
FUTURE DIRECTIONS IN POSTAL REFORM

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Reforming the Universal Postal Union

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The Universal Postal Union is a intergovernmental organization founded in 1874 to create a “single postal territory” among “civilized countries.” Since 1874, membership has grown from 22 to 189 countries and now includes virtually every nation on earth. Within the Union, international commerce in documents and parcels is enabled by uniform rules governing the exchange of items between national post offices, each owned by the government of a member country and operated as a public service sustained (in almost all cases) by monopoly rights. Even though the Universal Postal Convention and related agreements have been revised twenty-one times since 1874, the premises on which the Union is built have remained largely unchanged since its founding.¹

In the year 2000, these premises no longer correspond to the operations or needs of the international delivery services marketplace. This paper considers how the Universal Postal Union might be reconstituted to meet the needs of international commerce in the twenty-first century. Section 1 provides a brief description of the new global delivery services market. Section 2 recounts the halting efforts of the Universal Postal Union over the last decade to adapt to the new global market. Section 3 outlines legal principles on which a new UPU might be based. Section 4 offers

¹ Technically, the Universal Postal Convention is not a continuous agreement. Each general congress agrees to a new version of the Convention, and the prior version lapses when the new agreement becomes effective. As this paper is written, the current version of the Universal Postal Convention is the one agreed in Seoul, Korea, in 1994. The version agreed in the Beijing Congress, the twenty-second general congress of the UPU, will become effective on 1 January 2001. In 1964, organizational provisions were deleted from the Convention and placed in a separate document, the *Constitution*. The 1964 Constitution is a continuous agreement; however, each general congress revises the Constitution with a new “protocol.”

suggestions on how the current UPU might be reformed to give effect to the principles identified in section 3.

1. THE NEW GLOBAL DELIVERY SERVICES MARKET

As delegates gathered in Beijing, China, in August 1999, for the twenty-second general congress of the Universal Postal Union, the delegate from the host country greeted his guests by calling attention to sweeping changes in the environment for international postal services:

At the turn of the century, we find our human society is coming to a time of great transformation: speedier world economic integration and trade liberalization, closer economic relationships and interaction among countries; dynamic progress of the new technology revolution with information technology at its core and the emergence of an information economy and knowledge economy; the stronger call for a new international political and economic order from all parts of the world as well as the gradual formation of a world of multipolarization. All these changes have a significant impact on the environment of the survival and development of the world Post.²

This is a different world from the one in which the UPU was born. Delivery services first acquired a central role in social and economic affairs when inexpensive national postal service was fostered by seminal postal reforms adopted in England in 1840. Three decades later, international delivery services reached a new plateau when national postal services were joined through establishment of the Universal Postal Union. In the late nineteenth century, international commerce in documents and parcels was more or less the sole preserve of national post offices.

Today, although personal sentiments are more generally transmitted by telephone than by “current and personal correspondence,”³ the economic

² UPU, Beijing Congress (1999), Doc 63 Add 2 at 13 (emphasis added).

³ In the nineteenth century, the basic function of the post office was conveyance of social and business *letters*. In the first UPU convention, the convention establishing the General Postal Union in 1874, Article 2 declared that the subject matter of the convention was the exchange of “letters, post-cards, books, newspapers, and other printed papers, patterns of merchandise, and legal and commercial documents.” According to Article 13(1) of the Detailed Regulations, “legal and commercial papers” referred to documents “*which have not the character of current and personal correspondence.*” This definitional test was applied to printed papers in the Article 17 of Detailed Regulations of the 1878

importance of delivery services is increasingly. Small parcels with high value have expanded as a fraction of economic activity. For example, small personal computers worth several thousand dollars are delivered by parcel companies, replacing computing machines that required custom built rooms only a few decades ago. Markets have grown to regional and global scale as consumers regularly buy goods and services from sellers in other countries. Modern managers, using more and better information, emphasize close coordination of all phases of the supply chain, from brainstorm to final product. Each of these trends, accelerated by the rise of the internet, implies an increased demand for faster, more reliable delivery services.

No longer the sole preserve of post offices, the international delivery services market in the early twenty-first century is a competitive commercial market with several types of operators. International Post Corporation, a consortium of major public postal operators, estimates that the international mail and express market in 1998 was worth US\$ 41 billion. The revenue share of public postal operators was estimated to be around US\$ 12 billion, a mere 30 percent of the total. Moreover, of the share of the market held by public postal operators, approximately 60 percent is provided by operators in industrialized countries. In almost all industrialized countries, the public postal operator is a commercially oriented entity acting like a private business; the public postal operator covers its costs from revenues, pursues revenue making opportunities in competitive markets, and answers to its customers. While a public postal operator may face a universal service obligation that shapes its domestic services, such an obligation usually has only a minimal effect on the nature or scope of its international services.⁴ Post offices of developing countries, as well, are approaching international services in an increasingly commercial manner. In short, no more than 10 percent of the international delivery services market today retains the character of government service that prevailed in the late nineteenth century.

Under pressure of advancing technology and mounting competition, the structure of the international market is evolving rapidly. Delivery services are reorganizing into supra national, even global, operating entities. For example, TNT Post Group (itself a consolidation of the Dutch Post Office

Convention. The central and distinct role of *letters*—thus negatively defined as “current and personal correspondence”—persisted in the statement of the UPU’s mission until it was obscured by changes in the concept of “small packet” (successor to the category of “legal and commercial documents”) in the twentieth revision of the convention by the Washington Congress of 1989. A wholesale rewrite of the Convention by the Seoul Congress of 1994 further obscured the concept of *letter* and, hence, the basic mission of the UPU.

⁴ For example, the most stringent of the traditional universal service obligations—a requirement to offer service at a uniform national rate regardless of destination—does not generally apply to international delivery services.

and a major international express company), U.K. Post Office, and Singapore Post recently announced a joint venture combining their international business mail services. Types of delivery services which were once distinct (letter, parcel, express, logistics) are now merging. At the leading edge of this trend stands the Deutsche Post, the public postal operator in Germany, which is evolving into a regional parcel company and global logistics company with subsidiary businesses in e-commerce and finance. In response, governments are loosening restrictions on competition between public operators and private companies. In recent years, reductions in the scope of the postal monopoly have been adopted in most industrialized countries and several developing countries. At the same time, public postal operators are being granted greater authority to enter competitive sectors.

Given the vast transformation in the international marketplace since the late nineteenth century, it is inconceivable that, if a magic spell were cast across the postal world and all traces of the present Universal Postal Union forgotten, governments would recreate this convention along the lines agreed in 1874. In fashioning a new convention, governments would necessarily look forward to the new global delivery services market that is unfolding. The essential characteristics of this market are already visible. International delivery services will be predominately provided by a handful of global operators operating across national boundaries, not by the exchange of documents and parcels between national operators. Some or all of these global operators will be fashioned from alliances or mergers of wholly private companies and corporate descendants of public postal operators. At the international level, global operators will compete with one another and with the remaining direct exchange of services between national post offices. While global operators will collect and deliver a substantial portion of international documents and parcels, in many cases, they will also interconnect with national operators who will provide final delivery.

2. A DECADE OF REFORM INITIATIVES IN THE UPU

Evolution of a new global delivery services market has been proceeding for several years, and its implications for the international legal order have not gone unnoticed by the Universal Postal Union. In the last decade, the UPU has undertaken several studies of the increasing diversification and commercialization in the international mail market. This section reviews the reform initiatives of the UPU over the last decade and concludes that new approaches must be employed if the UPU is to be adapted to the new market.

2.1 Washington Congress (1989)

In December, 1989, the Washington Congress instructed the Executive Council⁵ “to have the organization and objectives of the [UPU’s major institutions] examined by experts selected from among public postal operators, management consultants or a combination of the two.”⁶ Proponents argued the study was needed so that post offices could meet “the *growing competition* which is often able to respond better to the ever changing requirements of the clientele [and] the challenge of the *new technology* in the field of communications [and] so that the UPU can *adapt its methods and practices* to present demands.”⁷ The Executive Council divided this work into two parts: (i) a study on UPU structures and work methods and (ii) a study on long term UPU strategy.

The study on UPU structures was assigned to a “Group of Postal Experts” drawn from the United States, Australia, Finland, France, United Kingdom, and New Zealand. The Group’s 80-page report,⁸ submitted in January 1992, noted “a ground swell of recognition of the need for the Union to change and adapt.” They proposed three scenarios for long-term reorganization of the UPU, each representing a step towards increasing separation of governmental and commercial functions. The third scenario posited “a complete separation of operational activities” which would be “spun off” as a separate enterprise supported by contributions from those administrations (not countries) participating in its activities.” The UPU itself would remain as “a purely regulatory body.” In September 1992, a majority

⁵ Prior to the 1994, the UPU was governed between general congresses by the 40-member Executive Council, with a second permanent committee, the 35-member Consultative Council on Postal Services, coordinating the exchange of technical assistance. Since 1994, the inter-congress period has been governed by the 41-member Council of Administration and the 40-member Postal Operations Council. The former focuses more on governmental issues while the latter concentrates on operational and commercial issues. Decisions taken by the congresses of 1989, 1994, and 1999 have shifted authority from Congress to the Council of Administration and, especially, to the Postal Operations Council.

⁶ Washington Congress (1989), Resolution C8/1989.

⁷ Washington Congress (1989), Proposal 026 by the United Kingdom (emphasis added).

⁸ UPU, CE 1992 C3 Doc 2a. The Group assembled in July 1991 during a period of exceptional turmoil in the international postal world caused by formation of a joint venture between a large international express company (TNT) and five major post offices (Canada, France, Germany, Netherlands, Sweden). The Group considered its original brief too limited to address the important issues facing the UPU and pressed to extend its brief to include “recommendations for changes outside the existing scope and objectives of [UPU institutions]” (appendix 5, page 2). The central concern of the Group was the rapid evolution of international express companies such as DHL, Federal Express, TNT, and UPS and the TNT joint venture.

of European postal operators confirmed their support for “a distinction between regulatory and operational functions within the UPU.”⁹

The study of long term UPU strategy was assigned to an outside consultant, Ernst & Young. In March 1993, the consultant proposed creation of an Administrative Council and Operations Council within a unified UPU.¹⁰ The consultant’s report was based on a canvass of UPU members through questionnaires and workshops. The option implicitly favored by the Group of Postal Experts, separate structures for governmental and operations functions, was discarded in the very first workshop in September 1992. As Ernst & Young took care to point out in its report to the Executive Council in May 1993, “recommendations contained in the report were not, strictly speaking, those of the external consultant but an amalgam of the views expressed in the course of the various consultations and the three workshops.”¹¹

2.2 Seoul Congress (1994)

In 1994, the Seoul Congress of the UPU reorganized the main bodies of the UPU along lines proposed in the Ernst & Young report.¹² Reorganization did not achieve separation of governmental and commercial functions but was said to be a gesture in that direction. In addition, the Seoul Congress, “recognizing the fundamental changes the international postal sector is currently experiencing, such as the expansion of competition, the liberalization of exchanges of services, and the growing need to take into consideration the interests of all participants in postal activity,” instructed the newly formed Council of Administration “to continue seeking as a matter of priority ways of improving all aspects of the Union’s structure and of the management of its work.”¹³

Accordingly, in October 1995, the Council of Administration adopted a work program focused on six objectives identified by the Executive Council prior to the Seoul Congress.¹⁴ Three studies were launched to address key facets of the future of the UPU: (i) a study on the legal, regulatory,

⁹ UPU, CE 1993 C3 Doc 2a Add 1, paragraph 11 and annexes.

¹⁰ UPU, “Universal Postal Union: Future Organisation and Funding,” CE 1993 C3 Doc 2b.

¹¹ UPU, CE 1993 Doc 7, paragraph 5.

¹² UPU, Seoul Congress (1994), Doc 70.

¹³ UPU, Seoul Congress (1994), Resolution C 59/1994.

¹⁴ UPU, CA 1995 Doc 17c/Rev 1/Annex 1, “Programme and budget: Five-year cycle 1995-1999, Financial year 1996.” As authority for the six objectives, the Programme cites not a resolution of the Seoul Congress but Doc 7 of the 1994 Executive Council. Doc 7 proposed that the Seoul Congress adopt a resolution restating the mission of the UPU “in a more accessible form than the one in the Constitution.” Doc 17c, paragraph 36. Apparently, however, this draft resolution was never adopted by the Seoul Congress.

technological and commercial environment in relation to the single postal territory principle, (ii) a study on the status of UPU members and the possibility of admitting outside observers, and (iii) a study on the UPU's mission statement. Reflecting European concern for separation of governmental and commercial functions, each study was led by a representative of a member government rather than by a public postal operator

The study on the principle of the single postal territory was led by Germany. It began with the customary survey of UPU members. The survey revealed substantial support for pro-competitive reforms and further separation of governmental and commercial functions. Accordingly, in 1996, the German ministry proposed that "the Universal Postal Convention should commit each member country to offering non-discriminatory transit and delivery services. Non-discriminatory in this context means that *private operators are treated in the same manner as postal administrations in respect of price and conditions of access when volume, structure and regularity of mail is comparable.*"¹⁵

The German proposal touched a nerve in the UPU. The Universal Postal Convention has never required post offices to align rates that they charge for delivery of inward international mail (called *terminal dues* in UPU terminology) with the rates they charge for delivery of similar domestic mail (domestic postage). Misalignment between terminal dues and domestic postage rates, in turn, serves to justify anticompetitive activities central to the operation of the convention. It is reasonable, it is said, that public postal operators and private operators face different prices for delivery of identical inward international mail because only public postal operators are subject to the terminal dues provisions of the convention. Similarly, it is said to be appropriate that the convention authorizes public postal operators to return or surcharge international mail that is posted in a country other than the country where the mailer resides because such "re-mail" undermines the UPU terminal dues system.¹⁶ In sum, these restrictions are akin to a market

¹⁵ UPU, CA 1996 C1 Doc 2 (emphasis added). In addition to Germany, the study group including Tanzania and Argentina. A German research group, Wissenschaftliches Institute für Kommunikationsdienste (WIK), provided technical assistance.

¹⁶ Article 25 in the 1994 Convention (Article 40 in the 1999 Convention) allows member countries to surcharge—or in some cases, to refuse to forward or deliver—international mail which is posted in a country other than the country where the mailer resides. Such mail is commonly called "re-mail." "Residence" has been so broadly interpreted by some post offices that it allows them to surcharge or intercept almost any substantial international commercial mailing. Terminal dues are a murky subject beyond the scope of this paper. In general, it is sufficient to note that, by keeping terminal dues below domestic postage, post offices in industrialized countries have been able to achieve one or more of the following: (i) supra normal profits, by pricing outbound international mail well above actual costs; (ii) a competitive advantage, derived by taking advantage of

allocation scheme, giving each public postal operator first claim on international mail produced by mailers “resident” in its territory. The thrust of the German approach was to eliminate this legal preference for national post offices by revision of the terminal dues and anti-remail provisions of the convention. The Council of Administration emphatically rejected the German initiative.

The next year, in October 1997, the German ministry returned with a scaled back version of its reform proposal, limiting commercial neutrality to bulk mail. The Germans explained:

The changes distinguishing today’s market for cross-border letter-post items from that of the past are fundamental; developments seem to be irreversible. In many countries, the postal administrations face competition with private operators whose market share of cross-border letter-post items is constantly increasing. Many postal administrations no longer confine their activities to the national territory. Some are presently undergoing a process of internationalization, they are becoming global players whose commercial interests reach far beyond the domestic market and the national borders. In view of all this, adoption of the regulatory framework for cross-border letter-post items seems to be indispensable.¹⁷

The Council of Administration answered the pared down German proposal by canceling the study. Policy implications of the German study were reassigned to the International Bureau. Terminal dues aspects of the German proposal were reassigned to other committees addressing terminal dues revisions.¹⁸

The possibility of admitting observers to UPU meetings was the subject of the second study set in motion by the Seoul Congress. The reporting country was the Netherlands. In 1997, the Dutch ministry proposed to

artificially low delivery rates in other countries; or (iii) a net subsidy gained from foreign post offices, earned by post offices with lower unit costs than other post offices. Postal attempts to control the practice of remail have been the subject of extension investigation and criticism by competition authorities in the European Union. See Case T-110/95, *IECC v Commission* [1998] ECR II-3605 (appeal pending) and Joined Cases T-133/95 and T204/95, *IECC v Commission* [1998] ECR II-3645 (appeal pending). In Joined Cases C-147/97 and C-148/97, *Deutsche Post v. GZS and Citicorp*, __ ECR __ (10 February 2000), the European Court of Justice discusses but fails to illuminate the interrelated topics of terminal dues, remail, and competition. See also the discussion of these subjects in the European Commission’s 1992 Green Paper on postal services.

¹⁷ UPU, CA 1997 C1 Doc 2, Paragraph 6 (emphasis added).

¹⁸ UPU, CA 1997 Doc 11a.

amend the rules of the UPU to admit observers from interested international organizations, including private operators. This proposal was distributed to all members of the Council of Administration and Postal Operations Council, eliciting numerous objections.¹⁹ In early 1998, the Dutch ministry returned with a more limited observer rule,²⁰ but members of the Council of Administration continued to object. In October 1998, the United States proposed an alternative to admission of observers, creation of an Advisory Group. In the Advisory Group, outsiders would be permitted to discuss issues with the UPU but not to observe UPU proceedings.²¹ The Council of Administration sent both the Dutch and U.S. proposals to the Beijing Congress, which rejected the Dutch proposal and adopted the American.²²

The third study derived from the Seoul Congress, on the long-term mission of the UPU, was led by the French government. In April 1996, the French ministry circulated a thoughtful paper setting out broad themes, which it intended to explore. Referring to the 1993 Ernst & Young study, the French noted the increase in competition in the postal market place and the trend towards liberalization of postal laws and continued

. . . an increasing number of States have considered they could no longer be “judge and party” and have chosen to separate public authority responsibilities from operational functions both organically and functionally. Operational functions have mostly been entrusted to autonomous entities. . . . Just as governments have had to adapt, the UPU, as an intergovernmental body, must also take this new situation on board.

The UPU was set up at a time when States were the only actors in the postal sector. Since then it has acquired a very strong “operational” responsibility through its mission to organize the international postal service. It nonetheless remains an intergovernmental body and is one of the UN’s specialized institutions. As such, it must, just like an increasing number of Member States making it up, take account of the new “ground rules” and ensure that the cooperation methods it recommends to its members, and which to a certain extent are essential for maintaining and

¹⁹ UPU, CA C1 1997 Doc 3a, paragraph 22. In 1996, the Dutch ministry outlined the issues involved in CA GT 1.1 1996.1 Doc 6; CA GT 1.1 1996.2 Doc 4.

²⁰ UPU, CA GT 1.1 1998.1 Doc 5.

²¹ UPU, CA 1999 Doc 11c.bis. The U.S. proposal to create an Advisory Group reflected the approach of the Postal Service rather than that of the Department of State. See footnote 30, below.

²² UPU, CA C1 1998 Doc 2a. Add 1, par. 22; Beijing Congress Resolution C 105/1999.

*improving the postal service world wide, cannot be interpreted as a sort of organized understanding with the aim of combating private competition.*²³

The broad instincts reflected in this early paper was restrained by the Council of Administration. In 1997, the French ministry surveyed UPU members and reported that "a majority emerges in favour of a *certain amount of impartiality by the UPU towards the various players in the sector.*"²⁴ Nonetheless, the Council of Administration instructed the French ministry to develop a specific proposal focused on a single issue arising from its study: a proposal adding to the convention an explicit obligation to guarantee universal postal service, implicitly provided by the public postal operator.²⁵ Another French suggestion, reorganization of the UPU along functional activities (similar to reforms adopted by the International Telecommunication Union in 1992) was assigned to a consultant, Arthur D. Little, for study.²⁶ The consultant's final report was submitted in 1998. Like the 1993 Ernst & Young report, this report was based heavily on workshops and questionnaires in which public postal operators were the major contributors.²⁷ Although the report noted trends reshaping the environment of the UPU and creating increased competition, it proposed only a series of minor organizational reforms to make the UPU more "resilient."

In September 1999, the Beijing Congress adopted a version of the French proposal adding a general universal service obligation to the Universal Postal Convention. While the practical effect of this provision is unclear, it plainly was not a step in the direction of a more market-oriented international delivery services sector.²⁸ As proposed in the consultant's report, the 1999 Beijing Congress modified the basic acts of the UPU to give the Postal Operations Council greater legislative authority over UPU regulations. These changes decreased the authority of Congress and increased the authority of the Postal Operations Council. Since the Postal Operations Council is composed exclusively of postal officials and charged with a mission to promote the commercial fortunes of public postal operators, the net effect was to recombine governmental and commercial functions to a significant degree.

In October 1997, the UPU organized a major conference on the future direction of the UPU in Geneva. Several speakers spoke in compelling terms of the need for reform of the UPU. Elmar Toime, Chief Executive Officer of

²³ UPU, CA GT 1.1 1996.1 Doc 4, pars. 13-15 (emphasis added).

²⁴ UPU, CA C1 1997 Doc 3b. Paragraph 23 (emphasis added)

²⁵ UPU, CA 1997 Doc 11a.

²⁶ UPU, CA C 1 1997-Doc 3a.Add 1, par. 9 and CA 1998 Doc 2a, pars. 22-29.

²⁷ UPU, "Review of the Organization of the UPU." CA GT 1.1 1998.2 Doc 3.

²⁸ See the discussion of the principle of universal service in section 3, below.

New Zealand Post, argued for a complete separation of governmental and commercial functions: “a postal world free from the shackles of Government conservatism and constraint. Where employees concentrate on customer service, on service performance, on efficiency. Where we get the basics right.” Other speakers noted the importance of globalization and the implications of the WTO telecommunications agreement. Implications of technology, liberalization, regulation, and the rise of private sector competition were addressed by several.²⁹ These insights, however, had no discernible role in shaping the acts of the Beijing Congress.

2.3 Beijing Congress (1999)

At the Beijing Congress, in September 1999, the United States³⁰ tried to draw together the loose threads of reform from the previous decade. Backed by other key member countries, notably Germany, the Netherlands, Australia, and New Zealand, the U.S. Department of State proposed that the UPU convene an Extraordinary Congress in 2001 to adapt the basic acts of the UPU to fundamental changes in the legal and commercial environment of international delivery services.³¹ The Beijing Congress did not even allow a vote on the U.S. proposal.

Instead of an Extraordinary Congress on fundamental reform, the Beijing Congress decided, in Resolution C 110, to continue the ten-year old process of internal consultation. After backroom negotiations consuming the entire three-week term of the congress, the UPU adopted a resolution instructing the Council of Administration “to *continue* to review the UPU mission, structure, constituency, financing, decision-making and budgetary processes and to make recommendations for any changes.”³² As an element of this review, the Congress established “a High Level Group (HLG) on the future development of the UPU, *within the frame-work of the Council of Administration, and reporting to it.*” The task of the High Level Group was, in turn, stated thus: “to consider the future mission, structure, constituency, financing and decision-making of the UPU, with particular reference to the development needs of developing countries and the need to more clearly define and distinguish between the governmental and operational roles and

²⁹ UPU, CA 1997 Doc 8.

³⁰ In October 1998, the United States amended its postal law to provide that, in respect to policy matters, its delegation to the Universal Postal Union would be led by the Department of State, rather than the U.S. Postal Service. In early 1999, the Department of State reviewed U.S. policy towards the UPU and adopted a position that was, in some respects, more pro-competitive than the position previously maintained by the Postal Service.

³¹ UPU, Beijing Congress (1999), Proposal 033.

³² UPU, Beijing Congress (1999), Resolution C 110/1999 (emphasis added).

responsibilities of the bodies of the Union with respect to the provision of international postal services.” The resolution ensures that the secretariat of the UPU will shape the work product of the High Level Group: “the International Bureau will provide the necessary support for the Group and will keep all Union members informed.”

2.4 Limits of the UPU’s mission

In the last decade, individual UPU members have shown keen awareness of both the need for reform and the path to reform. Resolutions of congress, the 1992 report of the Group of Postal Experts, and papers and proposals from leading member countries attest to an appreciation of the fundamental nature of commercial and regulatory changes sweeping the international delivery services market. Moreover, UPU members have considered at length key elements of reform, including separation of governmental and commercial functions, a commercially neutral definition of the single postal territory, rationalization of terminal dues and elimination of Article 40, and admission of observers to governmental meetings. Yet, despite such insights, the UPU has been unable to develop a reform plan that objectively reflects the needs of users and responds to the broad economic and legal trends reshaping the sector.

The UPU’s unsuccessful attempts to deal with radically changed circumstances reveal not so much a flaw in the UPU’s design as limits in the UPU’s mission. The UPU was established to coordinate the exchange of mail among public postal operators. It has done so successfully for more than a century and a quarter. In performing this function, the UPU has developed consultative procedures, which build consensus through surveys and workshops composed of public postal operators. In general, these procedures have served the UPU well. The UPU was not designed to hammer out innovations in trade policy, which is what a new legal framework for global delivery services would amount to. The fact that traditional deliberative procedures of the UPU have been unable to translate the insights and initiatives of individual UPU members into a collective reform plan reflects the limits of the UPU, not its failings. The lesson to be drawn from the fate of reform initiatives in the UPU is that member governments must venture further outside the traditional procedures and premises of the UPU in order to develop a new legal framework for international commerce in documents and parcels.

3. PRINCIPLES OF A NEW POSTAL UNION

Re-forming the Universal Postal Union on the basis of a new legal model is not the only option available to governments as they ponder these issues. A new legal framework for international commerce in documents and parcels could, for example, be embodied in national commitments within the framework of the General Agreement on Trade in Services (GATS), as happened in the international telecommunications sector.³³ Alternatively, a new legal framework could be achieved in piecemeal reform (or repudiation) of several international agreements. However, re-forming the Universal Postal Union by adopting a single body of rules for all types of international commerce in documents and parcels could offer greater clarity and cohesion than piecemeal reform. In addition, a new Universal Postal Union—now using “postal” in a broad sense of encompassing the transmission of all documents and parcels—could draw strength and acceptance from continuity with the present Union.

Key components of a new convention have already been identified in UPU studies mentioned above. These may be supplemented with ideas drawn from postal reform movements in Europe, Australia, and New Zealand and efforts within the World Trade Organization to liberalize trade in services. The following preliminary list of eight key principles is derived from such sources and illustrates what a new global “postal” convention might entail.

1. *The international market for delivery services should be defined first by the needs of users not the requirements of suppliers.*

In the market for the international transmission of documents and parcels, the defining influence has shifted from public service provider to customer during the period from the late nineteenth century to the early twenty-first century. The customer has become king, and a new convention must reflect this new reality. The essential object of a new convention should be to allow citizens of signatory countries to transmit documents and parcels as freely, as easily, and as efficiently as possible consistent with requirements of national security and prerogatives of national sovereignty.

A customer-focused convention should apply to the international transmission of documents and parcels generally, not only to the subset of documents and parcels exchanged between public postal operators. This implies a substantially broader ambit than the present convention and a qualitatively different type of agreement. Plainly, it is not in the public

³³ For a GATS-oriented approach to reforming the legal framework for international delivery services, see Campbell (1999).

interest of users to straightjacket parts of the market outside the scope of the present convention with new detailed regulations.

2. *An international delivery service established in any signatory country should be permitted to establish international delivery services in any other signatory country.*

In the twenty-first century, a new balance must be struck between the role of national boundaries and the operations of international commerce. The cornerstone of the present Universal Postal Convention has been freedom of transit. That is, each signatory country recognizes that other signatory countries have a legal right to require transportation of international mail across its territory by its post office. The traditional right of transit reflects the role of national boundaries as barriers to international commerce. In a new convention, the economic importance of seamless international services must be recognized. The cornerstone of a new convention should be formal recognition by each signatory country that international delivery services lawfully established in one signatory country can open offices and provide international delivery services in all other signatory countries (subject to the laws of doing business in those countries). Such a right of establishment is necessary to reap the benefits of *global* delivery services.³⁴

A right of establishment for international delivery services implies that a national postal monopoly law must be limited to domestic services. By the same token, where a signatory country maintains a reserved area for domestic postal services, it must be permitted to defend its domestic monopoly against financial injury due to migration of reserved domestic mail into international markets.³⁵ For example, a signatory country might be allowed to tax international delivery services to the extent that migration of domestic reserved services imposes a net cost on the remaining reserved services. Clearly, however, remedial measures should not exceed what is objectively necessary to compensate for demonstrable injury.³⁶

³⁴ Graeme John, Managing Director of Australia Post, expressed the views of many at the Beijing Congress of the UPU, "Globalization is familiar to many industries, but it's a new and powerful development in postal markets." Doc 63 Add 1.1 at 10.

³⁵ Migration of mail may occur as follows: Consider a large bank in country A that normally sends statements of account to customers in country A and assume that such statements of account are within the reserved area of country A. If a right of establishment for international delivery services is recognized, then a private operator or foreign public postal operator could establish an international service between country A and country B. The bank could print statements of account in country B and send them via international operator to addressees in country A. The effect would be to convert domestic reserved mail into liberalized international mail.

³⁶ The practice described in the text is distinct from so-called "non-physical ABA remail" because statements of accounts are not given to the post office in country A for delivery.

Private international delivery services are already established in virtually all countries. One way or another, major public postal operators are likewise rapidly opening offices in other countries. A right of establishment is thus to some extent a formalization of a new reality rather than an introduction of new legal rights. Nonetheless, it would be useful to confirm such rights and to establish clear and uniform guidelines on authorization procedures that could be used to regulate the right of international establishment.

3. *Governmental functions which regulate international delivery services should be separated from the commercial activities of public and private operators at both international and domestic levels.*

A new convention should reflect a complete separation of governmental and commercial functions in the provision of international delivery services. As noted above, public postal operators' participation in the international delivery services market is almost wholly commercial in nature. Combining governmental and commercial functions allows commercial entities to use governmental powers to distort commercial markets. The reverse effect is also a problem. International commercial activities of public postal operators are often handicapped by heavy-handed government intervention. As noted, both sorts of distortions have been identified and condemned by UPU studies.

At the international level, governmental authority is today exercised by a Universal Postal Union dominated by postal officials. Under a new convention, intergovernmental authority should be exercised by governmental officials whose jurisdiction includes the entire breadth of the market, including all operators and consumers. Only governmental officials should have authority to determine international public law. This principle must apply even where laws have "operational" implications, such as international customs agreements. Separation of governmental and commercial functions further implies that a secretariat dedicated to implementation of intergovernmental authority must be separate from a secretariat devoted to commercial matters. Moreover, as urged in the Dutch proposal on admitting observers to the UPU discussed above, the governmental functions of a reconstituted UPU should generally be open to observation and comment by all affected parties, including all types of operators. Separation of governmental and commercial functions should not impede collective efforts by public postal operators to improve the quality and commercial success of their national and international delivery

The remedy suggested is not related to the surcharging or interception of remail permitted in the current convention. See footnote , above.

services,³⁷ but, as in Europe today, these efforts should continue outside of a framework of intergovernmental authority.

A new convention should also require respect for the principle of separation of governmental and commercial functions at national level. That is, in the regulation of *international* activities covered by a new convention, the new convention should require that signatory countries establish independent regulators, which are separate from, and not accountable to, any supplier of domestic or international delivery services.³⁸

4. *International and national laws should apply equally to all international delivery services.*

A corollary to the principle of separation of governmental and commercial functions is the principle of equal application of the law. Provisions of a new convention should apply equally to all operators and all citizens. A reconstituted UPU should also be obliged by its charter to advance the principle of equal application of law in its coordination efforts with other inter-governmental organizations, such as the World Customs Organization, the World Trade Organization, and the International Civil Aviation Organization.

In this respect, customs law is of special consequence. Customs laws present the single greatest impediment to development of global delivery services. The present Universal Postal Convention lays the basis for unequal application of customs law by establishing simplified customs clearance forms for use by public postal operators and by exempting public postal operators from liability under customs laws. These legal preferences are, in turn, effectuated in both the applicable international customs convention—the International Convention on the Simplification and Harmonization of

³⁷ The Beijing Postal Strategy, a general plan of action adopted by the Beijing Congress, identifies a number of such activities: (i) establishment of common procedures and standards for access of national postal services; (ii) advocacy of improvements in the application of security and customs laws to public postal operators; (iii) development of proposals for compensation schemes between public postal operators and for contractual arrangements between public postal operators collective and air carriers; (iv) assisting public postal operators to expand their markets and market research for new products and services; (v) advice to member countries in respect to postal reform laws; (vi) providing a forum for interaction between public postal operators and their customers and suppliers; and (vii) promotion of the role of public postal operators, both individually and collectively.

³⁸ Compare paragraph 5 of the “reference paper” embodied in the commitments of many countries as part of the 1997 WTO telecommunications agreement: “The regulatory body should be separate from, and not accountable to, any supplier of basic telecommunications services. The decisions and the procedures used by regulators shall be impartial with respect to all market participants.” WTO GATS/SC/90/Suppl. 2 (11 April 1997) (schedule of specific commitments of the United States).

Customs Procedures (Kyoto Convention)—and national customs laws. Under the proposed principle, customs provisions included in a new convention should apply equally to all operators. This is not to say that customers of public postal operators must endure all of the customs complexities now visited on customers of private operators. For the most part, postal customers send non-urgent, low value, non-commercial parcels via international postal services. There may be sound public policy reasons for permitting simplified customs clearance for such parcels. A new convention might provide for equal application of customs laws but, at the same time, require or encourage establishment of simplified procedures for clearance of non-urgent, low value, non-commercial parcels.

A new convention should also require that, in general, the principle of equal application of law should apply to national laws governing international delivery services. For example, competition laws, customs laws, tax laws, environmental laws, airport access rules, and security laws should, in principle, be applied equally to all international operators. An exception may be necessary where application of this principle would demonstrably obstruct the ability of a national public postal operator to perform a particular public service task.

In particular, as noted in the German study on the single postal territory discussed above, a new convention should address national laws relating to international access to *non-competitive* domestic postal services. If international operators have no choice but to use a public postal operator for delivery of international documents and parcels because the public postal operator benefits from a reserved area or other special rights, then a new convention should require the public postal operator to give all international operators equal access to the non-competitive services.³⁹ If a signatory

³⁹ "Equal access" implies only the same charge for the same service at the same quality level and under the same conditions as provided for equivalent domestic mail. Generally, for example, for single piece letters, the concept of equal access implies a terminal dues charge less than the normal stamp price since the domestic stamp price includes, *inter alia*, a charge for the stamp itself and for collection of letters from post offices and mailboxes (many post offices consider that terminal dues should be 20 to 40 percent less than domestic postage). If a foreign mailer—whether foreign postal administration or private operator—prepares mail by, for example, sorting the mail, the appropriate terminal dues rate might be lower still, just as a domestic postage rate may include discounts for sorted mail. Similarly, if, for some reason, a postal administration provides foreign mail worse, or better, service than provided domestic letters, then the concept of equal access would imply appropriate adjustments in terminal dues rates. Equal access does not preclude surcharging a tender of international mail that differs from a typical tender of domestic mail in a significant, cost-related manner. For example, a postal administration might legitimately apply a cost-related surcharge to a tender of international mail that is all destined for rural areas since the domestic postage rate is based on an average tender of

country can, by national law, favor one or more international operators with access to non-competitive domestic delivery services, then the signatory country is applying the law in an unequal manner.

Another thorny area of unequal application of law is presented by state aid for a selected international operator, usually the national public postal operator. Manifestly, international delivery services among signatory countries will be distorted if a signatory country provides state aid to a postal operator, such as access to revenues of a postal monopoly, low-interest loans, or special treatment under tax, customs, or other laws. While state aids are a normal problem in international trade, the long history of governmental involvement in postal services and the relatively small scale of international operations compared to domestic operations may require particular consideration.⁴⁰

5. *International operators should be allowed to make arrangements for conveyance of international documents and parcels across territories of signatory countries without undue interference from domestic law.*

As noted above, under the traditional principle of “freedom of transit,” a post office in a member country could not refuse to forward international mail across its territory to a neighboring country. The significance of this international obligation has declined substantially with development of international transportation services. Today, a public postal operator can easily arrange with transport companies for conveyance of documents and parcels across almost any country in the world. Nonetheless, to assure continuity of international service, it might be desirable for a new convention to retain a residual obligation for signatory countries to ensure the availability of transit services, at appropriate compensation, where public conveyance is unavailable or impracticable.⁴¹

Far more significantly for the twenty-first century, a new convention should extend the principle of “freedom of transit” to include transit services arranged by the international operator. Facilitation of self-organized transit services for international documents and parcels will facilitate development

domestic mail that is predominately destined for urban areas where delivery costs are lower than in rural areas.

⁴⁰ See European Commission, “Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning aid measure C 61/99 (ex NN 153/96) State aid to Deutsche Post AG,” O.J. C 306 (23 Oct. 1999) at 5.

⁴¹ Article 1 of the 1994 Universal Postal Convention restates the principle of freedom of transit as an obligation imposed on postal administrations. In the new convention, however, the principle of separation of governmental and commercial functions implies that an obligation to provide transit services should be considered solely as an obligation imposed on signatory countries. Each signatory country should be free to decide which operator or operators will be enlisted to discharge this obligation.

of international hub operations without regard to national boundaries. Under this extended notion of freedom of transit, signatory countries would permit an international operator to make its own arrangements for the transit of documents and parcels without undue interference from domestic law. Documents and parcels in international transit would be deemed an exception to the postal monopoly law. Appropriate exceptions would also be implied for customs, tax, and other laws.

6. *Each signatory country should extend the benefits of its universal service definition to citizens in all other signatory countries.*

“Universal service” is a general concept that is not spelled out in the Universal Postal Convention. Unlike the obligation to provide transit services, there is no unequivocal obligation to provide universal national delivery for inward international documents and parcels. The historical concept of “universal service” was an understanding that each UPU member country is *implicitly* obliged to ensure that inbound international mail is delivered in a manner substantially equivalent to that accorded domestic mail. Nonetheless, the Universal Postal Convention has never been interpreted to require a member country to offer foreign operators—even foreign public postal operators—access to the full range of domestic postal services offered to domestic mailers. For example, a member country may offer its citizens a bulk discount postal service but not offer such service to foreign operators on the same terms. Moreover, the concept of “universal service” is further qualified by the fact that not every member country provides postal service to every address in its national territory. Thus, even implicitly, the Universal Postal Convention assures universal international postal service only in a limited sense.

Recent versions of the Universal Postal Convention have addressed universal service more explicitly. In 1989, the Washington Congress added an article stating that the quality of service provided inbound international mail should be no less favorable than that accorded domestic mail. A legal obligation to deliver inbound international mail was assumed but not stated in so many words. In 1999, the Beijing Congress added another article to require member countries to “ensure that all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices.” It is not entirely clear whether this provision grants the same rights to foreign “users/customers” as it does to citizens in each UPU member country.

A new convention should address the concept of universal service more clearly and align it more closely with the principle of national treatment found in many international conventions including the General Agreement on Trade in Services. Where a signatory country guarantees its citizens availability of a “universal postal service,” the new convention should

oblige the signatory country to ensure that citizens in other signatory countries will have equal access to such universal postal services. In other words, the new convention should embrace the principle that any definition of universal service adopted by any signatory country must be an *open* definition, available to customers in all signatory countries.⁴²

In deference to the rapidly changing market for postal services, this approach is more flexible than the present convention. It allows a signatory country to limit or even abolish its universal service guarantee. For example, if a signatory country decides that the world wide web has supplanted the need to assure continued availability of direct mail services throughout the nation, then the country would not be obliged to ensure that direct mail services are available to foreign operators or citizens in other signatory countries. As countries are now discovering, too expansive a definition of “universal service” can lead to unwanted distortions in domestic and international postal markets.

7. International delivery services are important to the global economy and should be facilitated by appropriate measures.

The system of public and private delivery services—not merely delivery services offered by public postal operators—is today vital to the economic welfare of every modern economy and to the growth of the global economy generally. For this reason, it appears appropriate for a new convention to positively facilitate the operation of such services by means of simplification and standardization of regulatory practices, which impede their development. The present convention provides facilitation in one vital area of international trade, customs law, for one type of operator, public postal operators. A new convention should refine these customs facilitation measures and, as discussed above, extend them to transmission of all documents and parcels by all operators. A new convention might address other areas of facilitation as well, such as aviation security regulations, hazardous material regulation, airport access rules, and so forth. Such possibilities deserve further study.

A principle of facilitation is not above controversy. Laws, which positively facilitate international delivery services, will discriminate against other types of international transportation services, such as freight and passenger services. A principle of facilitation must therefore be grounded in

⁴² This discussion not intended to suggest that signatory countries should be obliged to extend “national treatment” to all international delivery services, i.e., signatory countries should not be compelled to allow international operators all of the operational privileges accorded domestic operators. To extend the principle of national treatment so far would be to eliminate the possibility of domestic postal monopolies. A more plausible relationship between international operators and domestic postal monopolies is discussed in point (2), above.

an impartial and objective governmental conclusion that international delivery services are especially important for economic development. This was indeed the implicit judgment of governments when the only major delivery service was the national post office. For this reason, a new law facilitating operations of the national postal service would typically be considered sound national policy without extended debate. To the extent this approach was sound policy for postal delivery services, it would appear to be sound policy for the delivery services sector generally.

8. *Public assistance for public postal operators in developing countries is a governmental responsibility that should be funded and administered by governments.*

The present convention provides assistance to public postal operators in developing countries. The primary mechanism is a terminal dues system that fails to reflect the gap between high domestic postage rates in industrialized countries and low domestic postage rates in developing countries. In general, post offices in developing countries are paid more than domestic postage for delivery of inward international mail from industrialized countries, and they pay less than domestic postage for delivery of their outward mail by post offices in industrialized countries. This system directs aid to those countries with the most traffic. It is not targeted to these countries that have the greatest need or who can make the most effective use of such aid. Additional assistance is available through specialized technical programs whose costs are usually borne by public postal operators.

Under a new convention, assistance to public postal operators in developing countries should be restructured. The competitive operations of public postal operators should be relieved of the burden of such assistance because it puts public postal operators at a disadvantage compared to private operators who do not bear such costs. At the same time, it is inappropriate for commercially motivated post offices to administer assistance programs, which could influence votes on international postal laws with competitive consequences. The new convention should provide that governments fund and administer assistance to public postal operators in developing countries. Signatory countries should decide individually whether such assistance is funded from general tax revenues or from a competitively neutral tax on all international delivery services.

4. STRATEGY FOR REFORMING THE UPU

If governments of the world conclude that considerations of clarity and continuity favor re-forming the UPU rather than reform measures taken outside the UPU structure, how can they proceed from the present

convention to a new convention? A review of reform initiatives within the UPU over the last decade makes clear that it is neither reasonable nor appropriate for governments to hold the present UPU responsible for developing a wholly new concept of a postal union. This conclusion is reinforced by consideration of principles that should be reflected in a new convention. The edifice of the Universal Postal Union needs to be rebuilt from the ground up, even if using, as far as possible, the foundations of the old structure. New architects are needed as well as experienced craftsmen.

This section of the paper suggests a two-tracked approach to re-forming the UPU while working within the overall framework of the present UPU. The first track is to build on well-advanced European postal reform efforts by establishing a new legal framework for the transmission of documents and parcels among reform-minded countries. An agreement could be developed within the present UPU legal framework and yet effect principles appropriate for a new global convention. The second track would move more deliberately towards UPU level reform in the Abidjan Congress in 2004. It would make use of an idea from the International Telecommunication Union, a largely external "reform advisory panel." The two tracks are interrelated and depend upon greater involvement of non-postal officials than customary in current UPU deliberations.

4.1 A restricted union of reform-minded countries

Within the UPU, there are several groupings of countries within which documents and parcels are exchanged between public postal operators on the basis of rules that vary from those set by the Universal Postal Convention. These groups, called "restricted unions," are established under by Article 8 of the Constitution, which provides, "Member countries, or their postal administrations if the legislation of those countries so permits, may establish Restricted Unions and make Special Agreements concerning the international postal service, provided always that they do not introduce provisions less favourable to the public than those provided for by the Acts to which the member countries concerned are parties." Historically, restricted unions consist of regional groupings. The oldest is the Postal Union of the Americas, Spain, and Portugal founded in 1911. Other restricted unions encompass the countries of Europe, the Arab world, the former Soviet Union, Africa, and the Far East.

The restricted union of European countries has undergone fundamental reform since publication of a major postal policy reform proposal by the European Commission in 1992. Indeed, the European Conference of Postal and Telecommunications Administrations (CEPT) is moving towards a new legal framework embracing several of the principles which, as argued above, should characterize a new global postal union. In 1993, the CEPT

separated governmental and commercial functions. CEPT itself became exclusively governmental in nature, a committee of postal regulators, and public postal operators were required to form a new association, PostEurop. In 1999, after years of negotiations, major European post offices adopted a terminal dues agreement, REIMS II,⁴³ which generally aligns terminal dues with domestic postage. REIMS II should make it possible to give public postal operators and private operators equal access to non-competitive postal delivery services for inward international mail and put an end to postal resort to the UPU Convention's anti-remail measures. The European Commission is now considering additional postal reform measures to take effect after 2002, including further limiting national postal monopoly laws.

In similar manner, the UPU Constitution would permit establishment of a "super restricted union" of reform-minded countries. Nothing limits restricted unions to geographic groupings. Indeed, terminal dues provisions agreed by the Beijing Congress for the 1999 Universal Postal Convention provide for a special terminal dues regime among 29 industrialized countries, virtually creating an restricted union of industrialized countries. A restricted union of reform-minded countries might include, in addition to the CEPT group, countries, which unsuccessfully advocated basic reforms in the Beijing Congress, including the United States, Australia, and New Zealand. Some of the more sophisticated (in postal terms) developing countries, such as Brazil, Singapore, and South Africa, might also be interested in joining such a union. Since reform-minded countries account for roughly half of all international mail, a restricted union of reform-minded countries would be significant step towards creation of a new global union.

Establishment of a restricted union of reform minded countries by, let us say, the end of 2002, appears feasible with leadership from major countries. While leadership is often in short supply in postal politics, the sector is changing so rapidly in industrialized countries that doing nothing may soon appear less acceptable than doing something. Moreover, the first necessary step, separation of governmental and commercial functions, is simplified by the fact that the public postal operators of twenty industrialized countries have already created a non-governmental mechanism for coordinating operational arrangements, the International Post Corporation established in 1989.⁴⁴

⁴³ Commission Decision of 15 September 1999 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No IV/36.748—REIMS II), OJ L275/17 (26 Oct 1999).

⁴⁴ The International Post Corporation, Brussels based corporation, was established to coordinate marketing and management of international mail. IPC has developed methods for measuring the service quality of international mail and played a leading role in the REIMS II terminal dues negotiations.

4.2 Reform of the UPU in the Abidjan Congress (2004)

Reforming the UPU as a whole will necessarily require a more deliberate pace because there many more countries are involved and because there are wide differences in development of delivery services sectors. As noted above, the Beijing Congress rejected a proposal of the United States to reform the UPU in an Extraordinary Congress convened in 2001. The next opportunity for reform will be the Abidjan Congress in 2004.

Although there is a leisurely five-year period between UPU congresses, the extent of possible reform in the Abidjan Congress will depend largely on events in the first two years. The Council of Administration will probably meet in full session only five times after its initial, organizational meeting in November 1999. Legislative proposals for the Abidjan Congress must be shaped in the fourth meeting (October 2003) and refined in the fifth meeting (February 2004). These proposals, in turn, will be drawn from reports and recommendations adopted in, or at least substantially complete by, the third meeting (October 2002). The scope and quality of studies leading to these reports will be determined between November 1999 and October 2001. This two-year period of study is crucial to reform of the Universal Postal Union in 2004.

Based on the experience of the last decade, it is evident that UPU governments must adopt a new approach towards development of such studies if they are to engender recommendations of sufficient depth and objectivity to lay the groundwork for fundamental reform. As noted above, UPU studies have traditionally relied heavily on surveys and workshops dominated by public postal operators. Even studies by outside consultants have tended to be reports on the results of surveys and workshops rather than exercises of independent expertise. A possible alternative approach has been pioneered by the UPU's sister organization, the International Telecommunication Union. Like the UPU, the ITU has been reconsidering its future for several years. To develop an objective, long term perspective on reform, the Secretary General of the ITU recently appointed a 27-member Reform Advisory Panel, comprised of ministers and other senior government officials, chief executive officers of industry, and regulators and operators and chaired by the Secretary General of the International Chamber of Commerce, a user group. As the ITU conceded, this approach was "a radical departure from traditional approaches."⁴⁵

⁴⁵ International Telecommunication Union, "Major Changes Advocated by High-Level Reform Panel To Re-engineer ITU For The Future" (press release, March 10, 2000). The Reform Advisory Panel urged a broad reform agenda including "a truly public/private sector partnership." The panel further suggested the ITU should become "a think-tank for collecting and collating best practice regulatory policies and act as a repository for

Appointment of an ITU-like reform advisory panel appears to be a plausible means of elevating the analytical predicates for the Abidjan Congress. Nonetheless, to achieve meaningful results it will be necessary to adapt this approach to differences in the circumstances of the UPU and ITU. Unlike the UPU, the ITU is already caught in a strong current of reform generated by a 1997 agreement among members of the World Trade Organization to liberalize global telecommunications. An UPU panel will not be able to draw upon such a well-developed international consensus on sectoral reform. Hence, a UPU panel should be equipped not only to render a short statement of policy recommendations but also a substantial report to explain and support its recommendations. Compared to the ITU panel, a UPU panel will require a longer term and greater resources. Moreover, UPU reform probably cannot be accomplished by the work of a reform advisory panel alone. As noted, ITU reform has been stimulated by the external actions of the WTO. While a future WTO agreement on international delivery services is possible, establishment of a restricted union of reform-minded countries might also serve as the external stimulus needed to induce UPU reform in conjunction with a reform advisory panel.

5. CONCLUSION

The Universal Postal Union today stands in need of a once-in-a-century reconceptualization. The marketplace for international delivery services has changed so fundamentally from that premised in the present convention of the Universal Postal Union that a wholly new set of international rules must be developed to govern international commerce in documents and parcels in the twenty-first century. Such rules should promote and facilitate the evolution of global delivery services that, first of all, serve the needs of users and international commerce. To address the needs of users, the rules must encompass the activities of all service providers, private as well as public, and treat all equally. Governmental functions should be separated from commercial functions. Universal service guarantees should be extended to foreign citizens as well as nationals. Assistance for developing countries should be defined and administered more carefully and efficiently.

A new legal framework for international commerce in documents and parcels could take more than one form. Considerations of clarity and

benchmarking in its area of expertise" and a "global facilitator in regulatory and policy matters." The panel proposed that a specialized group be appointed to produce concrete recommendations. As actually realized, the ITU Reform Advisory Panel had serious shortcomings, but, as discussed in the text, the idea of a high-level advisory group drawn from outside normal channels appears to be worthy of consideration and adoption by the UPU.

continuity suggest the desirability of developing a new sectoral convention, in effect, reconstituting the UPU on a wholly new basis. Although the UPU has recognized the import of the changing environment and struggled with reform initiatives for a decade, the fundamental nature of the task at hand places the primary responsibility for reform outside normal UPU channels. This is job for governments, aided by all manner of users, operators, employees, and scholars. To build a new global postal union on the foundations of the old, governments must find a new strategy for reforming the UPU. A two-tracked approach has been suggested: establishment of a restricted union of reform-minded countries and appointment of a well equipped reform advisory panel composed of leading officials from a range of disciplines.

For a century and a quarter, the Universal Postal Union, the second oldest inter-governmental organization, has served the "noble aims of international collaboration in the cultural, social and economic fields."⁴⁶ During this long period, the UPU has made possible reliable transmission of letters and parcels between almost any pair of addresses on the globe. The glare of a new dawn should not obscure the benefits that this nineteenth century postal union has conferred on modern civilization. Thanks in part to the international collaboration fostered by the UPU, the time has come for evolution of global delivery services and, with them, a wholly new legal framework for international commerce in documents and parcels.

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⁴⁶ UPU, Constitution, Preamble.

⁴⁷ Most documents of the Universal Postal Union are unavailable to the public. The following materials are publicly available and provide a general background for this paper. By date of publication, the 1999 Universal Postal Convention should also be available.