' postal administrations. The International Bureau acts as the secretariat for all three.

Major decisions of the UPU are adopted in the form of amendments to four legislative "acts," listed in table 2.¹² The basic act is the Constitution, a permanent multilateral treaty subscribed to and ratified by member countries. Another act, the General Regulations, sets out the procedures of the UPU, including participation in meetings, observer status, voting rules, etc. International letter post service is regulated by two further acts: the Universal Postal Convention (or simply, the Convention) and the Detailed Regulations.¹³ Generally, decisions are taken by majority vote, each country having one vote.¹⁴

Table 2. Legislative Acts of the UPU		
Act	Initial Approval	Amendment
Constitution	Permanent. Ratified by member country or implemented by postal adm. ("tacit ratification"). Const. 25.3.	Requires 2/3 vote in Congress; should be ratified by government. Const. 30.
General Regulations	Reenacted by Congress. Changes proposed by postal adm 6 months before Cong.; approved by 1/2 Cong. Gen Reg. 119.2, 128.	None between Congresses. Gen. Reg. 128.
Convention	Reenacted by Congress. Changes proposed by postal adm 2 months before Cong.; approved by 1/2 of Cong. Gen Reg. 119.1, 128.	Proposed by postal adms; approval by all, 2/3, or 1/2 of "votes." Conv. 93.
Detailed Regulations	Approved by 1/2 of Executive Council. Const. 22.5; Gen. Reg. 102.4.	Same as initial approval process.

Formalities aside, the crux of decision making at the UPU may be described as follows. As a practical matter, it is impossible for a Congress of 168 national delegations to legislate on complex matters. Except for a few major issues, the proceedings of a Congress are therefore shaped largely by the preparatory work of

the Executive Council. Since proposed revisions submitted in advance of a Congress are reserved for postal administrations,¹⁵ proposals in Congress are discouraged,¹⁶ and outsiders are effectively barred from participation—there is virtually no possibility of a Congress taking a course other than that advanced by postal officials. Once a Congress has concluded, the government of a member country is handcuffed from objecting to any aspect of any UPU act by the General Regulations which prohibit reservations not expressed at the end of the Congress;¹⁷ a member government is left only the trivial decision of whether it will continue international postal service for the next five years or not. Indeed, as a general rule, postal administrations implement the decisions of the Congress without formal approval by their governments, relying upon a remarkable UPU doctrine called “tacit ratification.”¹⁸

Between Congresses, major revisions in the Constitution, General Regulations, and Convention are procedurally difficult, but the Detailed Regulations are also binding international law and, since 1989, can be revised by a simple majority of the Executive Council. In this manner, the Executive Council and its committees have become the effective legislature and executive of the UPU. In view of this authority, it should be noted specifically that the General Regulations require each member of the Executive Council to be “a qualified postal official” and “appointed by the postal administration of his country.”¹⁹ Within the Executive Council and UPU bodies generally, postal administrations of the developed countries exercise disproportionate authority on key issues by having the resources and willingness to staff working parties, as well as by the implicit threat of withholding commercial cooperation from other administrations.

3.2. Functions of the UPU

As the Constitution states in the first section, the goal of the UPU is to establish “a single postal territory for the reciprocal exchange of letter post items. . . . [the] aim of the Union shall be to secure the organization and improvement of postal services and to promote in this sphere the development of international collaboration.”²⁰

In 1992, approximately eight and a half billion letters, printed papers, and small parcels will be exchanged between 168 national postal administrations. This is a bit less than the domestic traffic of the Canadian postal administration. International traffic is only a tiny fraction of the total business of the world’s postal administrations, about 2.2 percent. Despite the large number of postal administrations, international postal traffic is concentrated primarily in relatively few major administrations; some 60 percent of international traffic originates from 28 developed countries, 40 percent from the United States and the European Community.²¹ The major functions of the UPU may be summarized as follows. (See table 3.)

Customer Service. To a customer, international postal service, like any other service, is measured by basic considerations. How much does it cost? How long does it take to deliver the mail? What happens if there is a problem? As discussed

above, one of the issues tackled by the Berne conference was low outward postal rates in accordance with the philosophy of Rowland Hill. The Berne conference failed to agree on this concept, and, despite long debates over the next decades, the UPU has never exercised a restraining influence on international postal rates. In the 1989 Congress, the UPU abandoned the effort to manage international postage rates.²² Indeed, the 1989 Congress took quite an opposite approach and encouraged postal administrations to offer preferential prices to large customers. For individual customers, international rates may be reduced to the lowest available domestic rate, a standard which is not only preferential but, in at least some cases, below cost.

Other than attempts to restrain prices, the UPU has never addressed customer concerns directly. The UPU does not keep regular records of the price or quality of international postal service, nor permit public access to such studies as are undertaken from time to time. The acts of the UPU do not invest consumers with any rights of redress in case of difficulties, either vis à vis the UPU itself or the postal administrations.²³ As to transparency (public access to information), the UPU has repeatedly confirmed its rule that Congresses and committee meetings are closed to press and public.²⁴ The absence of outside scrutiny at the UPU contrasts markedly with the practice in most developed countries. In many, postal administrations publish price and service quality information, either voluntarily or under regulatory requirement. In the great majority, sufficient customer complaints can precipitate a parliamentary inquiry in which the postal administration must explain and justify prices and services. At the international level, the postal customer has no access to information and no official recourse.

Table 3. UPU Functions		
Function	UPU activities	Comment
Customer services	Control postal rates; preferential prices for large mailers; no access to UPU meetings, data	No real control of rates; new preferential rates questionable (maybe below cost); less transparency than natl post.
International transport	Transit, air conveyance fees; standardize forms, procedures.	Original purpose of UPU, less important with air transport; UPU charges not cost based; air rates protested by IATA.
Delivery	Terminal dues	Non cost based charges distort trade, discourage business, contravene competition rules.
Customs	Customs forms, liaison with Customs Cooperation Council	Simple standard forms, but slow response to need for faster data, EDI, security.
Consultancy services	CCPS studies on postal operations; UNDP and UPU assistance to developing countries.	Increasingly important; requires greater professionalization; IATA may be model.
Administration	Election, committees, rules, statistics, library.	Unwieldy decision making; inadequate management data, coordination among adms.

Of course, the most fundamental customer service is good postal service. It seems likely that the establishment of the UPU did in fact improve the lot of international mailers in the last quarter of the nineteenth century. International postal practices seem to have become simpler and more reliable, improving the quality of international postal service from the customers' standpoint. More recently, however, a perception has arisen among customers and postal officials alike that the quality of international postal service is unsatisfactory. A joint report of the Executive Council, CCPS, and International Bureau to the 1989 Washington Congress noted:

Many sectors such as banking, international trade, insurance, the international building trade, advertising, and the big international newspapers felt an increasing need to transmit documents, receipts, written statements, industrial drawings, spare parts, trade samples or magnetic data at national, continental, and intercontinental levels with maximum speed and reliability. . . . *It does not apparently need any great stretch of imagination to realize now that these demanding customers found it hard to see the traditional postal administrations as the effective, flexible and businesslike partners they needed.*²⁵

Supporting this analysis, postal traffic data suggest customer disenchantment with the international post over the last decade, especially in the developed countries. The international post has stagnated despite a general increase in the domestic post²⁶ and other types of international communications.²⁷

Appropriately, the centerpiece of the last UPU Congress was a debate on "caring for the customer." The Washington Congress adopted an aggressively commercial strategic plan called the "Washington General Action Plan:"

The Washington Congress, recognizing the increasing competition in the communications market and the impetus which this creates for efficiency, along with our customers' demands for greater service reliability and better value for money, agrees. . . . Postal administrations must create market-led cultures where the customer commands top priority. . . . *The UPU must do everything in its power to encourage Governments and administrations to achieve these objectives.*²⁸

International Transport. As we have seen, the first and most fundamental task of the UPU was to arrange for the international transport of mail. At the Berne conference, the UPU developed a workable system of fees, forms, and procedures whereby postal administrations could rely upon each other to forward mail between end points of common carrier routes. With great effort, this system has been continually modified and updated to accommodate new needs and new forms of transportation. This is not a small accomplishment. In essence, the UPU's successful development of transit procedures has made possible international postal service despite the termination of international postal routes by the postal monopoly laws.

Today, transit fees for land and sea transport are based on two components: the cost of work by postal administrations and the cost of transport purchased from land and sea carriers. Complex surveys of postal administrations are undertaken,

and each Congress fixes a uniform transit fee based upon worldwide averages. Naturally, since costs vary substantially between postal administrations and parts of the world, some postal administrations are underpaid for transit work while some are overpaid.

Conceptually, aviation has completely altered the problem of arranging for the international transport of mail. Freed from the limitations of surface geography, each postal administration has the theoretical ability of direct access to any other postal administration. It has taken some time for commercial airlines to develop into a ubiquitous network, but today it seems reasonable to assume that the majority of international airmail is exchanged by direct airline connection.

The approach of the UPU towards air carriers has also evolved. In the early days, postal administrations agreed collectively on rates to be paid for air transport and dictated their decisions to the airlines.²⁹ Since airline operations were commercially impossible without airmail revenue, airlines had no choice but to take the money and carry the mail. With an increase in direct connections and a decline in the relative importance of air mail to airline finances, the cost of air transportation has become more a matter of direct negotiation between each postal administration and the airlines serving its routes. The 1979 UPU Congress adopted a worldwide rate to be paid airlines which, although based on extensive surveys, is related neither to commercial freight rates nor to the actual costs of air transport (e.g., longer flights cost less per kilometer than shorter flights). Despite strong and repeated protests from the International Air Transport Association, the 1984 and 1989 Congresses declined to modify the 1979 formula. As a result, little mail is actually carried under the UPU air transport rate, and the UPU and International Air Transport Association are hardly on speaking terms.³⁰

Delivery. In contrast to the transport function, delivery arrangements for international mail have historically posed less of a problem. International mail is such a small percentage of total mail that no postal administration modifies its national delivery service to suit the needs of inbound international mail. On the contrary, each postal administration delivers international mail as part of its most compatible domestic service. To avoid the complexities of international accounting for a small fraction of their business, postal administrations were content to deliver each others' mail without charge.

For the UPU, the major delivery issue has been large imbalances in bilateral mail flow. If administration A received much more mail from B than it sent to B, A felt that it should be paid for delivering the imbalance. The UPU has found it difficult to deal with this issue expeditiously or consensually. The issue was first raised in the 1906 Congress. Sixty-three years later, in 1969, the UPU introduced a per kilogram charge for inward delivery of international mail called "terminal dues." However, since a world-wide uniform terminal dues charge fails to allow for widely divergent costs among administrations and does not take into account the number of pieces to be delivered, it over compensates some administrations and under compensates others, to the dissatisfaction of many.³¹

For the next twenty years, terminal dues were a hotly contested and much studied

bone of contention between net receivers of mail and net exporters. By 1989, postal administrations were shocked to realize that non economic terminal dues charges had encouraged competition among postal administrations. Some postal administrations were willing to resell artificially low terminal dues rates to mailers residing in the territories of other postal administrations.³² Although development of "re-mail" competition rearranged the contending parties, the 1989 Congress again adopted a terminal dues system that, while revised, still failed to reflect the actual costs of inward postal delivery.³³ A new study has been ordered, but it appears likely that a cost-based solution will be imposed by the European Community before this study can be completed.³⁴

Customs Clearance. For any international carrier, customs control presents a regulatory discipline of such significance that it affects all stages of the operation. The UPU has developed very simplified procedures for customs declarations shipped by post. In consultation with the Customs Cooperation Council,³⁵ the UPU approves simplified forms which are labeled "customs" forms and appear to be customs declaration forms. The appropriate form is completed by the mailer and affixed to the package. At customs inspection at the country of destination, these UPU forms are usually accepted by the customs administrations despite the fact that the forms are not issued by the customs authority itself and will not be accepted from any other carrier. Additional simplicity is achieved by exempting postal administrations from liability for incorrect customs declarations.³⁶

Without doubt, the UPU has facilitated the international exchange of small parcels by innovatively simplifying customs procedures. In recent years, however, postal administrations have found these simplified procedures inadequate to the demands of modern commerce. Private express companies have achieved faster customs clearance by providing electronic data in advance of the actual arrival of shipments. Further improvement in customs procedures ranks high on the UPU's wish list.

Consultancy. From colonial times, major postal administrations have a long tradition of providing technical assistance to the postal administrations of developing countries. In the mid 1950s, the developed countries were wrestling with mechanization of postal operations, and the UPU was being pressured by the United Nations to formalize aid to developing countries. Postal administrations in both developed and developing countries concluded there was a need for a more structured sharing of knowledge. The 1957 Congress therefore established the Consultative Council for Postal Studies. In this manner, the UPU's mission expanded from improving the international mail system to also providing advice and assistance in the improvement of domestic postal systems, especially those in developing countries.³⁷

Over time, the primary function of the CCPS has become one of managing assistance to postal administrations of developing countries. The CCPS conducts a number of studies on subjects such as express services, electronic mail, quality control, postal use of computers, modern accounting systems, etc. These studies are generally designed to keep developing postal administrations up to date on the

technical advances of the most developed postal administrations. In addition, CCPS oversees a rather extensive direct assistance program managed by the International Bureau, partly funded by the United Nations Development Program and partly funded from UPU sources.³⁸

Administration. Like any organization, a necessary task of the UPU is self administration. The fact that the UPU is an organization with, in effect, 168 voting directors complicates the problem considerably. Generally, UPU Congresses expend a significant amount of time on rules of procedure and membership in the Executive Council, the Consultative Council for Postal Studies, and their various committees.³⁹ Between Congresses, virtually all decisions are dependent upon preliminary studies. A given study is committed to a standing committee which, in turn, either asks a postal administration to make a survey of administrations' practices or forms a working party of a few administrations. A working party proceeds by importing temporary staff from around the world, with one postal administration assuming the burden of preparing the report. After study, important decisions must await annual meetings of the Executive Council or Consultative Council for Postal Studies, or even a meeting of the Congress. Moreover, the entire decision process is affected by the political processes of the Congress. Participants must keep in mind the votes necessary to secure future committee assignments and positions in the secretariat.

The secretarial needs of the UPU are extensive, given the complexity of the administration and the need to produce many documents in up to seven languages. In addition to normal staff work, the UPU secretariat produces a quarterly magazine (*Union Postale*), publishes well-annotated versions of the basic acts, maintains a good library of postal materials, keeps common accounts for charges between postal administrations, and represents the Union at various functions around the world. For these purposes, the International Bureau employs about 60 professional staff and consumes a rather modest annual budget of about US\$ 20 million.

3.3. Governmental Aspects

The majority of functions of the UPU are "commercial" in the sense that they are the same functions that would be undertaken by a similar group of private companies trading with one another. However, certain key functions partake of a "governmental" or "regulatory" nature in that they represent the exercise of authority reserved for government. Used in conjunction with commercial activities, these governmental functions shape the international exchange of documents and small parcels in a manner significantly different from that which they would obtain in a normal commercial environment. Table 4 summarizes the most important governmental functions exercised by the UPU.

Many of these governmental functions tend to protect postal administrations from competition, both competition from private delivery services and competition from other postal administrations. To this end, the UPU permits or encourages postal administrations to allocate markets, fix prices, give preferential prices to

selected customers, and boycott private carriers—all in a manner that would be illegal for private companies similarly situated. Other governmental activities are directed towards different ends. For example, simplified customs treatment for postal shipments is intended primarily to facilitate trade, despite the fact that it affects competition as well. UPU aid programs, while they may represent an expenditure of public resources, also reflect commendable humanitarian purposes.

4. Rethinking the UPU

In the late nineteenth century, the Universal Postal Union resolved the problems and concluded the agreements necessary to establish a worldwide international postal system. In so doing, it earned the gratitude of mankind. Since World War II, however, the UPU has found itself slowed by increasing administrative complexity while challenged by rapidly changing technological and commercial circumstances. Today, the UPU stands in need not merely of reform, but of rethinking. For this, a return to basics is required.

Table 4. Organization of the UPU		
Functions	UPU activities	Comment
Legislate international law	UPU acts are international law; Cong. and EC amend acts. Const. §102.5.	Delegation of legislative authority to interested persons inconsistent with constitutional and competition laws.
Enforce market allocation	Post adms may intercept mail not posted with adm where mailer resides. Conv. §25.	Market allocation inconsistent with competition laws; scheme not limited to monopoly, ignores enforcement procedures of legislator.
Authorize price fixing	Fix terminal dues, transit and air conveyance fees. Conv. §§74, 85.	Price fixing inconsistent with competition laws; worldwide uniform rates distort trade.
Authorize preferential rates	Postal adms may reduce rates to large mailers to lowest domestic rate. Conv. §20.15.	Lowest domestic rate below cost of intl service in cases; inconsistent with competition laws.
Organize boycott	UPU has tried to organize boycott of express carriers.	Inconsistent with competition laws.
Exempt adms from customs liability	Postal adms "shall in no case accept liability for customs declarations". Det. Reg. §117.7	Renders customs law unenforceable; private carriers are liable customs decs.
Create customs forms	UPU customs forms, usually accepted by customs authorities.	Helpful simplification but other carriers must use forms set by customs.
Aid to developing countries	Technical and training assistance to developing postal adms.	Aid funds appears derived from governmental sources, e.g., legal monopoly, subsidy, etc.

4.1. International coordination services

For a postal administration, the collection and dispatch of mail is not a very profitable activity. The core business of a postal administration is the delivery function, for its universal house-to-house delivery system offers a postal administration substantial economies of scale. More mail to deliver adds revenue without a proportional increase in costs. In the collection and dispatch of mail, however, more mail means a more or less proportional increase in costs and no significant increase in net revenue.⁴⁰ Moreover, for international mail, collection and dispatch brings with it a host of complications. Retaining only enough from international postage to cover its costs for collection and dispatch,⁴¹ a postal administration must pay over the bulk of international postage to other organizations to cover the cost of international transport and delivery. To ensure the quality of the service sold to its customers, a postal administration must manage arrangements for international transport, customs clearance, and delivery to more than a hundred foreign countries, a tremendous operational task out of proportion to the few percent of mail volume involved.⁴²

The UPU was created to meet precisely this situation. With growing international traffic and commercial relations expanding to embrace as many as twenty different foreign destinations, major postal administrations met in Berne to improve coordination of international transport. How else could this be accomplished in the second half of the nineteenth century? Postal monopoly laws had long ago ended the preferred practice of establishing international postal routes. Since transportation technology was confined to the surface of the earth, international transport necessarily depended upon transshipment through a number of countries. More importantly, international communication was limited to the capabilities of the post itself; hence, it was impossible for a global transport company to coordinate transshipment activities better than the postal administrations themselves. In 1874, postal administrations had no alternative but to resolve the problems of international transport and standardization cooperatively. They did so admirably.

Gradually, however, changes in technology have fundamentally altered the operational premises of the UPU. Modern aviation has largely eliminated the technical need to rely upon intermediate postal administrations to transship mail. The critical stage was not so much the invention of the airplane as the invention of the jet engine. The introduction of jet aircraft in the 1960s, and especially jumbo jets in the 1970s, greatly expanded the number of postal administrations that could be reached by direct common carrier connection.

The additional capabilities of modern computers and telecommunications have changed the operational context even more. Suddenly, it has become possible and commercially feasible for a single organization to coordinate collection, transshipment, and delivery activities on a global basis; relations with multiple common carriers; and customs clearance through dozens of different customs procedures. Rapid and reliable "tracking and tracing" of shipments has become not only possible, but commercially necessary. Although pioneered by courier companies like DHL and Federal Express, other types of transport companies are similarly

taking advantage of these technologies. As a result, it is possible to purchase commercially many of the international coordination services which the postal administrations previously were forced to organize for themselves. Indeed, *coordination* is the essence of what these companies are selling, for there is nothing extraordinary about the individual operational elements of their services.

For postal administrations, it seems to me these developments offer a commercial boon, even if many postal officials regard them as a calamity. For the typical postal administration, the fraction of international mail has increased hardly at all since the beginning of the century,⁴³ yet the expanding family of nations has added greatly to the burden of arranging international transportation by means of a collegial structure such as the UPU. As far as the provision of international services is concerned, this complex structure—and it is the organizational structure and not the men and women laboring in it⁴⁴—is no longer serving the postal administrations satisfactorily. Commonality of vision with the aviation industry has been lost. Delivery charges ("terminal dues") have been set in such a way as to both stimulate competition and attract the intervention of competition authorities. Customs facilitation techniques are falling behind the state of the art, as is the quality of operational information available to senior postal management.

The bottom line for a postal administration is that the international service it is selling to its customers is not up to the quality of its domestic service. Postal administrations are losing international business, at least relative to their domestic business. This decline is due primarily to inadequate international coordination between postal administrations, not to competition. The number of letters and parcels carried by private means prior to the mid to late 1980s was minuscule; even now it is small compared to the traffic handled by the postal administrations in most countries.

Now, however, a postal administration can improve its international service and cut its costs by "contracting out" some of the international coordination functions to specialists who have, at their own financial risk, applied the latest technology to the process. Instead of being tied to its own "back room" staff, a postal administration has the option of switching among competing outside firms if service declines. In this need to "unbundle" non core activities, postal administrations are no different from other large businesses. In his latest book, Professor Drucker notes that modern managers must look to outside support services for a

single-minded, almost obsessive dedication to one narrow objective . . . to the exclusion of everything else. But such single-minded dedication is far more characteristic of an independent outside entrepreneur than of a department head within an organization who is expected to be a team player.⁴⁵

In the early 1980s, large corporate shippers of documents and small parcels turned increasingly to the international coordination services of private express companies. Instead of dealing with airlines, customs brokers, and warehousemen around the world, a corporate executive could deal with one local express company, which he held accountable for all international arrangements. Of course, occasionally there was resistance from a senior shipping department manager who

had mastered the labyrinth of international transportation regulations, but by now most companies, and most shipping managers, have recognized that the potential for increased business justifies new methods. By the late 1980s, large companies began using express companies for ordinary international mail as well. In effect, the express carrier was asked to organize arrangements with air carriers, customs, and foreign postal administrations in such a way as to provide a better or cheaper overall service than provided by the national postal administration relying upon UPU arrangements.

In 1988, twenty major post offices decided to set up their own coordination group outside the framework of the UPU. The International Post Corporation, as it was called, was charged with arranging for international express transportation, developing operational control and information systems, and marketing strategies. Like the UPU, IPC tried to make basic decisions on international coordination by reference to a committee of domestic postal administrations. And like the UPU, the IPC found the committee structure incompatible with modern management needs. In effect, IPC proved the correctness of Drucker's observations and the benefits of contracting out at least some international coordination services. Last year, five of the IPC partners came to the same conclusion. They purchased a half interest in a major international express company and turned over their international express operations to the new joint venture.

Ultimately, the UPU is, I believe, a service organization for postal administrations (governmental aspects are dealt with below). The future of the UPU will depend upon the degree to which it serves the interests of the postal administrations. From the standpoint of an individual postal administration, its interest in international transportation lies in obtaining convenient, high quality, reasonably priced, reliable service around the world—the same as any other large international mailer or shipper. Coordination of international transport activities is not the core activity of the postal administration; nor is it the core activity of sister postal administrations around the world. For each postal administration, the core activity is the economical, universal delivery network.

Nor does a postal administration's interest in simple, good quality international transport depend upon its size. Smaller, less developed postal administrations have no less need for good quality international transport services than the largest and most advanced postal administrations (or for that matter, than the largest and most advanced mailers). Indeed, the opposite may be true, because the most advanced postal administrations tend to come from large countries in which the proportion of international traffic to domestic traffic is lowest. A small postal administration, even less than a large one, can ill afford to tie up its best managers in a non core activity.

In view of these considerations, I suggest that as far as international transport services are concerned, the best future course of the UPU is to assist postal administrations in taking advantage of the possibilities for improved services that may be obtained from working creatively with those who, like the express companies, have become experts in taking advantage of the new technologies of

aviation, telecommunications, and computerization. I expect the UPU to follow this course for the simple reason that if it does not, it will find that its member postal administrations will have no choice but to make such arrangements anyway. The International Telecommunication Union has recently completed a review of its own role in coordination of international telecommunications services and finds itself pressed to cut back on its role to avoid hampering possibilities opened by technological advances. The observations of the ITU's High Level Committee could be applied to the UPU as well:

The ITU's roles in standardization, regulation and development must be streamlined. If the ITU mechanisms tend to restrain promising new technologies, the ITU will be by-passed.

In overcoming obstacles to international transport, the UPU served the postal administrations magnificently for decades. It can now serve the postal administrations best by helping them to unbundle those services which should be unbundled. Meanwhile, the largest postal administrations must be allowed, even encouraged, to make their own arrangements for major routes; they may even open foreign offices for this purpose.⁴⁶ In so doing, the UPU will effectively record as accomplished the original mission which gave it life.

4.2. Consultancy services

But the UPU will not, or at least need not, pass from the stage of history. On the contrary, it is my view that the need for a UPU has never been greater. Improvements in communications and computer capability are rapidly altering the nature of the core postal business as well as its international relations. Each postal administration will have to respond smartly to changes in the larger communications marketplace if it is to optimize its commercial role. The domestic portion of the postal industry is 96 percent of the business, or 99.9 percent if one includes the local collection and delivery of international letters. In this realm, postal administrations plainly can benefit from one another's commercial experiences. In many cases, postal administrations in developed countries will face and solve the same commercial problems that postal administrations in developing countries will confront later. Under these circumstances, it seems clear that the need for the UPU's consultancy services will increase substantially, becoming a central mission of substantially greater scope and importance than coordination of international transport.

As described above, the UPU already has developed a substantial consultancy function in the work of the Consultative Council for Postal Studies and the various projects carried out under the United Nations Development Program and the UPU's own resources. It is noteworthy that, in its consultancy efforts, the UPU has laid particular emphasis on reforming the *structure* of national postal operations. At its last full meeting in May 1991, the UPU Executive Council approved a development action plan sponsored by CCPS which concluded:

It is now accepted by postal professionals that the Post's current status of government department is no longer in tune with the realities of the present

competitive market. *Changes in status, structures and management methods are therefore essential* to enable the Post to adapt to the present competitive situation.⁴⁷

As the consultancy mission of the UPU evolves, I imagine that it will be shaped by the same economic considerations that have been discussed above in relation to international coordination services and by the quite similar approach towards the structure of postal services just quoted. Postal administrations are likely to demand that consultancy efforts at the UPU must become ever more professional and competitive. Postal statistics will need to become more complete. The UPU will probably make greater use of professional staff to supplement ad hoc working parties drawn from postal administrations. It will also probably make greater use of outside management consultants, a trend already noticeable among more advanced postal administrations. Increasingly, consultancy services of the UPU will be undertaken not only at the common expense of the postal administrations collectively, but also at the expense of the recipient postal administrations.⁴⁸

4.3. Governmental functions

The restructuring of national postal administrations advocated by the Executive Council just quoted is an extension of a policy trend towards commercialization and degovernmentalization that has now embraced most of the advanced postal administrations over the course of the last two decades. It was initiated by the United Kingdom in 1969, when Postmaster General Stonehouse explained:

*The Government have decided to set up this new corporation so that in the communications explosion we shall be experiencing during the next ten years there will be a public authority fully able to take advantage of the commercial opportunities available to it to serve the public and to provide new ways of improving communications within the United Kingdom.*⁴⁹

In 1980, the United Kingdom separated the telecommunications functions from the British Post Office, and in 1986 the British Post Office was subdivided into four separate businesses: letters, counters, parcels, and banking.⁵⁰ Other developed countries have studied and adopted similar "commercial" reforms of posts, including the United States (1970), Australia (1975), Canada (1981), Ireland (1983), New Zealand (1987), the Netherlands (1989), Germany (1989), and France (1990).

In the developed countries, the postal administration is no longer part and parcel of the government. The postal administration is an independent commercial organization with much the same instincts and incentives as any other competitor, albeit with certain public service benefits and obligations as well. In the developed countries, it has become generally recognized among governmental authorities that, whether under the principles of the competition rules of the Treaty of Rome or the "due process" clause of the American constitution, it is inappropriate for commercial postal administrations to exercise governmental functions. On the other hand, as the Executive Council resolution evidences, many developing countries have not adopted these structural reforms and do not share this governmental philosophy. Since this is a matter of sovereign choice, it cannot be

forced.

As we have seen, it is clear that the UPU is today the creature of postal administrations. The UPU consists of a series of agreements negotiated by largely postal administrations (in Congress), approved by postal administrations ("tacit ratification"), amended by postal administrations (in the Executive Council), and implemented by postal administrations (the International Bureau and major committees) for explicitly commercial purposes (Washington General Action Plan). In the advanced countries, it is as inappropriate for the UPU to exercise government functions as it is for the postal administration. It is also unnecessary. Postal administrations of developed countries have fared well in the domestic market by taking an essentially commercial, non governmental approach. In reality, the governmental functions of the UPU represent the last vestiges of the governmental authority exercised by these advanced postal administrations. At the same time, however, it may be that the governmental functions of the UPU represent what many developing countries continue to view as a legitimate extension of their sovereign rights.

The split personality of the UPU is unsustainable. In the developed countries, whoever—private carrier, user, postal administration, or competition agency—is dissatisfied with any UPU action with governmental overtones will have recourse to the basic principle of separation of commercial and governmental functions. Since this is a recipe for endless, unproductive litigation, it seems to me that corrective steps are likely. Indeed, in the advanced countries, I believe that these corrective steps will have the support of most (or many) postal administrations, private carriers, and large users.

What will be these corrective steps? I suspect that the governments of the developed countries will have little appetite for proselytizing at the UPU by attempting, from a minority position, to persuade the UPU as a whole to adopt the postal restructuring which they have implemented in their own countries. However, a simpler and more expedient solution is available. The governments of the developed countries can *turn over formal membership in the UPU to their respective postal administrations*.

Such a move would imply, for the developed countries, a withdrawal of their governmental powers, without any lessening of their postal administration's support. It would reflect commercial and administrative reality. In general, except for diplomatic issues, the advanced governments do not attempt to control the activities of their postal administrations at the UPU nor bar them from alternative arrangements such as the International Post Corporation. Nor are the governmental powers of the developed countries necessary for the work of their postal administrations in the UPU. The postal administrations of developed countries would be free to participate in the UPU precisely as they do today and, given their legal independence, they are competent to do so. The fundamental change would be that postal administrations of the developed countries would be representing themselves, not their nations, and that decisions taken at the UPU would have only commercial, not legal, implications in their respective countries.⁵¹

At the same time, it would seem appropriate and desirable for the developed countries to negotiate, outside the UPU framework, separate agreements specifying a minimal regulatory framework for all international delivery services, public and private. Such agreements would address strictly governmental issues such as market entry, price controls, applicability of the competition rules, and transparency of (public access to) governmental functions. In form, they would likely be similar to existing air transportation bilateral agreements, perhaps even including concepts such as first, second, third, fourth, and fifth freedoms.⁵² In my view, the starting point for such agreement should be a subject which, as noted above, is not addressed by the UPU, the legal rights of users. It should also address issues of international aid.

The most obvious candidates for a bilateral agreement on international delivery services would appear to be the European Community and the United States. In both the European Community and United States, the governments have adopted generally "liberal" or "commercial" views towards their postal administrations. Moreover, the European Community is just completing the most comprehensive governmental review of national and cross border postal policies to be undertaken in more than a century. If (as presently appears) the European Community's "Postal Green Paper" is forward looking, rather than defensive of the status quo, it is likely to serve as the intellectual groundwork not only for a new international policy in Europe, but for one in the United States as well.⁵³

In contemplating bilateral or multilateral agreements on the basic regulatory framework for international delivery services, the international community will find itself coming full circle. The essence of such agreements must be to permit the establishment of international postal routes; that is, the establishment of a series of collection, transport, transshipment,⁵⁴ and delivery offices in various countries, under the administrative control of a single organization, whether private express or postal administration. It was the banning of international postal routes, for reasons of national security, that gave rise to the UPU in the first place. Today, the ban makes no sense; there is no way to control the circulation of ideas across borders. Nor are the economic aspects of cross border traffic so great as to be material to the financial success of postal administrations. Meanwhile, all nations have an increasing stake in the efficient operation of the international economy. More fundamentally, there is no justification to deny citizens of the world the right to exchange thoughts and small parcels by whatever means is best suited to their ends. For the twenty-first century, the concept of a "single postal territory" must be defined by reference to the needs of the people of the world, not to the needs of its delivery services, postal or private.

5. Summary and Conclusions

By the seventeenth century, national monopoly laws had cut off the development of international postal routes by postal and private carriers. In an era in which transport was confined to the surface of the earth and communications were limited

to the post itself, postal administrations could only effect international transport by transferring the mail from one to another. The UPU was established in 1874 to standardize and coordinate arrangements for the international transfer of mail among postal administrations. So long as the original premises underlying the UPU remained unchanged, the UPU accomplished its mission well, making possible international postal service.

These premises are no longer appropriate in light of the development of modern aviation, telecommunications, and computer technologies. Mail can be shipped by air directly to all major cities without depending upon intermediate postal administrations. Widespread aviation and telecommunications capabilities have fostered the growth of private companies which can provide coordination of international transport in a manner that is simpler, cheaper, and better than the collegial approach once necessary. In general, postal administrations will improve their international services and reduce their costs by exploiting these new commercial capabilities rather than attempting to force the UPU to perform tasks it was never designed to address. Since coordination of international transport is only a "back room" function which a postal administration undertakes to support its core business of universal delivery, the most reasonable and probable future for the UPU lies in the direction of increasing cooperation with private companies to accomplish coordination of international transport. At least at an international level, coordination is the essence of what these companies are selling, not universal delivery.

The same technological influences which have undercut the original premises of the UPU have also revolutionized the basic national postal business. Over the last 35 years, these trends have impelled postal administrations to adopt a philosophy of continuous modernization and improvement, giving rise to a second basic mission of the UPU, to advise and assist postal administrations by drawing upon the experiences of other postal administrations and other industries. It seems to me that this second mission will quickly become the core business of the UPU, with a concomitant upgrading of funds and professionalism.

Although the UPU is established legally as an inter governmental organization, it is in reality an organization of postal administrations devoted increasingly to commercial purposes. In the developed countries over the course of the last twenty-five years, postal administrations have been separated from normal governmental processes. The UPU itself is advocating similar restructuring in developing countries. While these policy developments are healthy and desirable, it is unreasonable and undesirable for postal administrations from developed countries to exercise governmental functions through the UPU. In this respect, there may be a philosophical division among UPU members, for many developing countries continue to view their postal administrations as non commercial, governmental departments.

Rather than attempting to reform the UPU, I suggest that the developed countries are more likely to take the simpler step of turning over membership in the UPU to their postal administrations. This implies a phased withdrawal of governmental functions from the UPU, beginning with the governmental authority of the

developed countries. Such a process would be compatible with the UPU shifting its focus to consultancy functions.

Phased degovernmentalization of the UPU also suggests the possibility of the parallel establishment of a basic, minimal regulatory framework for international delivery services, agreed between national states outside the UPU. Such agreements could be similar to current bilateral aviation agreements. The obvious candidates for the first such agreement are the European Community and the United States, which share a liberal, commercial outlook towards the delivery services sector.

Needless to say, the foregoing has been an attempt to provide a framework for thinking about the past, present, and future of the UPU, not a firm prediction of events. My approach has rested upon the optimistic, but I believe plausible, premise that the postal administrations, private express carriers, and the UPU itself will find it necessary and desirable to focus upon core activities that complement, rather than confront, each other. If so, I imagine the "single postal territory" in the twenty-first century to be more diverse and commercial than it was in the nineteenth century, but no less important.

Notes

1. *Union Postale*, p. 86A (Oct/Nov/Dec 1989). Mr. Botto de Barros has been the Director General of the Universal Postal Union since 1984.

2. *The New Realities*, p. 64 (New York: Harper & Row, 1989; Perennial Library ed., 1990). Mr. Drucker is the Clark Professor of Social Science at Claremont University, California; he is one of the world's most acute and influential observers of all types of managerial activity.

3. Speech to World Express Conference 1988, London, U.K. (8 June 1988).

4. See, e.g., U.K. General Post Office, "Birth of the Postal Service" (undated); George A. Codding Jr., *The Universal Postal Union* (New York: New York University Press, 1964) (hereafter, "Codding, UPU"); Alvin F. Harlow, *Old Post Bags* (New York: Appleton & Company, 1928); Carl H. Scheele, *A Short History of the Mail Service* (Washington: Smithsonian Institution Press, 1970).

5. Codding, UPU, p. 241.

6. Originally established as a 19 member "Executive and Liaison Committee," the Executive Council grew in steps to its current level of 40 members, attained in 1974.

7. Originally established as a 20 member Management Council for the Consultative Committee for Postal Studies, a loosely defined committee of all UPU members interested in technical matters. The current structure dates from 1969.

8. UPU, *Constitution*. Berne: UPU, 1991 (acts of Washington Congress, 1989, with annotations by International Bureau). The *Constitution* is the first of a four volume set of annotated acts of the Washington Congress, prepared by the IB. The second volume is entitled *Convention*. The *Constitution* contains the Constitution proper and the General Regulations, as well as supplementary decisions and materials. The *Convention* contains the Convention proper, the Detailed Regulations, and supplementary decisions. Hereafter, *Constitution* and *Convention* will refer to the books; if only the specific acts or their annotations are referenced, the following abbreviations will be used: "Const.," "Gen. Reg.," "Conv.," and "Det. Reg."

9. Conv. 25.4. "Remail" is mail which is posted in a country other than the country in which the mailer resides. The 1979 provision expanded a preexisting rule which stated that the postal administration in Country A was not bound to deliver mail if a mailer residing in A took it outside A and mailed it back into A.

10. UPU, 1984 Hamburg Congress, Resolution C 26. *Acts of the Universal Postal Union: Revised at Hamburg in 1984 and Annotated by the International Bureau*, vol. 2, pp. 374-75 (Berne: Universal

Postal Union, 1985). The resolution "appeals to the governments . . . to maintain the postal monopoly . . . and where appropriate, to instruct Customs . . . to assist the postal authorities in enforcing the postal monopoly."

11. "The Universal Postal Convention . . . shall embody the rules applicable throughout the international postal service and the provisions concerning the letter-post services. These Acts *shall be binding on all member countries* [emphasis added]." Const. 22.3. Consider, for example, a complaint to the European Commission by the International Express Carriers Conference. The IECC argued that certain postal actions taken under color of 25 (then, 23) of the Convention were anti-competitive and inconsistent with the EEC Treaty. The United Kingdom postal administration responded: "*Article 23 provides for a derogation from postal administrations' general duty to transit mail. The Post Office considers that it is entitled to rely upon this Article*, as incorporated into the law of the United Kingdom. . . . [emphasis added]." Other postal administrations similarly cited acts of the UPU as a legal defense to their activities. This complaint is still pending.

12. There are other acts or "agreements" of lesser importance: Parcel Posts, Money Orders, Giro, and Cash on Delivery. They are binding only on signatories. Const. 22.5.

13. This two part structure was adopted by the Berne Congress in 1874. It was supposed to separate permanent provisions, to be revised by governmental Congresses every three years, from transient provisions, to be revised by the post offices. In fact, the distinction between permanent and transitory provisions has never been applied consistently, and both documents have been revised at each UPU Congress. Coddling, *UPU*, p. 100.

14. By virtue of territorial possessions, some large countries like the United Kingdom and France, control more than one vote.

15. Gen. Reg. 119. In order to be accepted automatically for consideration by Congress, a proposal must be submitted six months in advance. After this deadline, a proposal must be supported by varying levels of additional support depending upon its gravity and the act to be amended.

16. Proposals concerning the Constitution or General Regulations not received at least six months in advance of a Congress must be supported by two thirds of the delegates at the Congress in order to receive consideration. Gen. Reg. 119.2. Proposals concerning other acts are barred if not received two months in advance. Gen. Reg. 119.1(d).

17. That is, at the time of signing by the "plenipotentiaries." Const. 22.6 & n. 10.

18. Until the 1964 Constitution, all UPU acts required ratification by the governments of member countries. Most countries, however, did not do so, and the UPU responded with the doctrine of "tacit ratification," meaning ratification by virtue of implementation *by the postal administration*. After 1964, the various acts other than the Constitution require only that approval "shall be governed by the constitutional regulations of each signatory country." Even so, as the International Bureau notes, "Despite the flexibility introduced in the 1964 Vienna Congress . . . , *very few members complete this formality before the Acts in question go into force* [emphasis added]." Const. 25 nn. 5-6. See also, Coddling, *UPU*, pp. 108-110. In fact, by the time the 1989 acts of the UPU were put into effect on 1 January 1991, only seven member countries had formally approved it; 82 member countries never formally approved the 1984 acts at all.

19. On this basis, the Executive Council has "refused diplomats the right to represent their country at an ordinary session of that body." Gen. Reg. 102.4 & nn. 12-13. The Executive Council does, however, permit the postal representative to be accompanied by non postal observers. *Constitution*, Rules of the Executive Council 2.1.

20. Const. 1.

21. UPU, *Five Yearly Report on the Development of Postal Service, 1982-1986*, 2.2.2.1 (Berne: UPU, 1989) (excludes USSR). The UPU's estimate for the 1986 international letter post (letters, cards, printed papers, small packets) was 8.4 billion pieces, of which the 28 "free market industrialized countries" accounted for 5.0 billion. "Eight and one half billion" is a rough estimate that assumes little growth during the intervening years.

22. Prior to 1989, international rates set by the UPU could be increased or decreased by substantial margins, and surcharged or not according to various factors. The 1989 convention again fixes rates only for "guideline purposes." Conv. 20.1.

23. Prof. Coddling remarks in his *UPU* study,

Nowhere in the postal convention, its attached detailed regulations, or the various agreements on non-letter services, is there a provision setting forth the rights of

the individual to use the international mail or a declaration stating that the savings inherent in a rapid and efficient international postal service should be passed on to the individual user. The final acts of the UPU are oriented almost exclusively toward the rights and duties of postal administrations. [p. 78 (emphasis added)]

24. The International Chamber of Commerce has been denied observer status at UPU Congresses 1929, 1939, 1984, and 1989. See Codding, *UPU*, p. 136 and minutes of Hamburg and Washington Congresses. Some groups, such as the airlines and publishers, have been permitted observer status to meetings of committees directly related to their businesses.

25. UPU, *Implementation of the Declaration of Hamburg: Joint Report by the Executive Council, Consultative Council for Postal Studies, and International Bureau*, 112-115 (1989) (emphasis added).

26. According to UPU estimates, from 1977 to 1986 world domestic postal letter post traffic (letters, printed papers, and small parcels) grew from 273 to 387 billion items (42 percent increase) while outward international traffic in the same period increased from 7.2 billion to only 8.4 billion items (17 percent increase). UPU, International Bureau, *Five Yearly Report on the Development of the Postal Services* (1977-81 ed. & 1982-86 ed.). In developed countries, international traffic has declined in absolute terms. From 1981 to 1990, domestic postal traffic in France, Germany, United Kingdom, and United States increased 48 percent while international traffic declined 14 percent. UPU, *Statistiques* (various years).

27. E.g., international tonne-kilometers performed by scheduled air carriers increased 92 percent from 1981 to 1990. International Air Transport Association, *World Air Transport Statistics* (various years).

28. 1989 Washington Congress, Resolution C 91, *Constitution*, p. 180-87 (emphasis added).

29. The pattern for dealings between the airlines and the postal administrations of Europe was set in The Hague Airmail Conference of 1927. The airlines and International Air Transport Association were permitted to attend, but only as observers. Codding, *UPU*, p. 58.

30. See Conv. 85 n. 1; UPU, Executive Council, "Basic Airmail Conveyance Rate," 1989 Washington Congress, Document 63; UPU, Congress, "Report of Committee 6 (Airmail), Third Meeting" (1 December 1989).

31. UPU, *Documents of the 1979 Rio de Janeiro Congress*, vol. 2., Congress - Doc. 7 (1979), and annexes, is a good summary of the terminal dues issue to that date, prepared by the Canadian postal administration.

32. A resident of country A would take or send his mail to the postal administration in country B for forwarding to the post office in country C. Postal administration C would charge B terminal dues for delivery, an artificially low charge which B would resell with little markup. Meanwhile, postal administration A typically priced its outward international services substantially above the terminal dues rate, partly to make an excess profit and partly in order to pay the cost of delivering inward international mail, a cost for which the terminal dues rate did not adequately compensate it.

33. Conv. 73. For analyses of the 1989 terminal dues system, see PTT Post (Netherlands), Deutsche Bundespost Postdienst, and General Directorate of Posts and Telegraphs (Denmark), *Approaches to Pricing for Intra-Community Postal Services* (1991); European Express Organisation, *Community Delivery Services*, 284-309 (1990).

34. 1989 Washington, Congress, Resolution C 72. Conv. 73 n. 1. Resolution C 72 was inadvertently omitted from *Convention*. The correct cost of terminal dues is the subject of a competition law complaint brought before the European Community by the International Express Carriers Conference. As part of its deliberations on the Postal Green Paper, the European Commission has already indicated an intention to require postal administrations to move towards cost based payments to each other for the delivery of cross border mail.

35. Since the 1964 Congress, the UPU and the CCC have had a permanent joint working committee called the CCC-UPU Contact Committee. Conv. 42 n. 1.

36. Conv. 60.3.

37. Codding, *UPU*, pp. 174-184 (CCPS), 223-27 (technical assistance); M. Balma, "CCPS 1957-87: Thirty Years of Postal Studies," *Union Postale* 94A-95A (1987); CCPS, *Comprehensive Report on the Work for the Consultative Council for Postal Studies, 1984-1989* (1989), International Bureau, *Report on the Work of the Union* (1990). What is now the CCPS was actually set up as the "Management Council" of a theoretical committee of all UPU members called the Consultative Committee on Postal Studies. The committee of the whole proved unworkable, and the 1969 Congress reformed the CCPS

as a council of selected administrations. Const. 18 n. 6.

38. UNDP allocates credits to the UPU of about \$4 million per year for assistance programs coordinated by CCPS and executed in specific countries; UNDP also reimburses the UPU for a small portion of the costs expended by the CCPS in this effort. UPU itself contributes another \$0.7 million in aid, and many UPU postal administrations provide services of their experts without charge.

39. From the Berne Congress in 1874 to the Washington Congress in 1989, the number of countries represented increased from 22 to 162, while the number of participants per country increased from 1.5 to 7.2. Gen. Reg. 101 n.1.

40. Tabor (1991).

41. Historically, some postal administrations have taken advantage of the relatively small number of international mailers and their inelasticity of demand to price international services much higher than actual cost. Today, this practice is no longer feasible, even with the benefit of a legal monopoly. Using computers, large mailers will produce documents abroad, or even move headquarters functions to locations with good, cheap international communications. Small mailers will use the telephone, and competition authorities will increasingly step in to protect any remaining, captured users.

42. The correct measure of the importance of international mail to a postal administration is its proportion of traffic (measured in pieces or weight or some combination), not its proportion of gross revenue. While gross revenue per traffic unit is higher for international mail than for domestic mail, the difference is primarily due to costs passed on to other organizations. There is no reason why the work performed by the postal administration itself should be significantly greater (or less) for an international letter than for a domestic letter, nor does there seem to be any reason why the "profit" on the postal work associated with an international letter should be greater (or less) than for a domestic letter.

43. Contrary to intuition, perhaps, international trade has generally not increased as a percentage of total trade, in the twentieth century, whether in the field of telecommunications, aviation, general trade, or post (Deutsch and Meritt 1979).

44. To underscore this point, one can imagine an international express company calling together its country managers from 150 countries and asking the group, by majority vote, to revise the design of the airwaybill. Next the group could be asked to develop a system of international accounts. And so forth. No express company executive would hold much hope for the results of such a process.

45. Drucker (1992, 277).

46. As noted earlier, major administrations are already negotiating air transportation directly with air carriers. In the 1989 Congress, the UPU authorized, for the first time, postal administrations to conclude specific bilateral arrangements for the delivery of mail. Conv. 73.5. Within postal circles, the possibility of opening foreign offices is no longer an unmentionable taboo.

47. "Action Plan for Implementing the Resolution on Enhancing the Effectiveness of Aid and Increasing Resources for Modernizing the Postal Services of Developing Countries," 8, adopted by the Executive Council on 7 May 1991 as part of the report of the CCPS (emphasis added). See also, 1989 Washington Congress, Resolution C 91, *Constitution*, pp. 180-87 ("Washington General Action Plan").

48. This is the approach increasingly taken by the common secretariat of the world's airlines, International Air Transport Association. There seems to be no reason why it should not work in the postal field as well.

49. Quoted in Corby (1979, 1).

50. Each business is run by a managing director, and services exchanged between the businesses are provided on a contract basis. The United Kingdom reforms appear to have resulted in a more efficient and businesslike postal organization. The British Post Office reports that it is the only postal administration in the European Community to have survived without subsidy during the twelve year period ending 1988. During the decade ending in 1988, the U.K. Post Office's letter business grew by a healthy 42 percent. The Post Office, *Report and Accounts [1987-88]*, 4, 10; *Report and Accounts [1985-86]* 7-8; Post Office Users National Council (POUNC), *Customer Audit and Review of the Post Office 1987*, p. 12 (London: 1987).

51. In many cases, for a government to yield its membership in the UPU is but a small step from the existing situation. Consider the following response of the United Kingdom government to a parliamentary question concerning terminal dues and the United Kingdom postal administration's resort to Article 25 (then Article 23) of the Convention:

Details of negotiations and implementation of terminal dues agreements between the Post Office and other postal administrations are an operational matter for the

Post Office. . . . It is, of course, a matter for individual postal administrations to decide whether to take action under article 23. My legal advice is that a collective decision by postal administrations to implement article 23 could be contrary to the treaty of Rome. *This is also a matter for the Post Office.*

137 Official Report of the House of Commons (Hansard) 184 (11 July 1988) (emphasis added).

52. In international aviation parlance, the various "freedoms" refer to stages of market entry, i.e., for a carrier based in Country A the right to overfly Country B (first freedom), to land for emergency repairs in B (second), to carry passengers and cargo from A to B (third) or from B to A (fourth) or between B and a third country C via A (fifth). Indeed, it would be so similar that one could imagine accomplishing more or less the same ends by extending the air freight or "doing business" provisions of existing air transportation agreements to include the collection, transport, and delivery of all "mail," documents, and small parcels.

53. One could detect glimmerings of a separate, governmentally determined, EC/US approach towards international postal policy at the 1989 Washington Congress. Both the United States government and the EC representatives, unknown to each other, vigorously debated the need for a general reservation to the UPU acts in order to preserve the prerogatives of their governments. The United States considered a reservation allowing presidential review of all provisions. The EC delegates debated a reservation calling attention to the supremacy of the Treaty of Rome and its competition rules. In the end, neither reservation materialized.

54. The UPU already assumes that airlines have the legal right to transship mail at a connecting foreign airport. For example, mail from Country A would be flown by an airline to an airport in Country B, transshipped by the airline to a second aircraft, and flown to Country C for delivery to the postal administration. In Country B, the *airline*, not the postal administrations, is performing the same international transit function which, when Country B reserved it as a monopoly, gave rise to the UPU. Conv. 83.4.

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COMMENTS

El Mostafa Gharbi

1. Introduction

First of all, I must offer sincere congratulations to Mr. Campbell on his excellent and extremely well documented paper, which provides a valuable basis for the discussion that will undoubtedly take place on this fascinating and impassioned subject of the future of the UPU. I hope that the discussion will be productive and constructive: in any case, this is the spirit in which I intend to present my comments.

I shall begin by saying that a fair number of the ideas put forth by Mr. Campbell are very topical indeed and for the past while have been the subject of heated discussion in the various bodies of the UPU. My aim is not to analyze all his comments one by one, but I will instead confine myself to commenting on two principal ideas that in my opinion provide the framework and the main thread of Mr. Campbell's reasoning. One concerns the powers of the UPU, and the other its relationship with the private sector.

2. Powers of the UPU-Regulator -operator separation

The main conclusion reached by Mr. Campbell is that the UPU must become an organization exclusively for postal administrations as commercial enterprises that would not represent the States. As a result, the UPU would no longer have any regulatory power and would be exclusively concerned with operational matters. The regulatory aspects would be dealt with separately as part of a distinct organization that would set the rules for all operators, public and private. The latter organization is seen by Mr. Campbell as an organization for some or all of the industrialized countries.

What should we think about this revolutionary proposal? First of all, I must point out that it proceeds from the same spirit as that put forward by others who, starting from the same premise, have reached a diametrically opposite conclusion, namely that the UPU should be an association made up exclusively of regulators, with the operators being required to organize themselves elsewhere.

UPU circles, however, are convinced of the possibility of a third avenue, one calling for the UPU to alter its structure in consideration of the changes taking place in its member countries and that would result in a separation of operators and

regulators. Both activities should have a place within the framework of an appropriately reformed UPU where a balance would be achieved, where regulators and operators, working within frameworks established in a completely independent manner, would always be able to communicate and coordinate their activities under the umbrella of the UPU.

To determine the powers of each of these two structures, it would be necessary to decide which provisions in the Acts of the Union are within the purview of governments and entrust responsibility for them to a regulatory body. A tentative list prepared by Mr. Campbell is given in table 4, page 24, of his document. The number of such provisions will be fairly small, compared with the volume of the Acts of the UPU.

It is perfectly conceivable that the UPU will be able to adopt such a reform if its member countries are convinced that it is right and useful. In any case, the UPU is in the best position to reconcile these various interests and the only body capable of doing so. The Universal Postal Union has 118 years of experience in the international exchange of items of all kinds, and it performs this task in the best interests of governments and postal customers. It has, on many occasions, demonstrated its ability to adapt to new situations, to new needs that have arisen in its member countries. For example, at the 1984 Hamburg Congress, it made monitoring the mail transmission times and delivery one of its top priorities. More recently, at the Washington Congress, it adopted a program focusing on satisfaction of postal customers.

Just as it was able to integrate concerns of an operational nature, so it could take account of the need to separate regulators from operators under the general auspices of the UPU. In our view, it is not necessary to resort to an extreme solution calling for a split into two organizations with no links between them. This would not serve the interests of international postal unity and universality. Mr. Campbell talks about this potential split as affecting a small number of industrialized countries and responding to their own needs. Such a scenario would be contrary to the general spirit and to the unity objectives of the Universal Postal Union. Recent experience has amply demonstrated that this road leads to very regrettable consequences for the other countries and to a weakening of the postal network. Moreover, one must bear in mind that many countries have not yet proceeded with the regulator-operator separation at national level and are not considering doing so in the medium term; this does not apply only to the developing countries.

In another vein, the countries that have introduced the separation at national level have not completely severed all links between both activities. Fairly sustained relations are maintained between the two sectors, requiring a minimum of coordination. In addition, the public operator which the Post is cannot be completely assimilated to the private operators because, whatever its new status, it continues to discharge a public service obligation for which it receives compensation of some sort.

It is in the interest of all countries that the unity and universality of the postal service be maintained. This does not mean that nothing should be changed.

Changes must be made to the operation of the UPU in response to new circumstances. The UPU is fully aware of this, and this is why several groups have just completed a study of possible reforms that would affect all aspects of its activities and its various bodies. Proposals of substance have been made and will be considered by the next Executive Council at its April/May 1992 session. A high-level meeting is also scheduled for May 14 and 15 with many ministers and directors-general in attendance. This meeting could lend political support to the decisions that will have been made by the Executive Council. In this connection, a certain convergence can be detected in the results of the thinking of all parties. That convergence of ideas will very probably be given practical application at next month's session of the Executive Council.

3. Cooperation between the UPU and the Couriers

Another leading idea in Mr. Campbell's talk consisted in calling on the UPU to encourage administrators to engage in joint ventures with the private sector, and thus to take advantage of their capability as regards new technology of aviation, telecommunications and computerization. Mr. Campbell adds that postal administrations will make the leap in that direction anyway, with or without the UPU. I should like to point out in this regard that the UPU, as it stands now, is still an intergovernmental organization working in the interests of publicly owned enterprises. Its strategy must take account of that situation until such time as governments decide otherwise. While remaining receptive to innovations of all kinds and to cooperation consistent with the interests of its members, it cannot encourage initiatives that would tend to weaken the world postal network.

In any case, the private sector, even though it has a certain advantage in terms of application of computer technology, for example, does not have a monopoly in that area. Many administrations use it fairly extensively, and an efficient and harmonized system of this nature is being developed at UPU level, with the first test being scheduled to begin next July. Of course, the UPU can draw on a number of positive methods used by the private sector, but it also has assets and expertise of its own that should not be underestimated.

These objectives are part of the present UPU work program, the initial results of which will be made public next May. In this connection, one should mention the strategic planning study that was carried out by the private firm Ernest & Young, and which is likely to help the UPU to make more systematic decisions about its new missions and priorities and, possibly also, the criteria for collaboration with the private sector.

Some UPU detractors are trying to gain credence for the idea that progress is impossible within that organization, that the only way for postal administrations to resolve the issue is to sub-contract all or part of the international traffic to the private sector or to establish joint ventures and that the main objective of the UPU should be to encourage such a transfer of the international postal service to the private sector, which alone is capable of handling it in a modern and efficient manner.

Postal administrations should concentrate their international activity on the delivery sector for which they are the best equipped.

This kind of reasoning, which can be found in Mr. Campbell's paper as well, seeks to present as axiomatic that private couriers are and always will be professionally superior to the Post and more capable of handling the international service efficiently. From there to applying the same reasoning to domestic traffic is but one step; this might even be the target of a second campaign in the couriers' strategy. Little by little, the postal service would be eased out of the most lucrative markets and replaced sector by sector by private couriers. All that is fair enough, but the Post should be allowed to defend itself and to put forth its arguments.

An analysis, even a superficial one, of the market situation shows that the postal system remains very powerful, despite the serious onslaughts of its competitors. It is capable of reacting effectively at both the national and the international levels; a fact that it proves continually, and examples of which are plentiful. Even in a sector as fragile as that of EMS, which it entered after the couriers, the Post had to display dynamism to carve a place for itself, to remain among the best, and to increase its market share considerably. From 4 percent of the market in 1988, it had reached 19.4 percent in volume and 9.5 percent in revenue in 1991, according to the latest IPC/UNIPOST estimates. The postal administrations of the UPU are in the process of considering and implementing ways of meeting the challenges on the various markets. They are convinced that they will succeed, sacrificing the interests of neither the developed nor the developing countries.

It often happens that organizations or individuals of dubious intention deliberately exaggerate the differences between developed and developing countries. This sometimes goes far as presenting the interests of both groups of countries as being at odds with each other. At the UPU, we are convinced that a proper understanding of the interests of all countries and their customers requires that they work together within the UPU.

This does not mean that regional or, depending on the affinities between certain countries, individual initiatives might not be desirable. But coordination must always be at UPU level so that the most positive experiences can be extensively shared as part of general, harmonious, and properly managed development.

The Executive Council, which meets every year and whose powers were increased by the 1989 Washington Congress, can henceforth act more quickly in that direction than in the past, and make the right decisions at the right time. It can not only amend the Detailed Regulations of the Convention, but also "take any action considered necessary to safeguard and enhance the quality of and to modernize the international postal service" (General Regulations, article 102, paragraph 6.3). It can also recommend "the adoption of regulations or of a new procedure" (General Regulations, article 102, paragraph 6.22).

Naturally, the scope of these new powers is limited by financial considerations. The answer to this constraint could precisely be found in the context of the restructuring advocated by several UPU member countries.

4. Conclusion

The UPU is a living organization open to modernization. It is capable to the changes occurring in its member countries and, in doing so, to adopt the most appropriate structure. Specifically, it can help its members to jointly introduce the latest technology in order to offer a service more in keeping with customer wishes. To do that, however, it must have the confidence of all countries, and particularly that of the industrialized countries which are on the front line. Changes must be conceived and implemented for the benefit of all customers, in all countries. A united Post is in a position to regain the ground lost in all sectors of activity, thanks to its undeniable and incomparable assets, which are its presence, its very extensive experience in the field, and its professionalism. However things evolve, the UPU must strive to remain the natural meeting place of operators and regulators. It alone is in a position to work out a code of ethics to be respected by all the players, just as it is the organization best able to achieve harmonization and standardization of systems between the various partners. It can more validly than anyone coordinate the most difficult problems, such as those concerning customs clearance, conveyance, tracking and tracing, compensation, etc.

COMMENTS

Ross Hinds

1. A Universal Postal Service

A letter addressed to anyone in the world can be posted in France, and, regardless of where that person is, it will be delivered. That this should be possible is so widely accepted that no one even asks how it is done. The reason why it is possible is to be found in the existence of the Universal Postal Union.

Remarkably, the UPU does not operate the international mail service. It collects no letters, transports no mail, and delivers nothing. It does not manage the process, nor organize any of the links in the chain. It is the national postal administrations which operate the international mail service. There are over 170 of these. Each exchanges mail with all the others. The complexity of this set of relationships can be managed by the administrations themselves because the UPU provides a framework.

So, what is the Universal Postal Union, which provides this framework?

2. Which Conceptual Model?

It can be useful for ease of description if an existing concept or model can be applied in answering the question what is the UPU? Campbell tries to apply a few such models.

3. Legislature/Executive

His first is to compare it to a legislature and an executive. This is superficially attractive, especially from a United States perspective, where the Constitution of the country specifies a very formal separation of the Legislature, the Executive, and the Judiciary. The existence of the UPU is determined by an international treaty set out in a series of "Acts," and there is an Executive Council. Legislatures deal with "Acts," and it obviously seemed that the Executive Council is similar to an "Executive" or Government. In fact, the Executive Council cannot direct a postal administration or a member government to act in a particular way. It has powers of modification of the Detailed Regulations, which specify such things as the color of the mail bags and the labels to be used on them. But this is hardly

legislative power in the sense in which Campbell uses it.

An executive in Campbell's sense would consist of full time cabinet members with specific powers of their own. The Executive Council of the UPU is made up of representatives of the postal administrations elected to it by Congress. As far as their participation in the Executive Council is concerned, they are all part-time, meeting once a year. Is the International Bureau in Berne an "Executive"? Its function is to provide a secretariat to the various constituent bodies of the UPU. In no sense is it an executive. It is not even allowed to put forward motions for decision. For these reasons, the analogy with a legislature and executive is not helpful in understanding what the UPU is.

4. Regulator/Operator

Campbell's next model is that of Regulator and Operator. It is a concept which is familiar at the national level in many countries. The UPU has a body of text described as Regulations, and the postal administrations are certainly postal operators. So there seems to be a good fit and Campbell applies some argument based on it. But it is only an apparent fit.

Regulators have powers to control at the *national* level. Is the UPU able to control at the *international* level? The answer is that it is not. All enforcement, such as there is, is carried out at the national level. The UPU is not a regulator in the sense that the term is used nationally. We have already seen that the UPU is certainly not an operator either. Hence the Regulator/Operator model is not a useful one with which to discuss the UPU.

5. Standards Body

So, what is the best way to describe the UPU? Perhaps a more useful analogy would be to examine it as an international standards body. The Regulations of the UPU are in fact a set of interface standards for international mail. They specify in very low level detail the way that postal administrations transfer mail to each other. The real achievement of the UPU was one of standardization. The complexity of 170 postal administrations interacting with each other if they all had their own documentation is mind-boggling! The documents would be laid out in 170 different formats, in a similar number of languages. Through the standardization work of the UPU, all international postal documentation is in a defined format and uses French language text, albeit normally with the language of the country of origin as well. Most people are familiar with the 'Par Avion' blue label used to identify air mail letters across the world, for example. Thus mail can be sent across the world, and the documentation will be understood everywhere.

The standardization framework provided by the UPU has been of the first importance in the activities of the UPU since it was founded. Campbell passes over this aspect very lightly. Coming from the perspective of the international courier industry, this is perhaps not surprising, but in any consideration of the future of

the UPU, it is a vital concern.

The organization structure of the UPU is similar to that of a standards body. The organization is run by the Chairmen of the Committees, including the main committee, the Executive Council. The International Bureau are a secretariat who are charged with looking after the processes of standardization. The decisions are all made by the postal administrations using their vote in the committees. Each administration has only one vote, as is normal in a standardization body.

6. How Commercial?

In discussing the role of the UPU, one has also to recognize the nature of the postal administrations. Postal administrations, all over the world, are either government departments or are owned by governments. In an increasing number of countries, they are organized as statutory corporations or as public limited liability companies with stock holders. However, whatever the form of organization, they remain government owned. Even when there are stockholders, the government owns it all. This has very important consequences for the commercial freedom of action of postal administrations.

In a general sense, the non-civil service administrations are encouraged to be commercially-oriented and to exercise their responsibilities in an entrepreneurial way. When it comes to the particular, the reality can be quite different. When a postal administration calculates that it would be more cost effective to change from company-owned retail offices to contractor-owned ones, there are often government concerns about the social (and perhaps political) consequences, which may prevent any action. When the United States Postal Service began to run a postal electronic mail service in the early 1980s it was hedged about with commercially amazing restrictions; for example, all input had to be transmitted over telecommunications lines rather than by magnetic tape. This increased the costs to the customers. The situation probably reflected the relative influence at that time of the telecommunications lobby versus the USPS in Congress and the suspicion of public bodies evident in the United States political system.

Another way in which the developed countries' postal services are not truly commercial is in their financial targets. Although their owners will in theory wish to have some return for their investment, in practice, national political matters have some influence on how seriously they want them achieved. Losses may be much more acceptable than a rate increase or industrial action by the staff.

Campbell's basic difficulty is that he is attempting to apply commercial terms and logic to governmental bodies-the postal administrations. He starts from the position "that the postal administration is an independent commercial organization with much the same instinct as any other competitor, albeit with certain public service benefits and obligations as well." Having mentioned the public service aspect, he considers that it is of no significance really and proceeds to assume that they are indeed purely commercial organizations. He is then amazed that various regulations "tend to protect postal administrations from competition." But it is

axiomatic that a monopoly is protected from competition. He is surprised that matters are arranged "in a manner that would be illegal for private companies." But governments are not private bodies, and their statutory bodies are not either.

7. Social Policy

The whole nature of the postal service has an underlying social policy foundation. This is so because the three principles of universal access, universal delivery, and a uniform rate for a whole country, are really ones of social policy. The UPU provides the framework of standards, which link all the national systems based on these principles. Campbell's suggestion that it could be replaced by a modification of the bilateral arrangements for air transport is based on a number of misunderstandings of the nature of post offices and of the functions of the UPU. This is not surprising, given his statement that "one could imagine accomplishing the same ends more or less by extending the air freight or 'doing business' provisions of existing air transportation agreements to include the collection, transport, and delivery of all 'mail,' documents, and small parcels" (note 52). Hence, he is not at all concerned with the principles set out above or of the effects of his proposals on them.

8. UPU Primary Role

In his discussions of the origin of the UPU, Campbell gives great emphasis to the question of transit fees. Indeed, he says that "The UPU developed... primarily ... to settle... problems surrounding transit mail." He then goes on to argue that the invention of the airline has removed this *raison d'être* of the UPU, because mail can now be moved directly by air between countries. Of course, it is not true that transit fees were the *raison d'être* of the UPU. The primary issue was standardization. The 1874 Congress was primarily a simplification. It eliminated payments for delivery, introduced the concept of freedom of transit (albeit with the aforementioned transit fees, but these were standard), and standardized the forms and procedures for handling international mail.

9. UPU Role in Air Transport

From the section of the paper dealing with transit fee's one could get the impression that the UPU is in the business of organizing air transport. But, just as it does not collect and deliver mail, neither does it arrange mail transportation. Campbell has assumed that, because the UPU makes decisions on the rates to be paid to IATA carriers, it must actually be in the business of arranging transport. In fact, these rates are guideline rates, which have become *de facto* default rates. They are the rates which a postal administration will pay if no other contract applies. Campbell himself suggests that "the largest postal administrations must be allowed, even encouraged, to make their own arrangements for major routes." Of course he is

right, they should. And they do. Most of the large administrations put their mail carriage contracts out to tender. Strangely, having stated that they *should* be doing this, Campbell, in footnote 46, says that they *are* doing it. The reason for the existence of the UPU-IATA rates is that mail going in small volumes to particular destinations can be carried, without there being a contract between the originating postal administration and each airline taking the mail part of the way.

10. Rates

The UPU has been criticized for failing to operate in certain ways. Campbell for instance, says it has failed to control rates. He has not realized that it had always been recognized that different countries had different cost structures. That was the reason that there could be no application of the Rowland Hill formula to international mail. Where the UPU considered setting standards, it was by relating these to domestic rates or by allowing a wide variation in the application of what are now "guideline" rates. Those are the actions of a standardization body in such a situation. Again the UPU is not an operator or enforcement agency.

11. The Flow of Ideas

Campbell builds some of his arguments on the motives of European monarchs in the fifteenth and sixteenth century who restricted the international post to their own monopolies. He says that there should no longer be restrictions on the flow of ideas. Of course he is right! But the UPU in 1874 endorsed that approach when it created the concept of the "Single Postal Territory." It explicitly states an objective in this spirit in the Preamble to the Constitution, where it states that the Constitution has been created with a view "to contributing to the attainment of the noble aims of international collaboration in the cultural, social and economic fields."¹ The UPU was not the creation of fifteenth century kings. It was a nineteenth century creation with exactly opposite aims. The guarantee of freedom of transit in Article 1 of the Constitution prevented any arbitrary interference with the mails which might have been possible in the fifteenth century.

12. A Return to Bilateral Agreements?

The essence of Campbell's position lies in his statement that it would be appropriate "for the developed countries to negotiate, outside the UPU framework, separate agreements specifying a minimal regulatory framework for all international delivery services." The main purpose of such agreements would "be to permit the establishment...of a series of collection, transport, transshipment, and delivery offices in various countries, under the administrative control of a single organization." Thus, we would return to the pre-UPU patchwork of bilateral and multi-lateral agreements, with perhaps a different set of regulations governing the exchange of mail between each pair of countries. He does not explain the ad-

vantages of this arrangement for mail users in the developed countries. Nor does he examine the way that mail to and from other parts of the world, not party to all of these agreements, will be handled.

He says "Nor are the economic aspects of cross border traffic so great as to be material to the financial success of postal administrations." This assertion assumes that there is a clear distinction between domestic and international mail. The remail industry has shown that this is not the case. If international mail has some advantage over domestic, it will not be long before much domestic mail becomes international, with consequential financial effects. These effects do have to be taken into account in the debate. The European Community Green Paper on Postal Policy is expected to deal with them in some depth.

13. The Function of the UPU

The function of the UPU depends on the institutional arrangements for postal services at the national level in the first place. It was created to link governmental bodies. Hence there is no place for private sector bodies. Although many postal administrations have been corporatized in one way or another, there are no postal services in the world to date in which the government does not have a controlling interest of some kind. It is standard practice for postal administrations to have non-commercial obligations too, in exchange for a de facto monopoly. These are the underlying assumptions behind the structure of the UPU. If these change, then clearly the functions of the UPU will change too. At present, the most lively debate on the postal services policy is taking place within the European Community. As Campbell says, the publication of the Green Paper will "serve as the intellectual groundwork not only for a new international policy in Europe, but for one in the United States as well." The effects will be felt in the wider arena of the UPU too. Indeed, there is recognition of this in the attendance at UPU meetings of European Commission officials over the last few years. When it is clear what modifications will be made at the European Community level, it will be possible to predict the future of the UPU.

Note

1. UPU Annotated Code English language text, Volume 1, page 4, Berne, 1991.