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# Collected Papers on International Postal Policy

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# 1

## An Application of the Principles of Rowland Hill to the International Post (1990)\*

*Cheap postage! What is this men are talking about? Can it  
be that all my life I have been in error?*

- Sir Francis Freeling, Secretary, British Post Office<sup>1</sup>

It is a pleasure and a privilege to participate in this conference celebrating the one hundred fiftieth anniversary of the Rowland Hill's revolution. Although many nineteenth century figures are better known than Rowland Hill, few had a more beneficial effect upon civilization. His thoughtful analysis of the British Post Office resulted in the establishment of the first inexpensive, universal system for communications available to all members of society. Modern post offices allude romantically to Persian messengers and Roman couriers, to seventeenth century proclamations and ringers of bells in cockcaded hats. But these allusions are fundamentally misleading to the modern mind. What we think of as postal service began in 1840, a magnificent English innovation soon copied by all countries in the world.

Modern postal service has become so commonplace that we forget its significance. We take for granted—indeed we can hardly cope with—the possibilities of cheap universal communications. To appreciate the work of Rowland Hill we must imagine a world without telecommunications, when one's only connection to the outside world was by the physical delivery of messages and newspapers. In overall social importance, the development of cheap, universal postal service was as significant in its way as more technologically spectacular inventions such as the telephone and television.

The essence of Hill's approach was, I believe, that he refused to accept the

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<sup>1</sup>Alvin F. Harlow, *Old Post Bags*, p. 190 (New York, 1928) (hereafter referred to as *Harlow*).

correctness of traditional assumptions about the postal business or yield to political “realities.” Rather, he thought through his ideas logically and carefully and forced his opponents do the same. Today, discussions about postal policy on both sides of the Atlantic are replete with statements such as “You may be right, but of course we must recognize political facts of life.” The first lesson that I take from Rowland Hill is that governmental and industry officials—whether in Brussels or Washington or anywhere else—must concentrate their attention upon the truth, not political realities, if they are to earn what Hill nicely refers to as “the gratitude and affection of the people.”

For me, it is interesting to speculate what would have happened if Hill’s proposals had been rejected and the British Post Office left unreformed in 1840. Perhaps Rowland Hill would have started a private delivery company to put his ideas in practice. Of course, Hill Express would have started on a small scale. From the beginning, however, Hill would have introduced prices based upon actual costs, so that delivery rates between major cities would have been uniform. And he would have simplified procedures such as prepayment of charges, elimination of unnecessary supervisory work, expedited delivery procedures, and so forth.<sup>2</sup>

No doubt the British Post Office would have tried to close Hill Express for violating the postal monopoly. Having proven his ideas on a small scale, Hill would likely have argued his case to Parliament. The Post Office would have surely replied that Hill Express was “cream skimming” the most profitable routes, taking advantage of anomalies in postal tariffs, and failing to provide the traditional security measures. Scholars and experts would have been invited to comment about whether Hill’s ideas would be viable for the entire postal system. And the Post Office would have noted that in any social situation, there are so many variables that it is impossible to prove that disasters will not occur if conditions change.

Perhaps. But, of course, all of this is mere speculation. I raise it only by way of prologue.

Despite the general acceptance of most of Rowland Hill’s ideas, several participants in the conference question whether national postal policies have applied fully the teachings of Mr. Hill or, indeed, whether they comply with still more esoteric economic criticisms. Rather than push into this crowded field, I would like place before you the suggestion that there remains a most interesting and important realm of postal policy which is almost completely unenlightened by, and is quite ripe for, Rowland Hill’s reforms. I am referring to the international postal system.

To give you a sense of scale, the U.K. postal system in Hill’s day transmitted an estimated 126 million items. The international postal system of today handles about 6.4 billion items (excluding the Soviet Union), about 50 times as many. In 1837, the fastest coaches from London to Edinburgh took about 60 hours. Today, air transportation from London to Sydney takes about 24 hours. In operational terms,

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<sup>2</sup>Of course, to be fair, we must assume that Hill Express would have paid the same overall level of tax as the Post Office.

then, the international postal system is substantially denser and more compact than the British postal system of 1837. Compared to today's national postal systems, the international postal system is about the same size as the Italian post office, and a bit smaller than the Canadian.

I would like to suggest to the conference a few simple propositions about the international postal system:

- it has never embraced the basic reforms of Rowland Hill;
- it is extremely important in overall commercial and social development; and
- it presents a postal system in which fundamental reform is feasible and especially timely.

To support my suggestions, I shall examine seven aspects of current international postal policy using Hill's famous 1837 paper<sup>3</sup> as my basic text, with annotations drawn from the experience of the private international express industry. I do not intend my comments to be definitive in a scholarly sense; on the contrary, my purpose is to experiment with these ideas, to offer hypotheses, and to encourage further analysis by others more qualified than I.

#### 1. RELATIVELY POOR PERFORMANCE OF INTERNATIONAL POSTAL SECTOR

Hill began his study of the British Post Office by asking "whether its productiveness has kept pace with the increasing numbers and prosperity of the nation." He noted that, in the preceding two decades (1815-1835), population had increased by 31 percent whereas postal revenues had actually declined by 1 percent. He found this particularly remarkable considering that revenues from the stagecoach tax, a seemingly closely related industry, had increased by 129 percent.<sup>4</sup>

The circumstances of the international post today are remarkably similar, at least to the untutored eye. According to estimates by the Universal Postal Union<sup>5</sup> (UPU), during the last decade (1977-1986), the volume (pieces) of international letters (LC) handled by the 28 major non-communist post offices decreased by 6 percent and the volume of printed matter (AO) increased by only 4 percent. This poor performance contrasts with increases, during the same period, in domestic postal traffic of 32 percent for letters (LC) and 68 percent for printed matter (AO). Like Hill, we can look to seemingly related industries for confirmation that something is amiss. During the same decade in which international postal traffic

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<sup>3</sup>Rowland Hill, "Post Office Reform" (1839) (hereafter referred to as *Hill*).

<sup>4</sup>*Hill*, p. 2-4. In the early nineteenth century, postal rates were viewed more as taxes than as charges for services rendered. According to Hill, postal revenues overall were about three times total costs.

<sup>5</sup>The Universal Postal Union is an intergovernmental organization that was formed in 1874 to develop common rules for the exchange of international mail. The major UPU agreement is an international treaty called the "Universal Postal Convention." The UPU, which now includes virtually all governments in the world, convenes a "congress" every five years to revise and readopt the Convention and other agreements.

stood still, international aviation (world passenger kilometers) and international telecommunications (telephone calls between the EEC and US, both directions) grew by almost 100 and 500 percent, respectively. These figures are summarized in Table 1.

Table 1. Relatively poor performance of the international post

	1977	1986	Change
International Post (OECD)			
Letters (LC) bil.	3.9	3.7	- 6 %
Printed (AO) bil.	1.3	1.4	+ 4 %
Domestic Post (OECD)			
Letters (LC) bil.	107.8	142.5	+ 32 %
Printed (AO) bil.	64.6	108.3	+ 68 %
International Aviation (World)			
Sched. mil. tonne-km	46.7	89.6	+ 92 %
International Telecomm (US-EEC)	36.6	219.3	+499 %

Sources: UPU, *Five-yearly Report on the Development of the Postal Services, 1977-1981*, Tables XIV, XV, XVIII, XIX (1984); UPU, *Five-yearly Report on the Development of the Postal Services, 1982-1986*, Graphs T1, T4, T13, T16 (1989); International Civil Aviation Organization, *Civil Aviation Statistics of the World*, Table 1-13 (1986 ed, 1988 ed.); U.S. Federal Communications Commission, *Statistics of Common Carriers* Table 15 (1977 ed.), Table 13 (1986 ed.)

It should be noted that the relatively poor performance of the international post is in no way explained by the recent phenomenon of remail. Since remail is by definition eventually posted somewhere, a loss in one post office's account will show up as a gain in another post office's account, not affecting the total.<sup>6</sup> Moreover, remail of letters did not develop to any substantial degree until after 1986, the year the United States Postal Service withdrew objections to international remail based upon the U.S. postal monopoly.

According to Hill's approach, then, it would appear possible that the international postal system has failed to keep pace with modern commerce and may be in need of fundamental reform.

## 2. DIVISION OF DISTRIBUTION INTO PRIMARY AND SECONDARY AREAS

The second step in Hill's analysis was an intuitive simplification. He divided the business of the Post into "primary" and "secondary" distribution systems. "Primary distribution" was defined as distribution within and between major towns. "Secondary distribution" included distribution "to towns of inferior importance, and to country places." According to Hill's calculations, primary distribution accounted for about 61 percent of the whole (by revenue).<sup>7</sup> The reforms advocated by Hill pertained mainly to the primary distribution area.

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<sup>6</sup>Although remail could transfer volume for one post office's international account to another post office's domestic account (so called "ABB remail").

<sup>7</sup>Hill, pp. 10-13.

At the governmental inquiry into Hill's proposals, Hill himself was followed by two witnesses from the Post Office. The first said he did not understand the distinction between primary and secondary distribution, and the second testified that he understood it and saw no advantages. Finding the concept too technical to explain in the face of postal opposition, Hill withdraw this portion of his proposal.<sup>8</sup> Writing a century later (1939), Professor Coase commented:

There is indeed good reason to deplore the abandonment of the distinction between primary and secondary distribution. It . . . might have led to a rational discussion of price policy and its relation to costs. As it is, the magic word "uniformity" has been substituted for thought.<sup>9</sup>

Most, I think, would agree that Hill's distinction between primary and secondary distribution remains an economically sound idea.<sup>10</sup> The analogous approach in the international area is clear. Of total international mail, about 80 percent circulates between the developed countries.<sup>11</sup> Hence, as in England in 1840, it is possible to improve the entire system by concentrating on primary distribution. In the international postal system, we may tentatively define the primary distribution system as including all traffic among the 24 OECD countries or the UPU's similar list of 28 "free market industrialized countries."

Of course, dividing the world into "big guys" and "little guys" is not automatically popular. Indeed, as recently as 1979, the UPU explicitly rejected a carefully reasoned proposal to divide the "terminal dues" charge into a two tier system which distinguished between developed or less developed countries.<sup>12</sup>

Recent events in the international postal world, however, suggest the growing acceptability of such an approach in two key areas. First, the 1989 UPU congress made a U-turn and agreed to a two tier terminal dues system. Second, about 20 major post offices have decided to coordinate postal policy more closely under the umbrella of a Dutch company called Unipost.

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<sup>8</sup>R.H. Coarse, "Rowland Hill and the Penny Post," *Economica* 423, 432 (Nov. 1939) (hereafter referred to *Coarse*).

<sup>9</sup>*Coarse* at 435.

<sup>10</sup>By this, I mean only that, as with many types of economic activity, most postal transactions are concentrated in a relatively few number of markets. The pricing policies suitable for a few reasonably homogenous high density markets do not necessary apply to many diverse low density markets.

<sup>11</sup>More precisely, 76 percent for LC mail and 82 percent for AO mail according to 1979 Congress of the Universal Postal Union, Document 7, Annex 1, Attachment 14, Table 4.7. "Developed countries" in this study referred to 24 free market industrialized countries. Although out of date, this well done study of the terminal dues problem by the Canadian Post Office remains very informative. No more recent study is known for this particular datum, but there is no reason to believe the proportions have changed significantly.

<sup>12</sup>For those fortunately innocent of UPU terms, "terminal dues" are the charges that post offices levy each other for the local delivery of foreign mail (local delivery meaning exclusively of long haul transportation, such as air transportation).

It should be noted that in both cases, the international postal system's embrace of this Rowland Hill concept has come entirely by way of reaction to the competition posed by the private express system.<sup>13</sup> As we shall, this is not the only instance in which competition has forced the international postal system to rediscover Hill's principles.

### 3. ADAPTATION OF PRICE TO COST

After his grand division of the postal system into primary and secondary distribution, Hill analyzed post costs guided by the principle that prices should reflect actual costs (plus an uniform tax in Hill's day).

The most famous application of this approach was Hill's advocacy of a uniform postage rate within the primary distribution area. Prior to 1840, British postal rates varied according to distance and host of other transportation factors. Postal historian Alvin Harlow writes:

[I]n 1813 and thereafter, the city [of London] rates were twopence and threepence, and the weight limit four ounces. There were numerous surcharges throughout the kingdom. For example, a single letter of one quarter-ounce weight going from London to Dublin, about three hundred and twenty-five miles, paid one shilling fourpence [24 pence] of which twopence was steamer postage across the Irish Sea from Holyhead, one penny for crossing the Conway Bridge and another for crossing Telford's bridge across the Menai Straits. . . . The general result was that the post had become a convenience only for the well-to-do, and that even they avoided the payment of postage whenever and by whatever means possible.<sup>14</sup>

Undaunted by this seeming complexity, Hill carefully examined postal costs in the primary distribution area and concluded that, contrary to conventional wisdom, the cost of transportation between major towns was an insignificant fraction of the total cost of delivery. For this reason, Hill argued, the postage rate "must be uniformly the same from every post town to every other post town in the United Kingdom."<sup>15</sup>

Because of frequent misstatement of Hill's principles today, it is worth emphasizing that uniformity of price was simply a consequence of conforming prices to costs, not a goal in itself. Hill did not advocate uniform postage rates to secondary towns, for he saw clearly the economic error of such an approach and believed that "every branch of the Post Office ought to defray its own expenses."<sup>16</sup> We might summarize Hill's views of secondary distribution by saying that the institutional

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<sup>13</sup>It should also be noted that although both examples show a new spirit of economic realism on the part of the post offices, in both cases, the actual agreements pose serious issues under the competition laws.

<sup>14</sup>*Harlow*, pp. 180-81.

<sup>15</sup>*Hill*, p. 16.

<sup>16</sup>*Hill*, p. 46.

costs of the post office should be borne by the primary distribution system while secondary distribution costs should be tailored to the needs of individual communities and priced at marginal cost.<sup>17</sup>

Given the subject of my paper, Hill's views on international postage rates are especially interesting. He wrote:

For the sake of simplicity in accounting for postage, it is very desirable that the rates of charge should be the same for Foreign and Colonial as for Inland letters; that is to say, that a Foreign or Colonial letter not exceeding one ounce in the British Isles should be conveyed from any post town in the British Isles to the Foreign or Colonial *port* [emphasis by Hill] for one penny. *The conveyance in the foreign country or colony being of course subject to the arrangements there established* [emphasis added].<sup>18</sup>

Hill's insistence on conforming price to cost also led him to advocate abolishing postage rates for "packets" which depended upon the number of sheets of paper in the envelope. Hill reasoned:

Again, the expenses of receipt and delivery are not much affected by the weight of each letter, within moderate limits; and, as it would take a nine-fold weight to make the expense of transit amount to one farthing [one quarter penny], it follows *that, taxation apart, the charge ought to be precisely the same for every packet of moderate weight, without reference to the number of enclosures.*<sup>19</sup>

Thus, Hill's basic principle that postal prices should reflect costs may be seen in three pricing policies. We can restate them as follows:

- the cost of transportation between large cities does not vary proportionally with distance and is small relative to collection and delivery costs;
- postal charges for delivery in a foreign country should be based upon the cost of delivery by the foreign post; and
- postal charges for shipments of multiple letters handled as a single shipment should be based upon cost factors and not simply the number of letters.

Let us consider the international postal system in regard to each policy.

### 3.1 CHARGES FOR INTERNATIONAL TRANSPORTATION

While many post office contracts individually with international carriers, the matter of correctly costing international transportation comes up when post offices forward each other's mail, either to another post office or to a city removed from the port of import. For example, what should the French post office charge the British Post Office for transporting English mail from Calais to Germany? Or from Calais

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<sup>17</sup>Hill, pp. 46-48. This summary involves a little interpolation, as Hill was not very detailed in explaining his ideas for secondary distribution.

<sup>18</sup>Hill, p. 48.

<sup>19</sup>Hill, p. 17 (emphasis by Hill).

to Lyons? In UPU terminology these charges are called “transit charges” and, for air transportation, “air conveyance dues.”

At the very first congress of the Universal Postal Union in Berne in 1874, the matter of “transit fees” occasioned the “longest and most acrimonious discussion.”<sup>20</sup> Some post offices argued there should be no charge for forwarding mail, citing Rowland Hill, who of course would never have supported such a thing.<sup>21</sup> Other post offices, who were so situated that they had large amounts of transit mail, insisted upon being repaid (or better, overpaid) for costs incurred.

In the end, the twenty one predominately European countries agreed upon a common transit fee schedule under which transit charges varied depending upon weight, distance, type of conveyance, and the nature of the mail. Table 2 presents the figures.

Table 2. First UPU transit fees (1874)

Distance and Means	Letters (LC)	Printed Paper (AO)
0-750 km by land	2 gf/kg	0.25 gf/kg
750+ km by land	4 gf/kg	0.50 gf/kg
0-300 n.mi. by sea	0 gf/kg	0 gf/kg
300+ n.mi. by sea	6.50 gf/kg	0.50 gf/kg
Europe to U.S./India	Negotiated	Negotiated

Source: G.A. Codding Jr., *The Universal Postal Union* (1964) at 30.

“Gf” refers to gold francs; “n.mi.” refers to nautical miles.

It requires no special knowledge of nineteenth century economics to recognize this as a political solution rather than the economic one that Rowland Hill would have advocated. It seems highly likely that a 20 kilogram bag of letters cost little more to transport by ship than a 10 kilogram bag; in any case, the sea voyage for a bag of letters was certainly not 13 times as costly as for a similar bag of newspapers.

Today, UPU transit charges, and air conveyance dues, still vary according to weight and distance, even though the costs of transport tend to vary more by volume and number of pieces.<sup>22</sup> Moreover, unlike the UPU of 1874, the modern UPU convention makes no allowance for variations in cost around the world. The same schedule applies to America and India as to France and Germany.

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<sup>20</sup>G.A. Codding Jr., *The Universal Postal Union*, p. 29 (1964) (hereafter referred to as *Codding*).

<sup>21</sup>Hill did not support differences in postal charges to customers for letters circulating between major towns because the average transportation was only one thirty sixth of a penny. This is not at all the same thing as saying that post offices should not charge other post offices for substantial, clearly identifiable transport costs for bulk mail. Hill’s support for proper costing of postal services would presumably have led him to support cost related transit charges between post offices. The question of whether these transit charges were significant enough compared to total costs to justify differences in the ultimate postage rates to mailers is a quite different question.

<sup>22</sup>UPU Convention (1984), arts. 63, 83.

Within the last two or three years, however, the outbreak of international remail competition between post offices, aided by the private express industry, has caused some post offices to reconsider this inflexible and cost insensitive approach. A 1987 UPU “Study on Remailing” notes:

*The remail firms’ flexibility in obtaining favorable air transportation rates is another major competitive advantage they have over postal administrations. For longer distances they pay air freight rates which are much lower than UPU conveyance rates. For shorter distances, where the UPU air conveyance rates are comparable to, or even lower than, air freight rates, they submit their mailings to a postal administration which is willing to cooperate by dispatching the items as its own mail, at the usual UPU air conveyance rate.*<sup>23</sup>

At the UPU congress last December, the Secretary General acknowledged the assistance of the private express industry in bringing this matter to his attention when he described the situation to the man from IATA (International Air Transport Association) as “the onslaught of the competition.”<sup>24</sup>

Despite recognition that air transportation charges (the most important transport element today) do not reflect actual costs, the UPU Executive Committee has so far rejected proposals either to move to individually negotiated arrangements or to accept a slightly more cost related (“digressive”) air conveyance schedule.<sup>25</sup>

### 3.2 CHARGES FOR FOREIGN POSTAL DELIVERY.

Delivery of mail in a foreign country, Hill thought, should be “subject to the arrangements there established.” However, the UPU has never accepted this Hill precept either. Indeed, the UPU’s approach has been exactly the opposite. The basic principle of the UPU has been that British mail should be delivered in foreign countries, from Afghanistan to Zimbabwe, for the delivery cost incurred by the British Post Office in England! Put another way, the UPU’s basic premise has been that the mail flow between two post offices is the same in both directions, in quantity and content, and that delivery costs are the same in both countries; as a result, neither post office would charge the other for local delivery.

In the UPU’s 1897 Washington Congress, some post offices noted that they received more mail than they sent out. At the 1906 Rome Congress, the Italian post office demonstrated that it delivered 320,000 printed papers from abroad and sent out none. It was not until 1969, however, that the UPU introduced a correction for traffic imbalances. The correction charge, called “terminal dues,” was a fixed

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<sup>23</sup>UPU Terminal Dues Roundtable, 6-7 April 1989, Annex 3: CE 1988/C4 - Doc 9/Annex 1 (emphasis added) (hereafter this roundtable is referred to as *UPU TD Roundtable*). The several annexes to this work paper provide a detailed analysis of the phenomenon of remail competition among post offices and the postal responses to it.

<sup>24</sup>UPU 1989 Washington Congress, C6 - Rep 3, p. 2 (1 December 1989).

<sup>25</sup>UPU 1989 Washington Congress, Doc 63.

amount per kilogram.<sup>26</sup>

This uniform, weight based delivery terminal dues charge, however, is fundamentally flawed. Most basically, it applies equally to all post offices, despite the fact that, according to a 1988 UPU survey, actual local delivery costs around the world vary by a factor of 16 or more (depending upon LC or AO).<sup>27</sup> One can just imagine Rowland Hill shaking his head in amazement!

A second problem with the terminal dues rate is that it ignores the number of pieces of mail, even though local delivery costs obviously vary more by number of pieces than by weight. The 1989 UPU Congress finally addressed this second issue, but only halfway. It set different per kilogram charges for letter mail (LC) and printed matter mail (AO) based upon the assumption that there are 46 letters and 5.6 printed papers in each kilogram of mail.<sup>28</sup>

This limited reform was the direct result of the “problem” posed by remail competition. The problem with remail is that large mailers can use the private express system to shop among post offices, tendering their mail to those post offices that reduce international postage rates to marginal costs. Since terminal dues are the major component of marginal costs for international mail, the post offices agreed to raise terminal dues among themselves as much as possible.

Spurred by the competitive threat, some post offices have gone even further, embracing an approach very much like Rowland Hill advocated in 1837. These post offices are prepared to levy a charge for the delivery of foreign mail based upon the domestic postage rate. The domestic rate is discounted by a percentage, about 40 percent, reflecting the absence of collection costs for foreign mail. This system has been operating among the four Nordic post offices since the first of January of this year, and I understand other European post offices may be negotiating similar arrangements. Indeed, as a result of a complaint filed by the International Express Carriers Conference, the European Commission may soon rule that some such approach is required in the European Community. If the Commission so rules, I have no doubt the international postal system will be the better for it.

### 3.3 DISCOUNTS FOR PACKETS OF LETTERS

Unlike the British Post Office of the 1830's, the modern international postal

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<sup>26</sup>It makes no differences whether one considers this a charge levied against all international mail or only against the “imbalance” arising out of bilateral exchanges.

<sup>27</sup>*UPU TD Roundtable*, Annex 4: CE 1988/C 5 - Doc 8, p. 7. Even within the European Community, postal delivery costs appear to vary by a factor of three or more, judging from variations in both postal cost data and first class LC postal rates.

<sup>28</sup>This simplifies the matter somewhat. The 1989 UPU terminal dues provision is very complicated. It contains a correction mechanism for kilograms that contain more than 55 LC items per kilogram or more than 7 AO items per kilogram, although it is unclear to me how this will be administered. It also retains the flat rate per kilogram for bilateral postal markets in which the traffic is less than 150 tonnes per year in either direction. Furthermore, the 1989 convention allows post offices to agree upon alternative terminal dues agreements on a bilateral basis.

system has never charged for the transmission of letters based upon the number of sheets per envelope. But it has done something similar. For letters collected at a single point—a post office or sender’s office—the collection cost is more or less the same for one letter or for many letters. Yet the international post has traditionally been very reluctant, more so than the national post, to allow discounts for large mailers who save the post office collection costs.

Again, we may note that, in the last two years and in response to private competition, the international postal system has lowered prices for large mailers. A 1988 UPU survey found that 88 percent of responding post offices had accepted the need to lower prices.<sup>29</sup> Indeed, there is a danger that the international postal system will reduce prices to predatory levels. New Article 12bis of the 1989 UPU Convention authorizes post offices to “give preferential rates to major users [not less than] those applied in the internal service of items presenting the same characteristics”. A quick reference to Rowland Hill suggests to me that this provision would allow a relatively low (unit) cost postal administration, such as the Royal Mail or U.S. Postal Service, to reduce international postage rates to well below actual cost.<sup>30</sup>

#### 4. SIMPLIFICATION OF POSTAL OPERATIONS

A fourth major theme of Hill’s review of British postal operations emphasized the gains to be won from simplifying operations and procedures. He analyzed the inefficiency of letter carriers collecting postage. Hill also described in detail the complicated clerical work demanded by the old tariff, requiring “a vigilance rarely to be met with.” And he lamented the large number of supervisors necessary to guard against fraud. These observations led Hill to recommend, among other things, that all postage be prepaid and that the number of “receiving-houses” be expanded.

Today, hardly any international mailer is aware that postage used to be collected from the addressee, but there are still somewhat similar anachronisms to be found. For large international mailers, for example, the traditional method of paying postage is very cumbersome. Postage must to be calculated on an individual piece basis and affixed to each letter. And the prepayment of foreign postage for business reply cards was impossible. Private express companies, however, introduced the possibility of paying for large mailings of similar items on the basis of total weight. Shippers could accumulate charges and pay against monthly invoices, as with most other businesses. Prepaid international business reply cards were also introduced. Such simplified payment procedures are in fact quite important for large customers. Here again, the international postal system has been forced by

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<sup>29</sup>UPU TD Roundtable, Annex 2: CE 1988 /C 5 - Doc 9, p. 12.

<sup>30</sup>The domestic postal rates of a low cost post office are, plainly, far below the actual costs of delivery incurred by a high cost foreign post office. In addition, of course, domestic rates do not include international transportation costs, as international postage rates should.

the competitive threat to introduce similar features, to the benefit of the mailers.<sup>31</sup>

## 5. POSTAL MANAGEMENT AND POSTAL MONOPOLY

Overall, Rowland Hill was not favorably impressed with the quality of management at the British Post Office. He wrote:

The Post Office has too generally lagged behind other institutions in the progress of improvement, instead of being, as it might be, an example to the country of skilful and energetic management.<sup>32</sup>

Hill's 1937 paper carefully explains his view that the fault lay more in the system than in the individuals. The first flaw in the system was, he felt, the postal monopoly, which exercised an enervating influence upon postal management. He said:

There cannot be a doubt that if the law did not interpose its prohibition, the transmission of letters would be gladly undertaken by capitalists, and conducted on the ordinary commercial principles, with all that economy, attention to the wants of their customers, and skilful adaptation of means to the desired end, which is usually practised by those whose interests are involved in their success. But the law constitutes the Post Office a monopoly. Its conductors are, therefore, uninfluenced by the ordinary motives to enterprize and good management; and however injudiciously the institution may be conducted, however inadequate it may be to the growing wants of the nation, the people must submit to the inconvenience; they cannot set up a Post Office for themselves.<sup>33</sup>

Hill also blamed the political and legal circumstances which created a divided system of management. The worst evils were caused by the Legislature, which had no management responsibility. The Postmaster General was the chief executive, but he was a political appointee who at best could only "acquire a general knowledge of the vast and complicated mechanism." And the most knowledgeable executive, the Secretary, "[had] not the requisite authority for effecting such improvements as he may think necessary."<sup>34</sup>

If one looks at today's international postal system with the same skepticism that Hill brought to the British Post Office of 1840, it is possible that one would likewise conclude that the political and legal system has produced a management structure that is less than optimum. The management of the international postal system consists of about a thousand senior executives (there were some 900

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<sup>31</sup>If, in accordance with new arrangements, terminal dues vary both by number of pieces and total weight, then both private express companies and post offices will have to introduce tariffs based upon the number of pieces as well as weight. However, the procedures will still be simpler for the mailer than traditionally required by the international post.

<sup>32</sup>Hill, p. 40.

<sup>33</sup>Hill, p. 7.

<sup>34</sup>Hill, pp. 40-41.

delegates to the last UPU congress) physically located in the international affairs departments of about 170 post offices as well as UPU headquarters in Berne, Switzerland. Management decisions are taken in meetings of the UPU's various committees as well as meetings of the nine regional postal unions. The central staff, the UPU's International Bureau, has only very limited power to manage the system, or even gather the data needed for management. Even allowing for the large geographic distances and the differences in language and culture—a problem equally faced by the international express companies -- this appears to be a rather complicated management structure for a postal system smaller than the Canadian post office.

Like the British Post Office of 1840, the international postal system is also insulated from competition by legal protection: national monopoly laws, favorable customs procedures, antitrust immunity, and so on. In 1987, Mr. Mostafa Gharbi, Assistant Deputy-General of the UPU, wrote an article in the UPU's official magazine which should have earned him renown for courage and wisdom. Mr. Gharbi's theme was "deregulation, a postal modernization factor." He wrote:

A wind of change is currently blowing through postal administrations which, having long been ensconced in the comfort provided by monopoly, have suddenly noticed that they are being seriously threatened by private firms that have started to compete with them. . . .

It is a fact that top postal executives have long tended to give preference to the means provided by regulations in order to solve the management or operational problems facing their administrations. For this purpose, the Post has at its disposal an arsenal of legal texts. . . . However, it is being realized ever more clearly that too many regulations can retard progress and restrict initiative and the ability to adapt to new situations.<sup>35</sup>

Rowland Hill would have applauded these insights. And I sense that more and more postal officials, especially younger ones, are beginning to suspect the appropriateness of competition at the international level (leaving the national level to one side). But I may be wrong.

The "winds of change" stirred by the private express industry are beginning to be seen not only in regulatory philosophy, but also in management structure. Twenty of the largest post offices have established a separate international management organization, Unipost. And the UPU itself has, for the first time, authorized its Executive Council to modernize regulations without waiting for the next plenary congress. While I believe there are fundamental legal problems in both cases, in both cases I would also concede that the post offices are rightly searching for a more unified and flexible management structure for the international postal system.

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<sup>35</sup>*Union Postale* (1987) p. 11A.

## 6. ELASTICITY OF THE DEMAND FOR POSTAL SERVICES

With an eye towards his governmental audience, a major selling point in Hill's 1837 paper was his proposition that the demand for postal services is elastic. A decrease in postage would result in an increase in revenue. Whether or not Hill was correct in this proposition is unclear to me.<sup>36</sup> However, this seems a bit beside the point. Hill was right in that, in some sense, a drastic postage reduction was far less costly in net terms than previously thought and yielded much greater public benefits. Hill's instinct to price postal services as low as possible appears to have been vindicated.

It is my impression that the international postal system has been unsympathetic to Hill's low price instinct, although a quantitative study would be most interesting. Professor Coddington recounts numerous debates between high postage and low postage advocates at UPU meetings, with the high postage side almost always victorious (except just before World War I).<sup>37</sup> Most post offices appear to take the view that international postal rates should be set to reap extraordinary profits, since international rates are less politically sensitive than national rates and the mailers are generally well heeled. Like Adam Smith, I have the feeling that it is too much to expect groups of post offices in a collective meeting to reduce rates.

Within the last two or three years, however, the private express companies, acting in concert with individual post offices have become rate cutters for international postage rates. A substantial fraction of all international mail is now being transmitted for 50 percent or less of previous rates. Has this led to a beneficial increase in total international mail volume? Again, I quote excerpts from a 1988 UPU study:

In the period from 1979 to 1986, when the world's population, level of economic activity, tourism, and international trade rose, international mail volumes declined. . . . Postage-rate increases . . . were widespread. . . . Most administrations indicated [in answer to a questionnaire] that they face competition. Moreover, the competition is growing. . . . Most respondents believe the overall market (postal volumes plus privately carried volumes) for LC-type products is increasing . . . also . . . for AO-type products.<sup>38</sup>

The obvious implication of these observations is, of course, that competition has led to postage reductions, which in turn have led to the first up turn in international mail traffic for a decade. However, more analytical work is certainly needed in this area.

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<sup>36</sup>According to Hill, the overall tax on the postal system was about 200 percent of costs. Some fifteen years after Hill's reforms were introduced, postal revenues had more or less returned to previous levels, but one has to allow for changes in the tax rate and inflation in order to assess whether, even over this period, Hill's postage reduction paid for itself.

<sup>37</sup>See *Coddington* p. 238.

<sup>38</sup>*UPU Terminal Dues* CE 1988/C 5 - Doc 9, p. 3.

## 7. IMPORTANCE AND PRACTICALITY OF REFORM

Finally, Hill was very concerned to persuade his readers that postal reform was both important and politically practical. On the matter of importance, indeed, Hill was eloquent:

When it is considered how much the religious, moral, and intellectual progress of the people would be accelerated by the unobstructed circulation of letters and of the many cheap and excellent non-political publications of the present day, the Post Office assumes the new and important character of a powerful engine of civilization.<sup>39</sup>

I imagine that the present conference hardly needs to be persuaded of the importance of the exchange of documents. But it may be useful to note that, in the much more complex world of 1990, the corresponding “engine of civilization” is the communications and delivery infrastructure as a whole. When Hill’s reforms had reshaped the British Post Office, it was the basic means of exchanging messages and small parcels between citizens. Today, the citizens of the world require a multiplicity of similar tasks, at various service levels, from a complimentary network of post offices, telecommunications administrations, and private delivery companies (express and non express).

It must be true that, from the public policy standpoint advocated by Hill, what is important today is ask whether we are making the best use of the international communications and delivery system as whole, in order to ensure that we are not depriving ourselves of the efficiencies and benefits Hill discovered absent from the British Post Office of 1840.

Hill ends his paper by arguing the political practicality of his ideas, naming names of supporters, and concluding that “the proposed reform, if undertaken by the Government, would not meet with opposition.”<sup>40</sup>

I cannot end my paper quite so sanguinely. We have already seen tremendous opposition to reforms in the international delivery system (leaving communications to others), not least from post offices who seem to have forgotten some of Hill’s lessons. Nonetheless, fundamental reform does seem practical, for three reasons. First, international traffic comprises only 1 to 8 percent of the postal business, so the most drastic international reforms will not endanger the financial viability of any post office. Second, the European Community’s 1992 program has created an opportunity, which otherwise would never arise, to rethink in detail the appropriate public policy towards relations between different postal systems. Third, the United States is in the remarkable position of the being the largest supplier of both postal and private delivery systems and Chairman of the Universal Postal Union for the next five years. Logically, at least, the Bush Administration is positioned to play a very positive role. Of course, as in England in 1840, reform, however practical, will

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<sup>39</sup>Hill, p. 7.

<sup>40</sup>Hill, p. 54.

in fact occur only if demanded by the users and other leaders of society.

In closing, I would like to repeat that my purpose, in view of the occasion, has been to get an old coat out of Rowland Hill's intellectual closet and try it on today's international postal system. I would encourage others with more specialized skills to straighten it up and apply patches where necessary. Then we can all stand back and judge how well it fits. Perhaps, indeed, it will be seen to fit only to the extent that the international private express industry has, like Rowland Hill 150 years earlier, been successful in persuading the postal system to rethink the nature of its business.

Thank you.

# 2

## The Future of the Universal Postal Union (1993)\*

*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 Barros<sup>1</sup>

*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. Drucker<sup>2</sup>

### 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.

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\*Published as "International Postal Reform: An Application of the Principles of Rowland Hill to the International Postal System" in *Competition and Innovation in Postal Services*, eds. Michael Crew and Paul Kleindorfer (Boston: Kluwer, 1991).

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

<sup>2</sup>*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.

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.”<sup>3</sup> 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

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

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.<sup>4</sup>

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, the 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 intergovernmental 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

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<sup>4</sup>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).

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 U.S., 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.<sup>5</sup>

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 Council<sup>6</sup> 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.<sup>7</sup> In 1964, the Convention was completely revised around a separate, permanent Constitution.<sup>8</sup> 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.

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<sup>5</sup>Codding, *UPU*, p. 241.

<sup>6</sup>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.

<sup>7</sup>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.

<sup>8</sup>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.”

Table 1. Organization of the UPU

Body	Function	Membership	Meetings
Congress	Legislate acts; appoint DG, EC, CCPS; 5 yr budget, strategy.	168 natl 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.

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,”<sup>9</sup> as a means of protecting each other’s home markets. The 1984 Hamburg Congress urged governments to use the monopoly against private express companies.<sup>10</sup> 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.

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.<sup>11</sup> As summarized in table 1, the UPU consists of four

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<sup>9</sup>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.

<sup>10</sup>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.”

<sup>11</sup>“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*

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.<sup>12</sup> 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.<sup>13</sup> Generally, decisions are taken by majority vote, each country having one vote.<sup>14</sup>

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,<sup>15</sup> proposals in Congress are discouraged,<sup>16</sup>

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*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 U.K. 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.

<sup>12</sup>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.

<sup>13</sup>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. Coddington, *UPU*, p. 100.

<sup>14</sup>By virtue of territorial possessions, some large countries like the U.K. and France control more than one vote.

<sup>15</sup>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.

<sup>16</sup>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

Table 2. Legislative act 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.

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;<sup>17</sup> 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."<sup>18</sup>

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

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received two months in advance. Gen. Reg. § 119.1(d).

<sup>17</sup>That is, at the time of signing by the "plenipotentiaries". Const. § 22.6 & n. 10.

<sup>18</sup>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*, Codding, *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.

the Executive Council to be “a qualified postal official” *and* “appointed by the postal administration of his country.”<sup>19</sup> 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.”<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup>

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<sup>19</sup>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.

<sup>20</sup>Const. §1.

<sup>21</sup>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.

<sup>22</sup>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

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.

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.<sup>23</sup> 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.<sup>24</sup> The absence of outside scrutiny at the UPU contrasts markedly

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fixes rates for only for “guideline purposes.” Conv. §20.1.

<sup>23</sup>Prof. Codding 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).

<sup>24</sup>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

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.

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.*<sup>25</sup>

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 post<sup>26</sup> and other types of international communications.<sup>27</sup>

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":

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meetings of committees directly related to their businesses.

<sup>25</sup>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).

<sup>26</sup>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, U.K., and U.S. increased 48 percent while international traffic declined 14 percent. UPU, *Statistiques* (various years).

<sup>27</sup>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).

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.*<sup>28</sup>

*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.<sup>29</sup> 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

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

<sup>29</sup>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.

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.<sup>30</sup>

*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.<sup>31</sup>

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.<sup>32</sup> 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

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<sup>30</sup>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).

<sup>31</sup>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.

<sup>32</sup>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.

costs of inward postal delivery.<sup>33</sup> 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.<sup>34</sup>

*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,<sup>35</sup> 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.<sup>36</sup>

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 1950’s, 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

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<sup>33</sup>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).

<sup>34</sup>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.

<sup>35</sup>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.

<sup>36</sup>Conv. § 60.3.

of domestic postal systems, especially those in developing countries.<sup>37</sup>

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.<sup>38</sup>

*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.<sup>39</sup> 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

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<sup>37</sup>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.

<sup>38</sup>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.

<sup>39</sup>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.

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 some of the most important governmental functions exercised by the UPU.

Table 4. Governmental aspects 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.

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.

##### 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.<sup>40</sup> 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,<sup>41</sup> 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

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<sup>40</sup>Roger Tabor, "Comment," in *Competition and Innovation in Postal Services*, edited by Michael A. Crew and Paul R. Kleindorfer (Boston: Kluwer Academic Publishers, 1991).

<sup>41</sup>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.

of mail volume involved.<sup>42</sup>

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 1960's, and especially jumbo jets in the 1970's, 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

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<sup>42</sup>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.

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,<sup>43</sup> 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 it<sup>44</sup>—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 1980's 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. Indeed of being tied to its own “back room” staff, a postal administration has the option of switching among competing outside services 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.<sup>45</sup>

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<sup>43</sup>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. Karl W. Deutsch and Richard L. Merritt, “Transnational Communications and the International System,” *Annals of A.A.P.S.S.* (American Academy of Political and Social Science), pp. 84-97 (May 1979).

<sup>44</sup>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.

<sup>45</sup>Peter F. Drucker, *Managing for the Future*, p. 277 (New York: Truman Talley Books, 1992).

In the early 1980's, 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 1980's, 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.<sup>46</sup> 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 its international relations. Each postal administration will have to respond smartly to changes in the larger communications market place 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

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<sup>46</sup>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.

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.<sup>47</sup>

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.<sup>48</sup>

#### 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 U.K. 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*

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<sup>47</sup>“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”)*.

<sup>48</sup>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.

*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.*<sup>49</sup>

In 1980, the U.K. 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.<sup>50</sup> 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

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<sup>49</sup>Quoted in Michael Corby, *The Postal Business*, p. 1 (London: Kogan Page Ltd., 1979).

<sup>50</sup>Each business is run by a managing director, and services exchanged between the businesses are provided on a contract basis. The U.K. 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).

rights.

The split personality of the UPU is unsustainable. In the developed countries, whoever—private carrier, user, postal administrations, 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.<sup>51</sup>

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

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<sup>51</sup>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 U.K. government to a parliamentary question concerning terminal dues and the U.K. 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).

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.<sup>52</sup> 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.<sup>53</sup>

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,<sup>54</sup> 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

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<sup>52</sup>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.

<sup>53</sup>One could detect glimmerings of a separate, governmentally determined, EC/US approach towards international postal policy at the 1989 Washington Congress. Both the U.S. 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 U.S. 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.

<sup>54</sup>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.

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.

# 3

## GATS and Physical Delivery Networks (1999)\*

From kings to parliaments, governments have sought to “bind the Nation together” and promote national wealth by encouraging modern and efficient “infrastructure” services, i.e., basic public services that enable other economic activity. At the same time, governments have a long and inglorious record of impoverishing their people by reinforcing national boundaries through the restriction or obstruction of international commerce. In 1614 Spain unsuccessfully tried to make Seville the tobacco capitol of the world by decreeing that tobacco produced in New Spain must pass through Seville on the way to European markets. In the next century, similar efforts to control trade routes contributed to England’s alienation of the richest colonial prize in history. In the 1930s, England’s lost colony intensified global economic misery by leading the world into a round of protective tariffs.

At the end of the twentieth century, governments are reconsidering this incongruity between domestic and international economic policies. In the early part of the century, governments developed extensive regulatory regimes to control giant commercial enterprises spawned by the Industrial Revolution. These regulatory schemes proved too static. Technological innovation continued, and new forms of commerce developed. By the third quarter of the twentieth century, it became clear that, without fundamental modification, comprehensive regulation would suffocate rather than facilitate the services infrastructure. In the last two decades, national economies have been invigorated by a wave of reforms that have “deregulated” these services, or more accurately, that have enhanced the flexibility and sophistication of governmental controls. Benefits of economic “liberalization” have been so apparent at national level that extension to the international level is now accepted in principle. Modern communications and transportation technologies have contributed to this acceptance. National borders were never especially logical as economic boundaries, but their artificiality becomes even more obvious when you can talk to the other side

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of the world instantly and travel there in 48 hours.

The primary catalyst for liberalization of international services is a new international convention called the General Agreement on Trade In Services or “GATS.” This paper discusses the possibility of applying the GATS principles to “physical delivery networks” such as postal and express services.

#### 1. GATS AND THE “BORDERLESS GLOBAL ECONOMY ”

Today, the Director General of the World Trade Organization (WTO), Renato Ruggiero, speaks of the prospect of a “borderless global economy” as one might speak of an old friend. The borderless global economy will, says Mr. Ruggiero, be marked by

increasing indifference to geography, distance and time. Transaction costs for consumers and businesses will fall rapidly as many steps that intervene between buyer and seller—distribution, sales, retailing—are compressed. Perhaps the most significant result of the development of electronic commerce will be the falling barriers and costs to market entry. Starting a new business will be much easier—allowing a far greater number of suppliers to enter a market. Small and medium-sized enterprises—as well as large multinational corporations—will now be full participants in the global marketplace. Businesses in developing countries can now overcome many of the obstacles of infrastructure, capital, and transportation which limited their economic potential in the past. And in the end, consumers all over the world will benefit from this growing global competition.<sup>1</sup>

In truth, however, the prospect of global economy is a new acquaintance for most of the world’s governments. As a realistic possibility, it goes back only to the adoption of the General Agreement on Trade in Services in 1994. GATS establishes a set of principles and a negotiating process for mutually liberalizing trade in services. The father of GATS is GATT, the General Agreement on Tariffs and Trade, a 1947 treaty that reduced tariff levels. While GATT was a major achievement in its own right, its most important legacy may be that it prepared the way for GATS, as did Philip for Alexander.<sup>2</sup>

While GATS provides a framework for facilitating the exchange of all types of services—for example, advertising services, management consulting, repair services—its most important application will be to infrastructure services. In October 1997, Mr. Ruggiero described the services infrastructure needed to realize a borderless global economy as a sort of a three-legged stool (my analogy not his). The

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<sup>1</sup>“Services in a Borderless Economy” (Berlin, 23 October 1997).

<sup>2</sup>After World War II, economically developed countries recognized the collective folly of the high tariffs that preceded the war. In 1947, twenty three countries agreed to the General Agreement on Tariffs and Trade. GATT provided for a mutual reduction in tariffs and a procedure for negotiating further reductions in the future. In the eighth round of such negotiations (the “Uruguay Round”), concluded in Marrakesh in 1994, governments agreed to a series of treaties, including GATS. At the same time, a permanent inter-governmental organization, the World Trade Organization (WTO), was set up to administer trade agreements and promote international trade.

three legs are liberalized telecommunications services, financial services, and transport services. In the first two areas, the WTO has already achieved considerable success, while little progress has been made in the third.

The first key achievement was conclusion of an agreement to liberalize trade in telecommunications services in February 1997. Sixty-nine countries, accounting for more than 95 percent of world telecommunications revenues, agreed to permit substantially unrestricted trade in the supply of basic and value added telecommunications services. Participants also subscribed to a set of regulatory principles to protect competition from anti-competitive actions by telecommunications monopolists. The WTO telecommunications agreement represented a sea change from the pre-existing legal framework for international telecommunications services. Since the late nineteenth century, international conventions provided that cross-border telecommunications was provided by connection between national services, usually offered on a monopolistic “public service” basis. In stark contrast, the WTO telecommunications agreement is premised on the idea that telecommunications services should be supplied by public and private operators competing on a global basis. For the first time, the international economy will benefit from the seamless end-to-end telecommunications services that have stimulated growth in domestic commerce for more than a century.

The second leg of Mr. Ruggiero’s stool was cemented into place in December 1997 when nations representing over 95 percent of world trade in banking, insurance, securities, and financial information agreed to a WTO financial services agreement. This agreement reflects the fact that international trade is no longer the main vehicle for delivering products and services across borders; international corporations now “trade” by establishing a direct presence in foreign markets. In the decade since 1987, cumulative assets of foreign investment have trebled to over US\$ 3 trillion, while annual sales which these assets generate have overtaken the value of world trade.

Despite these successes, the third leg of Mr. Ruggiero’s stool—liberalization of transport services—has not even made it to the lathe. As he noted,

One last word on a final element of the global infrastructure I referred to above—*transport services*. *I mention them as a reason for looking forward, not because there are triumphs to report*. Negotiations on maritime transport which ended in the Summer of 1995 were unsuccessful; indeed neither the European Union nor the United States have accepted any market access commitments in this sector. The air transport industry is also something of an exception, because most aviation services were excluded from the coverage of the agreement - which may help to account for the fact that it can cost more to fly from Berlin to Geneva than from Berlin to New York.<sup>3</sup>

A three-year study of international direct marketing by the Organization of Economic Cooperation and Development (OECD), finished in 1997, emphasized the

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<sup>3</sup>“Services in a Borderless Economy” (Berlin, 23 October 1997) (emphasis added).

incompleteness of present reforms. While Mr. Ruggiero optimistically forecasts that “Transaction costs for consumers and businesses will fall rapidly”, OECD staff observed, “Consumers have not yet begun to benefit from the ease, convenience and potential savings of shipping by mail in the global marketplace.”<sup>4</sup>

## 2. WHY TELECOMMUNICATIONS AND NOT TRANSPORT?

How can one explain the contrast between the WTO’s success in liberalizing telecommunications and relative failure to deal with restrictions on international transportation? While awaiting a proper political science study, I would tentatively venture to note three differences between international telecommunications and transport.

First, unlike international telecommunications, international transport has not suffered from balkanized management. Since the only way to provide an international transport service is by means of a ship or aircraft that physically moves between countries, users of international transport services necessarily enjoy the benefit of a service that is managed uniformly from beginning to end. In contrast, international telecommunications has traditionally been provided as a joint service by connecting the wires, or satellite links, of two national monopolists. Only with the advent of more sophisticated telecommunications services has the lack of end-to-end management has become unacceptable.

A second, related distinction between international transport and international telecommunications is the legal framework. International transportation—especially air transportation—is governed by bilateral relations which create economic rights for particular operators. Once created, these rights give rise to a strong political pressure opposing further liberalization. On the other hand, international telecommunications services have historically been governed by multilateral conventions, such as the Convention of the International Telecommunication Union. Liberalizing international telecommunications law therefore requires only liberalization of a few multilateral agreements which, roughly, affects all parties in the same manner. In contrast, liberalization of air transport requires modification of a myriad of individual bilateral agreements, each affecting parties in different ways.<sup>5</sup>

A third, and probably the most important, difference between telecommunications and transport is that new technologies have had a relatively greater

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<sup>4</sup>“Parcel Delivery in the Global Marketplace”, DAFPE/CP(95)9 at 11 (November 20, 1995). The OECD study was prompted by a simple but extremely insightful question: If the cost and speed of air transportation are similar for international and domestic shipments, why is it so expensive and time-consuming for a person living in Paris to order a shirt from San Francisco when another person living in New York City can have the same shirt delivered overnight for one-third the cost? The OECD traced the additional costs and delays to three sets of outdated constraints on physical delivery networks: (i) monopolistic postal laws, (ii) burdensome customs and tax laws, and (iii) restrictive air and surface transportation laws.

<sup>5</sup>The problem of uneven vested rights in the transport sector is further exacerbated by the fact that many key facilities, such as airports and seaports, represent substantial public investments that governments are reluctant to expose to competition.

impact on telecommunications services than transport services in the last two decades. The spread of the personal computer, advances in satellite technology, emergence of the internet, and introduction of mobile telephony have all tended to render obsolete preexisting regulatory structures, so much so that many telecommunications monopolists have opted to give up their legal privileges in return for commercial freedom. In the transport sector, in contrast, the last major technological advances date from the 1960s and 1970s when jet engines, wide-body aircraft, and containerization were introduced. While transport markets have grown tremendously, their basic operational characteristics have changed little.

These differences—and perhaps others—seem to explain why international transport services have, so far, been more resistant to liberalization than other international infrastructure services.

### 3. PHYSICAL DELIVERY NETWORKS

Postal services and express services, which provide for regular exchange of physical items over a network of locations, do not fit comfortably into this communications/transport dichotomy. They are in some ways similar to both communications and transport services and yet distinct from both.

Public postal services originated as private long distance communications services in the fifteenth and sixteenth centuries when the transportation of freight was necessarily slower than postal relay systems set up for letters.<sup>6</sup> After the Industrial Revolution, transmission of the mail by specialized “postal” systems gave way to transport via railroads and steamships. Letters could move no faster than freight over long distances. The defining characteristic of postal service became door to door collection and delivery, service elements absent from the original concept of postal service. With the introduction of the telegraph, and later the telephone and radio, it became possible to communicate without conveyance of physical objects. Communications services and postal services became distinctly different services. Differences became more apparent still when motorized vehicles increased carrying capacity, and postal services began to offer “parcel post” service. In this manner, postal services diverged from communications services in the evolutionary tree of commerce.

Although postal services may now be viewed as different from “pure” communications services, they remain qualitatively distinct from transport services as well. While postal services and transport services both involve movement of tangible objects across distance, postal services, like telecommunications services, remain a medium of frequent interaction across a network joining virtually all members of society in given geographic areas. The central activities of a postal system are collection, sorting, and delivery. Long distance air, rail, and vehicular transport services constitute relatively minor inputs in the production of postal

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<sup>6</sup>A “postal” system was originally a series of posts, or way stations. Riders on horseback or walking messengers would carry a “mail” (or pouch) of letters from one post to the next where a rider could get a fresh horse or a foot messenger could turn over the mail to a new messenger.

service. Indeed, telecommunications services are likewise important inputs in a modern postal service because they permit coordination of collection and delivery functions. A postal service may be viewed as a “value added physical delivery network” built upon available transport and telecommunications systems.<sup>7</sup>

Introduction of the airplane substantially affected the evolution of physical delivery networks. For several decades, the air transport system (like the old postal relay system) offered an extra fast long distance transport technology that was available to mail but unsuited to the vast majority of general cargo. Introduction of wide body jet aircraft and improved long distance communications led to expansion of air transport for general cargo, but also to evolution of something different, express services. Whether operated by private companies or public post offices, express services are operationally distinct from traditional postal systems because they are tuned to a different level of speed and reliability. At the same time, they, like traditional postal services, are “physical delivery networks.” The essence of express service lies in the coordination of collection, transport, and delivery services and not in the operation of specific types of transport vehicles. The user of an express service, like the user of a postal service, is concerned about the ability to exchange physical items across a network with reliability, not particular modes of transport.

Development of express services has helped to make clear the distinct nature of physical delivery networks. So long as the only significant supplier of such services was a national post office, the nature of “postal service” was little examined and regarded as virtually *sui generis*. In the “Provisional Central Product Classification” used by the United Nations, postal service and land-based courier service are classified as communications services along with telecommunications services, even though it is obvious that postal service is no longer a communications service in the same sense as telecommunications services. In the same classification scheme, “air courier” service is classified as a form of air transportation even though the fundamental similarity between “air courier” service and “postal service” is plain. Inexplicably, “mail transportation by air” is classified as an “air transportation” service distinct from the air transportation of other types of cargo.<sup>8</sup>

The proposition that “physical delivery networks” may be distinguished from basic transport services, while novel, appears necessary to permit a clear discussion of the possible application of GATS to services like postal services and express services. Confusion in traditional industrial categorization in this area is undeniable. Similarities between postal and express services are apparent, as is the gulf that separates them from bulk freight transport by railroad or ocean liner. For the purposes of GATS, at least, it seems helpful to view physical delivery networks as

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<sup>7</sup>The analogy with some value added telecommunications services, like packet switched communications services, seems obvious and, if pursued, may offer additional insights.

<sup>8</sup>Although a revised CPC (“CPC Revision 1.0”) is about to be published, it does not appear that the revised definitions represent much improvement in the classification of physical delivery networks.

a separate sector or, perhaps, as a subsector of transport services.<sup>9</sup>

#### 4. LIBERALIZATION OF PHYSICAL DELIVERY NETWORK SERVICES

Recognition of the distinct nature of physical delivery networks clarifies the issues involved in applying the principles of GATS to postal and express services. In particular, liberalization of physical delivery network services does not appear to present the same formidable difficulties that have thwarted liberalization of transport services generally. In the effort to apply GATS, physical delivery networks may turn out to be more like telecommunications services than transport services.

As with the international telecommunications system, it is generally recognized that the international postal system has been handicapped by the inability of postal managers to control cross-border systems on an end-to-end basis. In the 1989 Congress of the Universal Postal Union, the Inspector General of the French post office admitted, "International operational strategies are hindered by the poor interconnection of national systems: mail can be moved faster from Brest to Nice (1500 km) than from Paris to Brussels, in Belgium (300 km)."<sup>10</sup> Commercial success of international private express companies in the late 1980s and early 1990s has driven home this point. Major post offices have responded by initiating true international services. In 1996, the Dutch Post Office purchased the entire stock of a major international private express company, TNT. In 1998, Deutsche Post bought a substantial stake in DHL, the leading international private express company. As a British Post Office official has boldly announced, "*The forces of globalization are rendering obsolete the idea of a national postal market.*"<sup>11</sup>

As in the international telecommunications sector, international physical delivery networks have developed more or less free of the inhibitions of bilateral legal frameworks. Public and private operators have opened collection and delivery offices in different countries and made use of available air transport services. As the traffic carried over international physical delivery networks has grown, however, operation of all-cargo aircraft has become economically feasible and some private express services have invested substantial funds in the acquisition of traffic rights. This investment in the current regulatory regime may hinder liberalization as it has in the air transport sector.

Finally, it may be noted that physical delivery network services, like telecommunications services, have been substantially reshaped by new technologies

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<sup>9</sup>As with any classification scheme, there may be difficulties in classifying services at the boundary of a category. Some air cargo or less-than-truckload trucking services might be considered either physical delivery networks or general transport services. These issues do not seem so severe, however, as to negate the benefits of the proposed classification.

<sup>10</sup>UPU, 1989 Washington Congress, Congress - PV6, page 29 (emphasis added).

<sup>11</sup>Tim Walsh, Director, International Affairs and Business Strategy, Royal Mail, "The Governance of International Postal Networks in a Changing Market Place" (London, September 16, 1997) (seminar at Royal Institute of International Affairs).

in the last two decades. Electronic services like the internet offer complete substitutes for much paper mail. Postal and express managers are facing a shift from documents to parcels in their traffic base. Even in the handling of documents, computers have introduced major operational changes. There are now significant distinctions between “industrial mail” and “retail mail”. Production of industrial mail is no longer tied to the offices of the mailer; bulk mail production can easily be moved to foreign locations, reducing the value of domestic postal monopolies. Optical character readers have altered the economics of mail processing. To cope with such changes, many developed countries have decided to modernize their post offices by reducing legal privileges and increasing commercial flexibility. The postal monopoly has been abolished entirely in Sweden, Finland, New Zealand, and Germany (effective 2003) and substantially limited in Australia and European Union countries.

In short, physical delivery networks may be ripe for liberalization in the GATS round beginning in 2000 for many of the same reasons that motivated liberalization of telecommunications. Early political portents are favorable. In June 1997, Sir Leon Brittan, vice president of the European Commission, outlined priorities of the European Union in the next round of GATS negotiations. He argued that “liberalisation of trade in goods and of services is inextricably linked” and announced, “in setting priorities, I expect Europe to focus on sectors where there is world-wide growth, and where Europe has a comparative advantage. . . . I suspect that the big gains from liberalisation in future negotiations will come in sectors that will surprise us all. Maybe . . . in postal and courier services.”<sup>12</sup> Speaking at the fiftieth anniversary celebration of GATT/WTO, in May 1998, President Clinton echoed Sir Leon in declaring, “I think it is essential to engage in wide-ranging discussions to ensure openness for dynamic service sectors, such as express delivery. . . .”<sup>13</sup> In June 1998, WTO Director General Ruggiero recalled these remarks and implied negotiations addressing the express industry might be the bridge needed to extend GATS to air transport services.<sup>14</sup>

## 5. ELEMENTS OF LIBERALIZATION

How would liberalization of physical delivery networks proceed under GATS? Under the process set out in GATS, countries make preliminary offers to liberalize services in a given sector in hopes of eliciting corresponding offers from other WTO countries. If enough countries judge the costs of liberalizations which they propose

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<sup>12</sup>WTO and Services: the Current and Future Agenda” (Geneva, 24 June 1997) (emphasis added).

<sup>13</sup>“Remarks by the President at the Commemoration of the 50th Anniversary of the World Trade Organization” (Geneva, May 18, 1998) (emphasis added).

<sup>14</sup>“Towards GATS 2000 - a European Strategy” (Brussels, June 2, 1998) (address to a conference on trade-in-services organized by the European Commission) (“President Clinton spoke of ensuring openness for dynamic sectors, such as express delivery [which has implications for the air transport sector] . . .”).

to be outweighed by the economic benefits of liberalization offers by others, an agreement will be struck and a “round” of negotiations successfully concluded. If countries are dissatisfied with the liberalization offers of others, they will adjust their offers or encourage others to do so until agreement can be found. In all cases, liberalization offers and commitments are voluntary, so the sovereignty of each country is respected.

Under GATS, “liberalization” may be considered as implying four types of reforms:

- *market access*: allowing foreign suppliers to sell services;
- *national treatment*: giving foreign services the same treatment under law as domestic services;
- *most favored nation (MFN) principle* : giving services from all foreign countries the same rights granted the most favored trading partner; and
- *domestic regulation*: the impartial and objective administration of all legal measures affecting trade in services.

Each of these reforms can be qualified in the “schedule of commitments” embodying a country’s offer to liberalize. For example, “market access” can refer to offering services from offices located abroad or offering services from offices located in the country in question. Similarly, countries may limit their commitments to most favored nation treatment by insisting on the right to limit access by companies of countries which have not themselves liberalized.

Keeping in mind the specific characteristics of physical delivery networks and the general principles of GATS, one might imagine an agreement liberalizing physical delivery network services could include the following elements:

### 5.1 DEFINITION OF THE SECTOR

As noted above, there is no generally accepted definition that satisfactorily describes the concept of physical delivery networks. Regardless of whether one considers physical delivery networks to be a “sector” or a “subsector” of a larger sector such as “transport,” a definition of physical delivery networks should take into account such characteristics as:

- Physical delivery networks provide the general public with regular (usually every business day) and reliable collection, transport, and delivery of physical objects across a network of geographic points;
- Physical delivery networks have management systems that monitor and ensure end-to-end quality of service.
- Physical delivery networks include the operation of such offices, buildings, telecommunications facilities, computers, sorting equipment, automobiles, trucks, aircraft, and other vehicles, as may be necessary to accomplish their basic function.
- Physical delivery networks generally rely on hub-and-spoke transport systems rather than end-to-end transport systems

Further subdivisions, if needed, could reflect the development of operationally distinct physical delivery networks. They might include: ordinary service for letters

and “flats” (larger-than-letter-size envelopes), ordinary service for parcels, ordinary service for larger items, and express service for all items, where “ordinary service” refers to a lower level of speed and reliability than “express service.” In addition, as in the telecommunications sector, distinctions could be drawn based on the local, long distance, or international nature of operations. A fourth geographical distinction might be drawn for “transit services,” i.e., the provision of services in country **B** in connection with the operation of services between country **A** to country **C**.

## 5.2 MARKET ACCESS

Article XVI of GATS states that a member may not maintain or adopt (unless otherwise specified in its schedule of commitments) various limitations on market access including “limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test”. Schedules of commitments regarding market access distinguish between four modes of access: the ability of non-resident persons to supply services in a country, the ability of residents to consume services supplied in foreign countries, the ability of a foreign supplier to establish a commercial presence in a country, and the ability of a foreign supplier to provide a commercial presence with foreign personnel. In the case of physical delivery networks, a foreign supplier must necessarily have a “commercial presence” of some sort, i.e., a collection, delivery, and transport operation. The main question is whether a foreign supplier can establish its own operation or must work with local companies as agents. Moreover, while physical delivery networks necessarily employ large numbers of residents who are familiar with local geography, the ability to relocate managerial personnel from country to country is highly desirable.

The most obvious implication of the principle of market access for physical delivery networks is the need to adjust national postal monopoly laws. GATS is not limited to cross-border services, so market access commitments could include commitments to open all domestic and international postal services to foreign post offices and private express services. Given the long history of national postal monopolies, however, some countries may decide to reserve access to local and long distance domestic markets.

Full access to international service markets appears to be the minimum commitment worthy of negotiation. An economic benefit, and potential political problem, of international liberalization will be that it will place a floor on the inefficiencies and economic distortions which a domestic postal monopolist can sustain. Production of many types of shipments—especially printed and computer generated documents—can be shifted out of a country. For example, if international market access is liberalized, a bank in Country **A** could send the data for statements of account to a foreign printing site, produce the statements abroad, and have them delivered to addressees in Country **A** by means of a physical delivery network. While it would be difficult for an international physical delivery network to compete in this manner with an efficient domestic post office, it would be possible to compete with an inefficient one. For this reason, those who benefit from inefficiencies and

distortions in the domestic postal market may oppose liberalization of international physical delivery network services.<sup>15</sup>

Logically, the sector definition suggested above also implies a need for countries to modify legal restrictions on the transport of cargo ancillary to the operation of physical delivery networks.<sup>16</sup> For large physical delivery networks, operation of all-cargo aircraft is as necessary as operation of motor vehicles. It makes as little sense to assure market access for foreign physical delivery networks without the right to operate aircraft as it does to assure market access for foreign telephone companies stripped of the right to lay wires and emit electromagnetic signals. Liberalization of physical delivery network services should thus include the right to operate all-cargo aircraft in support of such networks. Likewise, physical delivery networks make use of cargo services of common carriers, and ideally the use of such cargo services should be permitted without regard to restrictions found in current aviation bilateral agreements.<sup>17</sup>

If air traffic rights are to be included in the application of GATS to physical delivery networks, such a provision must be carefully drawn to avoid disturbing other vested economic rights. Most air cargo is today transported by means of traditional air freight services, either as cargo in the holds of commercial airliners or in all-cargo aircraft operated by air freight forwarders. Realistically, a proposal for a GATS commitment to liberalize all types of air cargo services may be overcome by opposition from interests that benefit from the current system of air traffic rights. Therefore, a GATS initiative to liberalize global physical delivery networks should likely not go beyond those air traffic rights actually needed to operate physical delivery networks.

The solution to this drafting problem is not readily apparent, but provisions in a recent bilateral aviation agreement between France and the United States may offer

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<sup>15</sup>Theoretically, the domestic operations of even an efficient post office could be threatened by competition from international services if (i) there exist discrete geographic markets where actual costs are substantially below domestic postage rates because (ii) public service costs comprise a substantial fraction of domestic postage rates and (iii) the national post office is legally prohibited from adjusting domestic postage rates to actual costs because of, say, a uniform tariff requirement. Even so, international services could not serve as a viable alternative to domestic services unless (iv) the difference between actual costs and domestic postage exceed the value of the economies of scale enjoyed by the domestic post office (presumably large relative compared to the economies of scale of an international service). Since there is little or no evidence that conditions (i), (ii), or (iv) can be satisfied in fact, it appears that, as practical matter, international services pose little commercial threat to an efficient domestic post office. See James I. Campbell Jr., "Estimating the Effect of Cross-Border Liberalisation on Universal Postal Service" (unpub., 1993) (WIK seminar); J. Dodgson and S. Trotter, *Study on the Impact of Liberalization of Inward Cross-Border Mail on the Provision of the Universal Postal Service and the Options for Progressive Liberalization* (Brussels: European Union, Oct. 1994).

<sup>16</sup>Air traffic rights are not currently subject to GATS although this exemption is subject to review by the WTO every five years. See the discussion of the MFN principle, below.

<sup>17</sup>For example, a U.S. air carrier flying from New York to London to Paris might be permitted to carry the cargo of a physical delivery network from London to Paris even though it does not have "fifth freedom" rights for general cargo.

clues. With some exceptions, that agreement limits all-cargo services from the United States to France and beyond to cargo that passes through certain intermediate hubs. The effect of this restriction was to distinguish between physical delivery networks and regular air cargo services. Because physical delivery networks rarely have enough point-to-point traffic to justify direct transport operations, physical delivery networks convey the majority of their cargo via hub and spoke systems. This tendency to make use of hub and spoke systems characterizes both dedicated transport systems (all-cargo aircraft or truck fleets) and transport services purchased from common carriers. Moreover, at either end of long distance transport routes, physical delivery networks are further characterized by a high degree of sorting and handling and perhaps additional hub and spoke arrangements. Thus, it might be possible to use the “degree of hubbing”—or, in other words, the relative level of collection, sorting, and delivery compared to actual transport—to distinguish physical delivery networks from transport services generally.

In addition to traffic rights, market access for physical delivery networks may imply a need for commitments to refrain from economically-based restrictions on the operation of motor vehicles and discriminatory access to key facilities such as airports and customs facilities. Commercially discriminatory limitations on the ability to load or unload aircraft, to operate aircraft at selected hours of the day or night, to operate vehicles of specific size on public roads, or to tender items to customs services at certain hours or in accordance with specific procedures all effectively regulate market access of physical delivery networks.

### 5.3 NATIONAL TREATMENT

According to Article XVII of GATS “each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers”.

National treatment may be the least controversial of the GATS principles as far as postal and express services are concerned. Application to physical delivery networks would, however, still require significant changes in the practices of countries which seek to reserve certain services to national post offices or local freight forwarders.

Moreover, it should be noted that the principle of national treatment implies a basic change in the economic arrangements which now govern the exchange of mail between countries. Under the “terminal dues” provisions of Universal Postal Union and regional postal agreements, national post offices apply substantially different charges for the delivery of domestic mail and cross-border mail. Economic distortions produced by this system are now generally recognized. Nonetheless, some of the largest and most efficient post offices have continued to support the terminal dues mechanism because its intricacies hide the fact that they are being subsidized by foreign mailers. Other major post offices support terminal dues arrangements because the resulting distortions serve as an excuse to restrict “re-mail” competition from other post offices and private carriers. Within the Universal Postal

Union, officials are beginning to recognize the inconsistency between these terminal dues provisions and GATS.<sup>18</sup>

#### 5.4 MOST FAVORED NATIONS PRINCIPLE

Article II of GATS states that “each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country”. The “most favored nation” (MFN) principle is intended to benefit even those WTO members who do not offer liberalization of their own markets in a given sector. That is, once a country pledges to liberalize access for foreign physical delivery networks, it cannot prohibit entry by operators from a country that itself refuses to allow access for other physical delivery networks.

In many of the laws regulating physical delivery networks, application of the MFN principle seems unlikely to cause difficulties. National postal and customs laws generally apply to other nations equally, so it should not be objectionable to apply liberalizations equally. The MFN principle does, however, imply modification of the “terminal dues” of international postal arrangements noted above. Not only do current terminal dues agreements discriminate between domestic and foreign mail, they also discriminate between the mail of different countries. Post offices levy different charges for the delivery of identical mail depending on its origin. The rationale for this practice is, in part, to allow discounts for the delivery of mail from developing countries. In light of the MFN principle, it would seem that aid to the post offices of developing countries would have to be provided through a separate mechanism, reform already being advocated by some postal officials.

The most troublesome implication of the MFN principle to physical delivery networks arises in the case of air traffic rights for all-cargo aircraft and cargo carried on other aircraft. As noted above, international air transportation is governed by a series of bilateral aviation agreements which are per se inconsistent with the MFN principle. Most nations have, so far at least, strongly resisted proposals to apply the MFN principle to international air transport.<sup>19</sup> For this reason, GATS currently excludes air traffic rights from its purview. This exemption is subject to review by the WTO every five years “with a view to considering the possible further application of [GATS] to this sector.”<sup>20</sup>

One possible approach to reconciling the MFN principle and the existing

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<sup>18</sup>Proposals to abolish the terminal dues system have been tabled in advance of the UPU’s general congress in 1999, but adoption appears unlikely. As a halfway measure, Germany has proposed that the UPU accept the principle that post offices levy the same charges for the delivery of all *bulk* mail whether tended by a foreign post office, a foreign private express company, or a domestic mailer. Even the limited German proposal, however, is opposed by many.

<sup>19</sup>For an extensive discussion of the difficulties of extending the MFN principle to air transport services generally, see R.I.R. Abeyratne, “Would Competition in Commercial Aviation Ever Fit into the World Trade Organization?” 61 J. Air. L. & Com. 793 (1996).

<sup>20</sup>GATS, Annex on Air Transport Services, paragraph 5.

bilateral legal framework is shown in the WTO telecommunications agreement. In that case, some members took exceptions to application of the MFN principle because the MFN principle precludes the use of market access as a bargaining chip to encourage future liberalization in restrictive countries. The United States, for example, reserved the right to deny MFN treatment in respect to satellite services if another country failed to allow U.S. companies to provide such services to its territory. In the case of air traffic rights as well, many countries argue that bargaining in the context of reciprocal rights is the only practical way to bring about liberalization. Based on the telecommunications experience, it seems possible that member countries may require the WTO to make a similar accommodation in the MFN principle for air traffic rights associated with physical delivery networks as the price of bringing all key aspects of the industry within the GATS framework.<sup>21</sup>

### 5.5 DOMESTIC REGULATION

In sectors in which specific commitments of liberalization have been made, Article VI of GATS enjoins members to “ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner”. This article goes on to require impartial tribunals and prohibit licensing criteria that are not based on “objective and transparent criteria”.

In the WTO telecommunications agreement, fifty-five countries agreed to an extension of Article VI by pledging adherence to a specific set of regulatory principles embodied in a “Reference Paper”. The Reference Paper prohibits dominant suppliers from using monopoly revenues to cross-subsidize competitive services and requires suppliers to permit non-discriminatory interconnection with other service providers. Regulators are required to be “separate from, and not accountable to, any supplier of basic telecommunications services” and “the decisions of and the procedures used by regulators shall be impartial with respect to all market participants.”

In regard to provision of physical delivery networks, it seems apparent that a reference paper on regulatory principles will be needed. Public post offices have a record of using legal privileges for competitive gain. Legal monopolies granted to promote universal letter delivery have become a revenue source for underwriting the cost of the establishing, or purchasing, competitive services. Special customs procedures for postal shipments have become a selling point for postal express services that compete with private international express services. Exemptions from taxes and licenses are claimed for competitive as well as monopoly services.

Indeed, the idea of a reference paper might be extended to cover national

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<sup>21</sup>Technically, under Article II of GATS, MFN exemptions must be listed at the time to joining the WTO or granted by special decision of the Ministerial Council. MFN exemptions were possible in the telecommunications agreement because it was negotiated as part of the original negotiations establishing the WTO. Extension of this right of exemption would therefore have been included as part of the process of extending GATS to cover air traffic rights associated with physical delivery networks.

positions at international fora. For example, through the Universal Postal Union, post offices have conferred upon themselves authority to enforce a market allocation agreement that reserves to each national post the right to provide forwarding services for international mail produced by companies “resident” in its territory, regardless of where the mail is physically produced. Although condemned as anti-competitive in the European Commission’s Postal Green Paper of 1992, this provision survives to this day. Similarly, a provision of the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) provides special customs procedures for postal shipments as distinct from identical private shipments.<sup>22</sup> In light of such provisions, subscribers to a reference paper on physical delivery networks might pledge to support its principles in the shaping of international as well as national measures.

#### 5.6 CUSTOMS SIMPLIFICATION

Under Article XVIII of GATS, “Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII”. Customs simplification offers a good candidate for such additional commitments. Customs laws probably comprise the single most significant impediment to the exchange of low value items via international physical delivery networks.

The destructive effects of customs duties fall especially heavily on international physical delivery networks because the nature of such services makes them particularly suitable for the transportation of individual items of relatively low value. Customs duties are generally antagonistic to the trade promotion philosophy of GATS. They reinforce national borders by taxing imports of goods to make them less competitive with domestic goods. An additional inhibition posed by customs formalities is the cost of compliance. For a shipload of goods, the administrative cost per item implied by customs regulations may be small. For an international physical delivery network transporting thousands of different items, each from a different shipper to a different addressee, the cost per item of classifying and clearing goods on a shipment-by-shipment basis, added to the duty itself, is often a significant fraction of the total cost of the service. As a result, physical delivery networks are relatively discouraged compared to bulk freight transport services.

A wholly new approach to customs treatment is needed for the customs treatment of shipments transported by physical delivery networks.<sup>23</sup> For the

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<sup>22</sup>Customs treatment of public operators is derived from practices developed for the clearance of letters and printed papers. When applied to parcels, customs procedures for public operators are slow, burdensome for customs authorities, and enforced unevenly. Customs treatment of private operators is derived from the laws relating to customs clearance of freight. Although customs authorities have introduced simplifications based mainly upon electronic processing of data, customs procedures for private operators remain far too expensive and complicated, especially when applied to documents and low value parcels.

<sup>23</sup>Compare President Clinton’s call for elimination of duties of items transmitted via telecommunications services: “Today, there are no customs duties on telephone calls, fax messages,

clearance of letters, documents, printed papers, and low value items, customs duties and formalities should be eliminated entirely. The cost of transportation per se is a significant amount compared to the value of such items and should be deemed adequate protection for domestic markets. For clearance of shipments of somewhat higher value, the administrative costs of customs compliance should be reduced. Customs duties could be stated in terms of one or more average rates, eliminating the need for classification. Except for special categories of goods, customs entry can probably be abolished in favor of minimal record keeping obligations on the part of physical delivery networks. Payment of duty (and sales taxes like VAT) can be made the responsibility of the shipper, an approach equivalent to the red door / green door system for baggage. Periodic checks of records would prevent substantial abuse.<sup>24</sup>

## 6. SUMMARY AND CONCLUSIONS

In the last few decades, improvements in technology have lessened the significance of distance and catalyzed liberalization of domestic economies. The 1994 General Agreement on Trade in Services indicates a recognition by governments that economic benefits may be reaped by extending liberalization to services on a global basis. As the Director General of the WTO has observed, the salutary effects of liberalization will be greatest if liberalization can be focused on the infrastructure services that facilitate the production of other goods and services. To this end, he has identified three sectors where liberalization is most important: telecommunications, finance, and transport. While claiming success in the first two, he has regretted the lack of progress in the third.

In this paper, I suggest that telecommunications/transport dichotomy overlooks the fact that there is a fourth infrastructure sector (or subsector)—physical delivery network services—that is distinct from either telecommunications services or normal transport services while kin to both. I also suggest that impediments to liberalization of the transport sector may not restrain application of GATS to the physical delivery networks. The political signs seem to indicate the possibility of movement towards application of GATS to the physical delivery networks in the WTO services round to begin in 2000, but so far, this is only a possibility. Little attention has been given to the clear definition of the sector or the potential elements of a GATS agreement. In this paper, I have tried to suggest tentative approaches to both topics.

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e-mail or computer data links when they cross borders. We have spent 50 years tearing down barriers to trade in goods and services. Let us agree that when it comes to electronic commerce, we will not erect these barriers in the first place.” “Remarks by the President at the Commemoration of the 50th Anniversary of the World Trade Organization” (Geneva, May 18, 1998). In May 1998, the WTO did agree not to introduce import duties on software and information delivered across the internet.

<sup>24</sup>As provided in Articles XIV and XIV bis of GATS, simplification of customs cannot affect regulatory controls designed to protect public morals, public health, privacy, safety, or national security.

# 4

## Reforming the Universal Postal Union (2001)\*

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.<sup>1</sup>

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

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<sup>1</sup>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.”

## 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.<sup>2</sup>*

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,<sup>3</sup> the economic 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

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

<sup>3</sup>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 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.

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.<sup>4</sup> 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 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

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<sup>4</sup>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.

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 Council<sup>5</sup> “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.”<sup>6</sup> 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.”<sup>7</sup> 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”

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<sup>5</sup>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.

<sup>6</sup>Washington Congress (1989), Resolution C8/1989.

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

drawn from the United States, Australia, Finland, France, United Kingdom, and New Zealand. The Group's 80-page report,<sup>8</sup> 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 of European postal operators confirmed their support for "a distinction between regulatory and operational functions within the UPU."<sup>9</sup>

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.<sup>10</sup> 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."<sup>11</sup>

## 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.<sup>12</sup> 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

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<sup>8</sup>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.

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

<sup>10</sup>UPU, "Universal Postal Union: Future Organisation and Funding," CE 1993 C3 Doc 2b.

<sup>11</sup>UPU, CE 1993 Doc 7, paragraph 5.

<sup>12</sup>UPU, Seoul Congress (1994), Doc 70.

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.”<sup>13</sup>

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.<sup>14</sup> Three studies were launched to address key facets of the future of the UPU: (i) a study on the legal, regulatory, 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.*”<sup>15</sup>

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

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

<sup>14</sup>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.

<sup>15</sup>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.

terminal dues system.<sup>16</sup> In sum, these restrictions are akin to a market 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, adaptation of the regulatory framework for cross-border letter-post items seems to be indispensable.*<sup>17</sup>

The Council of Administration answered the pared down German proposal by cancelling 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.<sup>18</sup>

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 amend the rules of the UPU

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<sup>16</sup>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 “remail.” “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 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.

<sup>17</sup>UPU, CA 1997 C1 Doc 2, Paragraph 6 (emphasis added).

<sup>18</sup>UPU, CA 1997 Doc 11a.

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.<sup>19</sup> In early 1998, the Dutch ministry returned with a more limited observer rule,<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

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

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*

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<sup>19</sup>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.

<sup>20</sup>UPU, CA GT 1.1 1998.1 Doc 5.

<sup>21</sup>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.

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

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

*the UPU towards the various players in the sector.*"<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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 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.<sup>29</sup> These insights, however, had no discernible role in shaping the acts of the Beijing Congress.

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

<sup>25</sup>UPU, CA 1997 Doc 11a.

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

<sup>27</sup>UPU, "Review of the Organization of the UPU." CA GT 1.1 1998.2 Doc 3.

<sup>28</sup>See the discussion of the principle of universal service in section 3, below.

<sup>29</sup>UPU, CA 1997 Doc 8.

### 2.3 BEIJING CONGRESS (1999)

At the Beijing Congress, in September 1999, the United States<sup>30</sup> 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.<sup>31</sup> 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.”<sup>32</sup> 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 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

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<sup>30</sup>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.

<sup>31</sup>UPU, Beijing Congress (1999), Proposal 033.

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

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.<sup>33</sup> 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

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

global “postal” convention might entail.

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

3.2 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.<sup>34</sup>

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

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<sup>34</sup>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.

injury due to migration of reserved domestic mail into international markets.<sup>35</sup> 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.<sup>36</sup>

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.

### 3.3 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

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<sup>35</sup>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.

<sup>36</sup>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. The remedy suggested is not related to the surcharging or interception of remail permitted in the current convention. See footnote 16, above.

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 services,<sup>37</sup> 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.<sup>38</sup>

#### 3.4 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

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<sup>37</sup>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.

<sup>38</sup>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).

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 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.<sup>39</sup> If a signatory country can, by national law, favor one or more international operators with access to non-competitive domestic delivery services,

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<sup>39</sup>“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 domestic mail that is predominately destined for urban areas where delivery costs are lower than in rural areas.

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.<sup>40</sup>

### 3.5 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.<sup>41</sup>

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 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

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<sup>40</sup>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.

<sup>41</sup>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.

would also be implied for customs, tax, and other laws.

3.6 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.<sup>42</sup>

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<sup>42</sup>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

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.

### 3.7 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 an impartial and objective governmental conclusion that international delivery services are especially important for economic development. This was indeed the implicit judgement 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.

### 3.8 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

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of domestic postal monopolies. A more plausible relationship between international operators and domestic postal monopolies is discussed in point (2), above.

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,<sup>43</sup> 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 limiting national postal monopoly laws to domestic postal services.

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,

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<sup>43</sup>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).

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 a 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.<sup>44</sup>

#### 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 are many more countries 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

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<sup>44</sup>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.

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."<sup>45</sup>

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

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<sup>45</sup>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 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 adaption by the UPU.

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 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.”<sup>46</sup> 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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<sup>46</sup>UPU, Constitution, Preamble.

# 5

## Evolution of Terminal Dues and Remail Provisions (2002)\*

National post offices do not charge foreigners the same as their own citizens for delivery of mail. From this simple asymmetry there has grown a tangle of international postal regulations, legal and economic analyses, and lawsuits of incredible cost and complexity.

This article describes the evolution of the two principal features of international postal law resulting from this asymmetrical condition: *terminal dues* and *remail* restrictions. *Terminal dues* are what post offices charge each other for the delivery of inbound international mail. *Remail* is the practice of producing mail in one country and posting it in another. Where terminal dues are not aligned with domestic postage rates, remail poses a threat to post offices. Using remail, mailers can take advantage of terminal dues rates set below domestic postage rates (e.g., by taking domestic mail out of a country and posting it back in as international mail) and avoid international postage rates set too high in relation to domestic postage rates in the destination country (e.g., by exporting mail to the destination country and posting it there as domestic mail). More commonly, mailers have patronized post offices who are willing to forward international mail to third countries at low terminal dues rates undercutting traditionally high international postage rates. To prevent such “abuses”, international postal treaties—written by postal officials—have authorized post offices to intercept and return or otherwise penalize remail.<sup>1</sup> Since the late 1980s, European competition authorities and the commercial pressure of private international express companies have slowly pushed international postal agreements in the direction of aligning terminal dues more closely with domestic postage rates and relaxing restrictions on remail, but progress has been slow.

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<sup>1</sup>For an economic analysis of remail and terminal dues see U.Stumpf, “Remailing in the European Community: Economic Analysis of Alternative Regulatory Environments”.

### 1. TERMINAL DUES THROUGH UPU HAMBURG CONGRESS, 1984

Postal service may be thought of as the product of three operations: collection and “outward” sorting of mail, transport of mail in bulk from the region of collection to the region of delivery, and “inward” sorting and delivery of mail to addressees. The public postal operator performs outward and inward operations using its own personnel and facilities; transportation of bulk mail is typically purchased from a common carrier, such as an airline, railroad, or trucking company. In this process, the costs of outward and inward operations are quite different. Outward operations account for about 20 to 30 percent of total postal costs and do not exhibit marked economies of scale; that is, if it costs  $X$  to collect and dispatch a certain amount of mail, then it costs about twice  $X$  to collect and dispatch twice as much mail. Inward operations account for about 70 to 80 of costs and exhibit strong economies of scale; that is, if it costs  $X$  to sort and deliver a certain amount of mail, then it costs about 1.6 times  $X$  to sort and deliver twice as much mail. Put simply, if a stamp on a letter were priced at 1.00 EURO, about 0.20 EURO could be attributed to the cost of collecting the letter and about 0.80 EURO to the cost of delivering the letter. Despite the fact that the cost of delivery is much more important than the cost of collection in determining the cost of postal service from end to end, international postal arrangements traditionally ignored the cost of delivery.

Since 1874, the primary legal framework for international postal services has been the Universal Postal Convention, an international treaty joined by virtually all nations in the world. The Convention is administered by the Universal Postal Union, a permanent intergovernmental organization established by a second treaty, the Constitution of the UPU, and headquartered in Berne, Switzerland. Every five years, plenipotentiaries from UPU member countries gather in a “Congress” in a major world city to revise the Convention and other “acts” of the UPU. The most recent congress was the Beijing Congress convened in 1999.<sup>2</sup>

Under terms of the various Conventions in force prior to 1969, a destination post office delivered international mail without compensation from the origin post office. Post offices generally set postage rates for outward mail high enough to cover the cost of delivering inward mail as well as the cost of collecting and dispatching the outward mail. International postage rates thus bore no relation to the cost of delivery by foreign post offices. The cost of foreign postal delivery might be

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<sup>2</sup>Originally, the Convention both established the UPU as an organization and set the rules for the exchange of mail. The Constitution was adopted as separate treaty in 1964. Although now out of date, the best book on the history of the UPU is G. Codding, *The Universal Postal Union* (1964). For discussion of reform of various aspects of the UPU and international postal laws, including terminal dues and remail restrictions, see generally U. Stumpf and M. Plum, eds., *Towards a New Regulatory Framework for Cross-border Mail* (1998). See also, J.I. Campbell Jr. “GATS and Physical Delivery Networks” (1999) and “Reforming the Universal Postal Union” (2001); M.S. Elcano and A. Alverno. “Reform in the Universal Postal Union and the World Trade Organization” (2001); H. Smit, “GATS and the Postal Sector: The Next Round of Negotiations” (2001); T. Walsh, “Globalization, Posts, and the Universal Postal Union: A Functional Critique” (2000)

substantially higher or lower than the cost of inward delivery by the origin post office. Indeed, an origin post office might find itself with more (or less) inward mail than outward mail, so that outward mailers would, in effect, be forced to pay for delivery of more (or less) mail than they posted.

In short, in the global exchange of mail, postal delivery services were bartered. A barter system does not favor all post offices equally. Post offices which exported more mail than they imported did better than those which were net importers. Large industrialized countries were usually net exporters of mail, especially of printed matter (newspapers, catalogs, magazines, books, technical manuals, etc.). Developing countries and certain industrialized countries, such as Canada and Ireland, were large net importers. Low cost post offices did better than high cost post offices because a barter system allowed them to trade cheap services for expensive services. The economic unfairness of this system did not wholly escape the attention of postal officials. In the 1906 Rome Congress, the Italian post office noted that in the previous year it had delivered 325,000 items of printed matter received from other post offices while sending out none in return. The Italian post office's plea for some form of monetary compensation was denied.<sup>3</sup>

Not until the 1969 Tokyo Congress did the UPU finally establish a *terminal dues* charge to compensate destination post offices for the cost of delivering inward international mail not balanced by outward mail. The initial terminal dues rate was 0.50 gold francs (about SDR 0.16)<sup>4</sup> for each kilogram by which the weight of the international mail sent from post office A to post office B exceeded the weight of international mail sent from B to A. The terminal dues charge was set at the same level for all post offices worldwide; it was unrelated to the actual costs incurred by a specific destination post offices even though these costs vary many fold.

Terminal dues gradually shifted the economic advantages of the system more in favor of net importers, especially those with low costs. Postal officials, particularly but not exclusively from developing countries, came to view terminal dues as an appropriate developmental subsidy from industrialized countries and supported compensation rates well above actual inward delivery costs.<sup>5</sup> Terminal dues discussions at the UPU became freighted with considerations of international

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<sup>3</sup>1979 Rio de Janeiro Congress, Doc 7 Annex 1, pars. 1-3.

<sup>4</sup>The gold franc of the UPU was derived the exchange rate between the French franc and gold found in a 1803 French law; one gold franc was equal to 10/31 of a gram of gold with a fineness (purity) of 90 percent, or 0.29032258 grams of pure gold. In the Rio de Janeiro Congress of 1979, the UPU resolved that thereafter postal administrations should settle accounts based on an exchange rate of 3.061 gold francs to 1 Special Drawing Right (SDR) of the International Monetary Fund. 1979 Congress, Resolution C 29. Although the 1979 Convention and the 1984 Convention continue to refer to gold francs, after 1979 the UPU effectively adopted the SDR as its accounting unit. The 1989 Washington Congress finally eliminated reference to gold francs. *See* 1979 Const. § 7, 1979 Conv. § 8; 1979 Det. Reg. § 103 and annotations. In this article, except as just noted, all terminal dues rates are expressed in SDR whether or not so stated. On UPU documents generally, see the note under References at end of this article.

<sup>5</sup>See Treworgy and Waddell, "Postal Service and Less Developed Countries" (1991).

politics. In the 1974 Lausanne Congress, the terminal dues rate was tripled to 1.5 gold francs per kilogram (SDR 0.49/kg). In 1979 Rio de Janeiro Congress, the terminal dues rate was more than tripled to 5.5 gf/kg (SDR 1.80/kg). At the 1984 Hamburg Congress, postal officials from industrialized countries made a concerted effort to hold down the increase in terminal dues charges. The 1984 Convention adopted a new rate of SDR 2.641/kg, a mere 81 percent increase over the 1979 rate.

The uniform weight-based UPU terminal dues system in place from the first day of 1971 to the last day of 1990—the period of effectiveness for the Conventions of 1969, 1974, 1979, and 1984—introduced three types of economic distortions into the international commerce in mail. The first and most important economic distortion derived from the *uniformity* of terminal dues rates. If two post offices with substantially different unit costs exchange equal amounts of mail and terminal dues rates are uniform, each will owe the other the same amount even though the economic value of delivery services in the two countries may be very different. In other words, a uniform terminal dues rate retained the barter feature of pre-terminal dues days for all international mail except the portion of inward mail not balanced by outward mail (or visa versa in the case of a net exporter). It is as though European taxi companies agreed among themselves that an Englishman should pay London taxi rates for taxi service in Athens and a Greek should pay Athenian taxi rates for a taxi ride in London. The magnitude of distortion was proportional to the difference in delivery costs incurred by the two post offices. The discrepancy could be substantial. In the European Union, unit costs of postal service vary by a factor of three or more. The net effect of a uniform terminal dues scheme is to aid post offices with low unit costs and penalize those with high unit costs. Within the European Union, a uniform terminal dues regime hurts customers of the expensive German post office and benefits customers of the relatively inexpensive U.K. post office.<sup>6</sup>

A second source of economic distortion materialized if the amount of inward international mail was not balanced by the amount of outward mail in any given bilateral exchange. This distortion was due to misalignment between terminal dues and the actual cost of delivery incurred by the destination post office. Since actual postal costs varied widely among post offices and the level of terminal dues did not, terminal dues payments did not reflect the actual cost of delivery for imbalance mail except by coincidence.

A third source of economic distortion arose because the UPU approach to

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<sup>6</sup>In a balanced exchange, the magnitude of economic distortion does not depend on the terminal dues rate since the nominal liabilities between post offices cancel each other. In 1998 comments to the European Commission on the REIMS II terminal dues agreement, discussed below, the European Express Organisation developed an economic model that suggested the net effect of the CEPT terminal dues scheme, a uniform terminal dues scheme discussed below, was to create a substantial subsidy from German mailers to British mailers; Dutch, Spanish, and Greek mailers also gained to a lesser extent. The EEO analysis was based on many assumptions and illustrative only, but it demonstrated how a quantitative analysis could be undertaken given data on bilateral mail flows. Since such data have never been disclosed, there has never been a public accounting of the economic effects of uniform terminal dues systems in Europe.

terminal dues failed to recognize that the structure of postal delivery costs. For example, although it cost much more to deliver fifty 20-gram letters than five 200-gram magazines, a terminal dues charge based solely on the weight of mail provided equal compensation for the destination post office. Nor did terminal dues reflect differences in the cost of delivery based on the size of postal items, priority of service, and other cost causative factors.

## 2. REMAIL RESTRICTIONS THROUGH UPU HAMBURG CONGRESS, 1984

In ordinary commercial usage, “re-mail” refers to international mail that is posted in a country other than the country where the mail is produced. Remail developed because the international postal system failed to keep pace with changes in business practices brought about by improvements in technology. Historically, post offices offered only two international mail services: an expensive airmail service and an inexpensive but slow surface mail service. Post offices gave low priority to collection and dispatch of outward international mail and to distribution and delivery of inward international mail. International service was further slowed by the difficulty of coordinating activities of two or more post offices, each of whose primary focus was domestic mail delivery. Meanwhile, large international mailings increased due to expansion of international commerce and advances in computers. Improved telecommunications also made it easier to centralize production of international invoices, statements of account, personalized direct mail, and similar types of mass mail.

As early as the 1930s, European publishers circumvented limitations of the international postal system by using air freight to transport bulk shipments of publications to the United States where they were posted as domestic U.S. mail. In the late 1950s, McGraw-Hill and KLM Royal Dutch Airlines began experimenting with remail of U.S. publications bound for European addressees. The rise of the international express industry facilitated remail of more time-sensitive letter mail. In the 1980s, the Belgian post office pioneered international remail of letters.

The advantages of remail were described by a 1987 UPU report in the following terms:

The remail firms' flexibility in obtaining favourable air transportation rates is another major competitive advantage they have over postal administrations . . . Because remail firms arrange to pay very low postage rates to the postal administrations providing remail services, the rates they offer to the large business mailer are often more than fifty percent below the rate the mailer would normally have to pay to post the items locally . . . Postal administrations must take note that the remail firms often offer service that is faster and more convenient than that offered by the mailer's national postal service. Speed of delivery, especially for LC items [letters and cards], is very important to large mailers. Because of the time it takes to process and dispatch letters in the international mails and because they are very often given lower priority in processing and delivery by the destination administration in comparison to domestic mail, the remail firms which often transport the mail to a destination on the evening of the day of posting can achieve a better delivery standard.

The remail firms often provide collection service at the mailer's place of business at no extra charge. They may also place stamps or postage meter impressions on the items. The added services save time and work for the mailer and make the remail service more attractive. Some remail firms offer mailers additional services such as enveloping and addressing of direct mail and updating of subscribers' lists and invoicing of subscribers.<sup>7</sup>

Remail and terminal dues were closely linked, but they were not simply two sides of the same coin. As the UPU report notes, an economically flawed terminal dues system was only one of several factors leading to the rise of remail, albeit an important factor. Remail, moreover, represented only one market reaction to poor international postal service and uneconomic international postage rates. Instead of using remail, large mailers could and did shift production of international mail from countries with high costs and poor international postal service to countries with low costs and good service. Faxes could be employed instead of international letters. Mailers of international advertisements could substitute announcements on television or in magazines for international direct mail. Flaws in the international mail system not only stimulated remail, they also encouraged flight from the international postal system.

Although remail benefitted remail users directly, the most important effect was to stimulate improvements in international postal services. A 1987 UPU survey of 74 post offices catalogued responses to remail by post offices. Of post offices surveyed, 87 percent said that they responded to remail with "improved services"; 82 percent with "new or modified service"; and 80 percent with "lower prices."<sup>8</sup>

Even so, remail has long been an anathema to the UPU.<sup>9</sup> The 1924 Stockholm Congress first authorized post offices to intercept or surcharge remail. The 1924 provision was directed against domestic mail that had been physically taken out of a country and posted back into the same country. The anti-remail provision was embodied in a reservation (rather than an article of the Convention), Article IV of the Final Protocol, which read as follows:

Each country shall be authorized to take all the measures considered necessary to prevent correspondence originating in its territory from being conveyed across the frontier to be posted abroad. It shall have, in particular, the right to charge postage at its internal rates on or to return to origin items which persons

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<sup>7</sup>UPU Executive Council, "Study on remailing", Annex 1 to UPU Circular Letter n ° 3370(B/C)1790 (2 Sep 1987), reprinted as CE 1988/C4 - Doc 9/Annex 1. International mailers supported competitive alternatives for distribution of international mail. As the European Commission noted, with regard to cross-border delivery services, "a number of companies, or associations of such companies . . . emphasized the potential advantages of liberalization in terms of price, choice, and quality of service." *Commission Guidelines for the development of Community postal services*, COM (93) 247 final (1993), p. 8.

<sup>8</sup>CE 1988 C5 Doc 9, par 46 ("Other aspects to be considered in the study on terminal dues") (30 Mar 1988).

<sup>9</sup>The following history of terminal dues provisions from 1924 to 1957 is adapted from CA GT 4.1 1998.2–Doc 3. Annexe 1 (memorandum by International Bureau).

or companies resident in that country post or cause to be posted abroad, in order to benefit from lower charges, for dispatch to persons or companies in that same country. The methods of collecting the charges shall be left to the discretion of that country.

This text was based on a proposal by Switzerland which explained that

if, in one country, the charges are considerably lower than in other countries, there is an advantage to sending to the former country letters and, in particular, printed papers from the latter countries for posting. . . . That country thus unilaterally benefits from the proceeds from the charges at the expense of the other countries. The intolerable situation arising therefrom is a danger to the very existence of the Postal Union. . . . If countries applying the normal charges of the Union could not protect themselves from what one would be tempted to call the ‘dumping’ of another country, the very existence of the Postal Union would be jeopardized.

In the 1929 London Congress, Germany added a provision to suppress not only mail physically exported and reimported by post but also mail which a mailer printed in another country and posted back to addressees in his country “with the sole aim of benefitting from lower charges”. In support of its proposal, Germany noted that

the present wording of Article IV remains virtually ineffective since it is very difficult to establish whether items have been transported across the frontier to be posted in a foreign country. In any event, this question has lost all its importance since the persons concerned have got used to having their items printed, particularly in the case of bulk printed papers, in the foreign country in which they wish to post them. The reservation . . . on behalf of printed papers manufactured abroad therefore results in not only the postal administration of the country where the sender has his registered office losing the amount of the charges to which it should be legally entitled but also the local paper and printing works suffering losses because of orders going abroad. These abuses should be suppressed.

The 1957 Ottawa Congress extended the scope of the reservation to items posted in large quantities abroad regardless of whether postage was saved. The Netherlands objected, noting that printing abroad might be motivated by the fact that the country of manufacture and posting “has a special printing process which does not exist in his (i.e., the sender’s), or the cost of manufacturing printed papers is lower there. These reasons and many others may argue for manufacture and dispatch in a country other than his own”. The Dutch defense of competition in printing services was not considered persuasive.

The 1974 Lausanne Congress transferred the text of the anti-remail reservation to the Convention itself. At this point, Article 20 of the 1974 Convention read as follows:

A member country shall not be bound to forward or deliver to the addressee letter-post items which senders resident in its territory post or cause to be posted in a foreign country with the object of profiting by the lower charges

in force there; the same shall apply to such items posted in large quantities, whether or not such postings are made with a view to benefiting from lower charges. The rule shall be applied without distinction both to correspondence made up in the country where the sender resides and then carried across the frontier and to correspondence made up in a foreign country. The administration concerned may either return the items to origin or charge postage on the items at its internal rates. In the latter case, the items may be disposed of in accordance with the internal legislation of the administration concerned if the sender refuses to pay the postage.

The 1979 Rio de Janeiro Congress extended the anti-remail article to include mail which was not returned by post to the country where the sender resides. The 1974 article was confusingly divided into three paragraphs and a fourth paragraph added. Paragraph 4 was directed to all mail which a sender residing one country posts or causes to be posted in a second country regardless of destination. As amended, Article 23 of the 1979 Convention read:

1. A member country shall not be bound to forward or deliver to the addressee letter-post items which senders resident in its territory post or cause to be posted in a foreign country with the object of profiting by the lower charges in force there. The same shall apply to such items posted in large quantities, whether or not such postings are made with a view to benefiting from lower charges.

2. Paragraph 1 shall be applied without distinction both to correspondence made up in the country where the sender resides and then carried across the frontier and to correspondence made up in a foreign country.

3. The administration concerned may either return its item to origin or charge postage on the items at its internal rates. If the sender refuses to pay the postage, the items may be disposed of in accordance with the internal legislation of the administration concerned.

4. A member country shall not be bound to accept, forward or deliver to the addressees letter-post items which senders post or cause to be posted in large quantities in a country other than the country in which they reside. The administration concerned may send back such items to origin or return them to the senders without repaying the prepaid charge.

New paragraph 4 was adopted after considerable disagreement; the vote was 66 for, 30 against, and 20 abstentions. The proposal was sponsored by Japan, which argued that the addition was needed to combat “private postal services that took the most profitable mail and left postal administrations with only the marginal mail.” Germany supported the proposal arguing that “the Convention did not deal with competition between administrations.” Canada opposed the proposal as interfering with each country’s right to permit or prohibit remail by national legislation. The United Kingdom agreed and noted further that the proposal was full of imprecisions.

The 1984 Hamburg Congress of the UPU retained the 1979 provision without change, again numbering the anti-remail provision as Article 23 in the 1984

Universal Postal Convention.<sup>10</sup>

In analysis of postal policy and remail, it is customary to distinguish different categories of remail based on the relationships between the country where the sender resides, the country where the mail is posted, and the country where the mail is delivered. Thus, “ABA remail” refers to mail produced by a sender residing in country A that is transported across the border outside of postal channels and put into the postal system in country B for forwarding via the international postal system back to country A for delivery to addressees in country A. “ABB remail” refers to the mail produced by a sender residing in country A that is transported across the border outside of postal channels and put into the postal system in country B for delivery to addressees in country B. “ABC remail” refers to mail produced by a sender residing in country A that is transported across the border outside of postal channels and put into the postal system in country B, for forwarding via the international postal system to country C for delivery to addressees in that country.

Table 1. Categories of remail

	Sender resides	Mail produced	Mail posted	Addressees	Physical mail equivalent
ABA	Country A	Country A	Country B	Country A	
ABB	Country A	Country A	Country B	Country B	
ABC	Country A	Country A	Country B	Country C	
Nonphysical ABA	Country A	Country B	Country B	Country A	B to A intern'l mail
Nonphysical ABB	Country A	Country B	Country B	Country B	Domestic mail in B
Nonphysical ABC	Country A	Country B	Country B	Country C	B to C intern'l mail
Nonphysical ABCA	Country A	Country B	Country C	Country A	ABC remail

A second categorization of remail that has become increasingly significant to postal policy since 1988 is the distinction between “physical remail” and “nonphysical remail”. “Physical remail” refers to mail that a sender in country A produces in country A and physically transports to country B for posting. In normal commercial usage, the term “remail” connotes only physical remail. “Nonphysical” remail refers to mail which a sender who “resides” in country A “causes to be posted” in country B in some nonphysical manner. The sender in country A may

<sup>10</sup>Article 23 of the 1984 Convention was readopted without change as Article 25 of the 1989 Convention. It was significantly revised and adopted as Article 25 of the 1994 Convention. It was slightly revised and adopted as Article 43 of the 1999 Convention. Each convention took effect the second year following the year of adoption and remained in effect for five years: thus the 1984 Universal Postal Convention was in effect from 1 January 1986 to 31 December 1990. In this paper, the antiremail article of the Convention is referred to by the number appropriate to the time period under discussion.

send to country B the tangible ingredients of the mail or electronic data from which the mail is prepared. However, to qualify mail as “nonphysical remail”, it is not necessary to show that the sender made any contribution to the content of the mail. Nor is it necessary to establish that the sender residing in country A does not reside in country B; a post office may consider mail to be nonphysical remail if a sender residing in country A “causes mail to be posted” in country B even though *the sender also resides in country B*.<sup>11</sup>

“Nonphysical remail” thus refers to a legal doctrine rather than a distinct commercial service. What is characterized by postal officials as nonphysical remail would, in normal commercial usage, be regarded as an ordinary physical mail service where the sender is thought of as person who physically produces and posts the mail. For example, the term “nonphysical ABA” remail is used to refer to mail that a sender residing in country A produces and posts in country B for delivery to addressees in country A. “Nonphysical ABB remail” is no different from ordinary international mail sent from country B to country A except that postal officials deem the sender, in a legal sense, to reside in country A. Similarly, “nonphysical ABC remail” is equivalent to international mail sent from country B to country C. The term “nonphysical ABB remail” could be (but rarely is) used to refer to domestic mail posted in country B by a mailer that “resides” in country A. In another elaboration, the term “nonphysical ABCA remail” is used to refer to mail that a sender residing in country A produces in country B and posts in country C for delivery to addressees in country A. “Nonphysical ABCA” remail is equivalent to physical ABC remail (with the letters shifted around) except the mailer, according to postal officials, is deemed to reside in country C.<sup>12</sup>

In summary, Article 23 of the 1984 Convention authorized a post office to intercept and return to the sender any *large* mailing which could be fit into one of the foregoing categories of “remail”. If the “sender” is considered to “reside” in the same country as the addressees of the mail, a post office may also intercept *small*

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<sup>11</sup>The classic example of invocation of the nonphysical remail doctrine is the following: In 1994, the German post office informed two large European banks, GZS and Citibank, that it would use Article 25, paragraph 1, to intercept credit card statements sent via the Dutch post office to German addressees. GZS and Citibank prepared credit card statements for European customers in a central facilities in Denmark and the Netherlands, respectively. The German post office demanded that the mail bound for German addresses be posted as domestic mail in Germany. In 1995, when the banks refused to change practices, the German post office sued them in German courts for German domestic postage on all mail sent to Germany. Ultimately the European Court of Justice agreed in part and disagreed in part with this use of the nonphysical remail doctrine. *See* Joined Cases C-147/97 and C-148/97, *Deutsche Post AG v. Gesellschaft für Zahlungssysteme mbH (GZS) and Citicorp Kartenservice GmbH*, [2000] ECR I- (decided 10 February 2000).

<sup>12</sup>No post office applies the nonphysical remail doctrine consistently. To do so would imply interception of virtually all commercial mail since most large commercial mailers can be said to “reside” in more than one country. The nonphysical remail doctrine is used intermittently, as a means of protecting a post office’s revenues and commercial position. Production of a large mailing is expensive, and delay in delivery can dissipate some or all of its value of the mailer so mere threat of interception was enough to keep most large mailers in line.

mailings posted with the object of profiting by lower postage rates. Under Article 23, the sender forfeited international postage paid for delivery of such mail. In addition, if the “sender” is considered to “reside” in the same country as the addressees of the mail, then a post office could charge either the sender or the addressees domestic postage before releasing the mail.

### 3. REMAIL CONFERENCE AND CEPT TERMINAL DUES AGREEMENT, 1987

Traditional UPU rules regarding terminal dues and remail acted like dikes around each national postal administration, allocating to each administration the international mail generated in its territory and restraining development of end-to-end cross-border postal services. International mail was permitted to flow between countries only when exchanged between national postal administrations.

The hole in the dike appeared in 1986. In that year, the U.S. Postal Service, under pressure from Congress and the Reagan Administration, modified postal monopoly regulations and explicitly permitted export of U.S. letters for remailing abroad. In one stroke, the United States liberalized 10 percent of the world’s international mail, roughly 16 percent of international mail exchanged among industrialized countries. Because the U.S. Postal Service, like post offices in most industrialized countries, focused on the needs of domestic mail (more than 99 percent of total mail), remail services from U.S. to Europe were able to provide delivery services that were both cheaper and faster than the U.S. Postal Service’s international mail. U.S. liberalization gave a major commercial impetus to the remailing of international letters.<sup>13</sup>

For imaginative postal officials, remail of publications and letters was the harbinger of a still more ominous prospect than the loss of some international traffic: the evolution of competitive global postal services. There was no tangible difference between a private express company collecting remail in country A for tender to post office B and post office B establishing an office in country A. Remail implied that post offices, like international telecommunications and aviation companies, should be free to open offices in each other’s territories and compete for the *collection* of international traffic. The inevitable next step would be a demand for the right to *deliver* international mail in countries where postal delivery was unsatisfactory. Global postal services would ensue. Once established, global postal systems with the ability to collect and deliver cross-border mail could theoretically compete with national post offices for domestic mail. A large domestic mailer in country A might, for example, export his mail to a neighboring country, or produce his mail there, and give it to a global operator for delivery to addressees in country A. In a country where postal service is overpriced or poor in quality, a global postal system could

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<sup>13</sup>In 1986, U.S. outbound international mail (0.80 billion items) constituted about 10 percent of world international mail (8.36 billion). In the U.S. international outbound mail was only 0.54 percent of total mail (147 billion); in industrialized countries generally, international mail was 2.00 percent of total mail (251 billion postal items). See 1989 Washington Congress, Doc 20 (“Five Yearly Report on the Development of Postal Services, 1982-1986”); U.S. Postal Service *Annual Report 1986*

“cream-skim” the domestic market much like a local private express company. The ultimate threat of remail—and the economic promise of remail—was the possibility that it could lead to efficient global postal services that would not only improve cross-border postal service but also offer a competitive alternative to inefficient national postal services.

The prospect of European post offices competing for large quantities of international remail from the United States shocked postal officials into concerted action. On 12 March 1987, the U.K. post office wrote to the post offices of Belgium, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, and Switzerland and requested a meeting to discuss the increase in remail competition. The letter declared:

Remailing poses a serious threat to the future relationships of postal administrations. Airmail letter traffic, the traditional preserve of postal administrations, is now being strongly attacked by large, multinational companies. . . . [I]t is vital to consider whether there is a common policy we can adopt to counter the activity of these companies.

The first meeting of the Remail Conference, as the group called itself, convened in a hotel at Heathrow Airport on 22 April 1987.<sup>14</sup> The U.S. Postal Service sent two representatives bringing active membership in the Remail Conference to fifteen. Sir Ronald Dearing, chairman of the U.K. Post office, opened the discussions by noting:

We are all aware that remail has existed to a degree in the last decade or so—the traffic segment predominantly involved has been printed papers. Until recently, the traffic volumes and revenue dilution involved have not been sufficiently great to cause the level of concern that has brought us there today. In the last two years the situation has changed dramatically. Remailing firms are now seeking systematically to exploit the availability of cheaper rates in some countries, and the limitations of the present systems of imbalance charges, and they will take whatever profitable traffic they can acquire, be it printed papers or much more significantly, airmail.

They have efficient transportation networks, originally established for parcel and bulk consignment distribution, and they are now using their network strength to very good effect in establishing posting facilities throughout the world.

With the concern being expressed by several administrations we have convened this meeting today to discuss how we should respond to the challenge presented by remail in Europe. Our North American colleagues are here with us as observers as they have a particular interest in this problem; North America offers the remailer a vast market and, as you know, it is currently one of the principal sources of such traffic for European destinations.<sup>15</sup>

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<sup>14</sup>All invited post offices attended except the post offices of Denmark and Ireland; both, however, attended subsequent meetings of the Remail Conference.

<sup>15</sup>Remail Conference, Draft minutes of the 22 April 1987 meeting (28 April 1987).

Working documents at the conference fleshed out postal concerns. One expressed dismay that private operators had not “limited themselves” to express services but were beginning to provide alternatives to international postal services which were admittedly “have not been able to keep up a satisfactory standard of service”. Another listed the key issues as non-economic terminal dues, non-economic air transportation rates, uncertainty of enforceability of UPU Article 23, and lack of agreement amongst postal administrations. Still another outlined possible approaches to terminal dues reform, including the competitively neutral option of relating terminal dues to domestic postage rates, an option never again raised. The Remail Conference appointed a working party which, after further study, declared it was “convinced that remail constitutes a serious threat to postal business and that a vigorous response is urgently needed. It has for that purpose worked out a three-part strategy: a new system of terminal dues, a set of aligned practices, and a new business letter service.”<sup>16</sup>

In October 1987, the Remail Conference working party agreed to replace the 1984 UPU terminal dues scheme<sup>17</sup> with a new approach towards terminal dues, one that took into account the number of pieces of mail as well as total weight. The new terminal dues rate was expressed as a formula,  $1.225/\text{kg} + 0.121/\text{item}$ , which postal officials commonly refer to as a *linear tariff*. In other words, the total terminal dues charge for a shipment of inward mail in SDR was to be 1.225 times the weight of mail expressed in kilograms plus 0.121 times the number of items received.<sup>18</sup> From the standpoint of postal officials, a linear terminal dues tariff is far easier to apply than domestic postage rates, because domestic postage rates are defined in terms of weight steps. To apply domestic postage rates to inward mail, the origin or destination post office would need to count the number of items in each individual weight step for each class of mail. With a linear tariff, the total terminal dues charge for a shipment of inward mail could be calculated by weighing the entire shipment and counting the total number of items.<sup>19</sup> Under the new formula, the charge for a 20-gram letter, the approximate weight of a typical cross-border letter, increased

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<sup>16</sup>Remail Conference, Report by Sweden Post (10 September 1987), quoted in Case IV/32.791 - Remail, Statement of Objections ¶ 36.

<sup>17</sup>In adopting the CEPT terminal dues agreement, participating post offices apparently violated the 1984 UPU Convention. In the 1989 Washington Congress, a paragraph was added to the terminal dues provision to permit post offices to supplant the UPU terminal dues provisions by bilateral or multilateral agreement. 1989 Conv. § 73(5).

<sup>18</sup>This formula is equivalent to a declaring that the terminal dues charge for each individual postal item is given by the linear expression  $1.225w + 0.121$ , where  $w$  is the weight of the individual postal item in kilograms.

<sup>19</sup>In a liner tariff, the coefficient in the weight factor (1.225 in the case of the Remail Conference formula) represents the degree to which postage rates rise as the weight of a postal item increases. The coefficient in the item factor (0.121) represents the cost of delivery of a postal item no matter how small. This second factor should approximate the basic stamp price, less that portion of the stamp that pays for collection of a letter since terminal dues cover only the cost of delivering, not the cost of collecting, international letters.

from SDR 0.052 to SDR 0.146, a 178 percent increase. A lightweight, 10-gram letter, experienced a terminal dues rate increase of 410 percent. Heavier weight letters and printed papers faced smaller rate increases or even decreases: 30-gram (101 percent), 50-gram (39 percent), 100-gram (-7 percent), and 200-gram (-30 percent).

Although the linear tariff of the Remail Conference was an improvement over the UPU scheme, it was fundamentally addressed to restraining remail rather than reforming terminal dues. The improvement lay in the fact that, since the actual cost of postal delivery varied with the number of items as well as the weight of items delivered, introduction of a charge per item implied that the new formula would yield charges that corresponded more closely to actual cost. The anti-remail import lay in what was not changed. The new terminal dues substantially raised the cost of remail without reforming charges for most ordinary international mail exchanged among postal administrations. This was accomplished by modifying the level of terminal dues charges without changing the uniformity of the terminal dues rate. Since remail represented additional mail for the remail post office, increasing the level of the terminal dues charge increased the marginal cost of all remail. Yet, since the uniformity of terminal dues rates was left untouched, post offices could still trade inward delivery services to compensate for outward delivery services, regardless of the unequal economic value of the two services. In sum, the Remail Conference addressed defects in the 1984 UPU terminal dues system which had a minor, but a competitive, impact while ignoring the major economic distortion implied by the 1984 UPU terminal dues scheme.

The terminal dues system of the Remail Conference subsequently became known as the “CEPT terminal dues” system, either because most of the participants were members of the Conference of European Postal and Telecommunications Administrations (a European association of postal administrations) or because the CEPT itself officially recommended the system in February 1989.<sup>20</sup> The level of CEPT terminal dues was revised three times with across the board increases. Participating post offices agreed to a 10 percent increase in terminal dues rates in 1991, a further 5 percent increase in 1992, and a further 5 percent in 1993. After the last increase, the CEPT rate in SDR was  $1.491/\text{kg} + 0.147/\text{item}$ . At the end of 1995, European post offices in theory replaced the CEPT terminal dues agreement with first version of the REIMS terminal dues agreement. In practice, as discussed below, the REIMS agreement maintained the CEPT terminal dues provisions until the end of 1997.

The Remail Conference also served as a focus for efforts to discourage remail by appeal to Article 23 of the UPU Convention. One post office, for example, asked

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<sup>20</sup>CEPT, Resolution PO/C33. By June 1, 1990, post offices in the following European countries participated in the CEPT terminal dues agreement: Germany, Belgium, Denmark, Finland, France, Ireland, Iceland, Luxembourg, Monaco, Norway, United Kingdom, Sweden. Most other European post offices anticipated joining the scheme. Several European post offices also implemented CEPT terminal dues with the U.S. Postal Service.

other post offices for assistance by enforcement of Article 23.<sup>21</sup> In the spring of 1988, the German post office invoked Article 23 to restrain remail in two ways. It pointed out Article 23 to German mailers to discourage them from using remail for outbound international mail. It also intercepted and returned inbound international mail posted by Community mailers with the Dutch post office and destined for German addressees.

#### 4. NORDIC TERMINAL DUES AGREEMENT, 1988

While Remail Conference post offices were addressing remail with anticompetitive terminal dues “reforms” and resort to UPU Article 23, Nordic post offices adopted a more positive approach. In 1988, the post offices of Denmark, Finland, Iceland, Norway, and Sweden agreed that, beginning 1 January 1989, terminal dues on mail exchanged among these five post offices would be based on domestic postage rates rather than the CEPT agreement. Under the Nordic system, each post office used sampling techniques to estimate, for both priority and nonpriority services, the number of letters, flats (large flat envelopes), packets (large bulky envelopes), and newspapers sent to the other post offices. Terminal dues were calculated based on 60 percent of the domestic postage rates of the destination post office. The 60 percent figure was agreed among the Nordic post offices as a reasonable approximation of the fraction of domestic postal service costs incurred in the delivery (as opposed to collection) of international mail.

As of 1 January 1991, the Nordic system was modified by the addition of quality of service standards. A destination post office’s terminal dues payment would be reduced by a certain percentage if it failed to deliver cross-border mail in accordance with quality of service standards set for domestic mail. For example, if a destination post office failed to deliver more than 80 percent of a given type of mail within an applicable domestic service standard of 95 percent overnight delivery, then its terminal dues bill to the origin post office would be reduced by about 50 percent.<sup>22</sup>

Over time, the Nordic system was highly influential as a model for reform of other terminal dues systems.

#### 5. UPU WASHINGTON CONGRESS, 1989

Like the Remail Conference, the Universal Postal Union became increasingly

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<sup>21</sup>Letter from U.K. Post Office to post offices in and out of Europe (12 Feb 1987) (“I very much hope . . . that your administration will not accept UK-originating LC-type traffic for remailing . . . [W]e would regard it as an unhelpful act on the part of a sister postal administration which would be regrettable in light of our previous excellent relations”). In response to such pleas, in early March 1987, the Singapore post office discontinued accepting all foreign origin mail tendered by private remail companies, citing the objection of the U.K. Post office. In January 1988, the Japanese post office notified the Hong Kong Post office that it will not accept international mail remailed through Hong Kong.

<sup>22</sup>*See generally* Bruun, “Nordic Measurements 1991: Service Performance and Terminal Dues Settlement” (1993).

concerned about remail competition.<sup>23</sup> In May 1987, the UPU Executive Council initiated a survey of remailing activities. In August 1987, the Director General of the UPU distributed a circular letter to UPU members urging post offices not to cooperate with remail companies.<sup>24</sup> In September, on the eve of a key meeting of the Remail Conference, the UPU distributed an initial report on remailing.<sup>25</sup> The final report, issued in March 1988, outlined competitive difficulties posed by remailing and noted that about half of the post offices surveyed supported increased interception of remail. At the same time the UPU distributed a second report on “other aspects to be considered in the study of terminal dues” which addressed, among other things, the rise of international competition and the role of the monopoly in opposing such competition.<sup>26</sup> In April 1989, the UPU Executive Council convened an extraordinary Round Table on terminal dues and remail and concluded remail “is a very important problem which calls for close collaboration among all administrations . . . [and] flexible, varied and swift measures . . . to face up to the competition”.<sup>27</sup> When the UPU Congress convened in Washington, D.C., in November 1989, it was prepared to address “the harmful effects for the world postal service of the expansion of remailing.”<sup>28</sup>

In terminal dues provisions agreed by the 1989 Washington Congress, the UPU departed substantially from its traditionally global approach. To win acceptance from developing countries, industrialized countries agreed to split the UPU terminal dues system into two regimes. A base terminal dues rate, SDR 2.940/kg, was adopted for mail exchanged between most post offices. A second, two-tiered rate was applied if a destination post office received more than 150 metric tonnes of mail a year from a given origin post office.<sup>29</sup> This high volume rate applied to most mail exchanged between post offices in industrialized countries and was intended to discourage remail. Under the high volume regime, different terminal dues rates were established for letter mail and printed matter. For letters, terminal dues were increased to 8.115/kg.; for printed matter, terminal dues were reduced to 2.058/kg. For both letters and printed matter, a “correction mechanism” was introduced to compensate for mail containing an usually high proportion of

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<sup>23</sup>The 40-member UPU Executive Council included eight members of the Remail Conference who could, as a practical matter, exert substantial control over the group. The most important Remail Conference members of the Executive Council were the post offices of Germany (chairman), France, and the United States.

<sup>24</sup>Circular No. 0115(B/C)1745 (14 Aug 1987).

<sup>25</sup>Circular No. 3370(B/C)1790, Annex 1 (2 Sep 1987).

<sup>26</sup>CE 1988 C5 Doc 9 (“Other aspects to be considered in the study on terminal dues”) (30 Mar 1988).

<sup>27</sup>1989 Washington Congress, Doc 56, p. 4 (“Remailing”) (Executive Council, 23 Jun 1989).

<sup>28</sup>1989 Washington Congress, Doc 21, par 99 (“Implementation of the Declaration of Hamburg”).

<sup>29</sup>1989 Conv. § 73.

lightweight items. If a destination post office could establish that the average weight of inward letter mail received from an origin post office was less than 18.1 grams per piece (i.e., greater than 55 items per kilograms), then it could charge terminal dues according a liner formula,  $1.258/\text{kg} + 0.143/\text{item}$ . The correction mechanism formula also applied to lightweight printed items, but the threshold for resort to the formula was an average weight for printed matter less than 143 grams per item (i.e., greater than 7 items per kilogram). In effect, the 1989 Convention, like the CEPT agreement, adopted a uniform linear item and weight based tariff for mail exchanged between industrialized countries; the weight-based rates for letters and printed matter represented zones in the linear tariff within which small variations in average weight per item were disregarded.

Table 2. UPU terminal dues base rates

Convention	Terminal dues (SDR)
Tokyo, 1969	0.163/kg
Lausanne, 1974	0.490/kg
Rio de Janeiro, 1979	1.799/kg
Hamburg, 1984	2.614/kg
Washington, 1989	2.940/kg
Seoul, 1994	3.427/kg
Beijing, 1999	3.427/kg

The overriding purpose of the 1989 UPU terminal dues provisions, like that of the CEPT agreement, was to discourage remail among industrialized countries. Like the CEPT agreement, the 1989 Convention retained the uniformity of terminal dues rates so that, for mail in balance (the great majority of international mail), post offices continued to provide delivery services without regard to economic value. Major economic distortions produced by terminal dues were continued and only remail was attacked. In addition, the 1989 Washington Congress introduced the idea of preferential rates for large customers<sup>30</sup> and instructed the Executive Council to continue work on the issue of remailing.<sup>31</sup>

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<sup>30</sup>1989 Conv. § 19(12bis) allowed “preferential rates to major users” of international mail. The Executive Council explained the proposed amendment as follows: “Large industrial and commercial firms are the customers most accessible to and sought after by the competition. These customers often complain that the tariff policy applied by the Post is too egalitarian . . . It therefore seems necessary to introduce a facility allowing post offices to give preferential rates to major users. This measure would contribute to increasing postal service competitiveness in order to retain or regain its market share in the letter-post sector which is particularly threatened by the competition. UPU, 1989 Washington Congress, Proposition 3019.11. *See* UPU, 1989 Washington Congress, Doc 56, “Remailing” p. 4 (June 23, 1989) (“In Proposition 3019.11, the Community [UPU Executive Council] aims expressly to authorize post offices to grant preferential rates to their large mailing customers so that they can compete better with remail firms for the most lucrative traffic.”)

<sup>31</sup>1989 Washington Congress, Resolution C88. This resolution was one of several omitted from the published record of the Congress, apparently inadvertently. *See* 1 UPU Annotated Code [1989]

## 6. EUROPEAN POSTAL GREEN PAPER, 1992

After four years of study, in June 1992, the European Commission published a lengthy analysis of postal policy in Europe, the “Postal Green Paper”. This study was prompted in substantial part by a legal challenge to the anti-remail measures of post offices. In July 1988, the International Express Carriers Conference, a group of private express companies, had formally complained to the European Commission that activities of the Remail Conference appeared to be inconsistent with European competition law.<sup>32</sup> The Postal Green Paper analyzed all aspects of postal policy and proposed a comprehensive European policy framework for postal services. In particular, the Postal Green Paper considered several key issues relating to terminal dues and remail. It concluded that terminal dues should not be set at a uniform rate among European post offices because of the substantial disparity in costs among post offices. Instead, the Postal Green Paper advocated that terminal dues should be related to the domestic postage rates of each destination post office.<sup>33</sup>

The Postal Green Paper also addressed the issue of nonphysical remail. It recognized that new technologies and increased centralization of European mail preparation would shift mail from domestic distribution to cross-border distribution.

It is not uncommon for publishers to centralise the printing of a European-wide magazine in one location, even if the publication is in different languages. If the material is then posted in the same country as the printer, it should be treated by the receiving administration as ordinary cross-border mail—even though it might otherwise have the appearance of domestic mail in the country of delivery.

This phenomenon of centralised production which could turn domestic mail into cross-border mail is likely to increase as customers modify their location and buying strategies as a result of the Single Market. . . .

The fact that such mail might formerly have been domestic and therefore subject to domestic monopolies causes some people to contemplate whether such movements of mail thus caused should be considered an infraction of domestic monopolies unless the items concerned are posted in the country of delivery. Briefly, the question that should be put is as follows: should the single market in printing, electronic data and advertising adjust to possible interpretations of postal rules, or the converse?<sup>34</sup>

The Postal Green Paper generally rejected application of the Universal Postal Convention to intercept remail resulting from centralization of printing and mail preparation services in the European Union. At a minimum, declared the Postal

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<sup>32</sup>Case IV/32.791 - Remail.

<sup>33</sup>Postal Green Paper, pages 251-52 (“The existing systems of charging between post offices (called terminal dues) is not cost based, leading to significant distortions between remuneration and actual delivery costs incurred . . . . Since inland tariffs will be related to costs, the compensation charges between post offices ought to be based on the delivery proportion of the inland tariff, with some supplement for the extra handling necessary and for profit.”)

<sup>34</sup>Postal Green Paper, page 135.

Green Paper, “use of Article 25.4 (which refers to A-B-C remail) therefore seems clearly inappropriate”. The Postal Green Paper even expressed doubt about the lawfulness of using the Convention to turn back “physical ABA” remail, that is, mail that had been physically taken out of country A to country B and posted back into country A. The Postal Green Paper’s view was that, at the least, the Universal Postal Convention should only be invoked by regulatory authorities, only in cases of genuine violations of the domestic postal monopoly, and never against “nonphysical” remail.<sup>35</sup>

Commission support for a competitively neutral legal framework for international postal services was also manifested in the IECC remail case. In April 1993, the Commission adopted a long Statement of Objections that condemned both the CEPT and 1989 UPU terminal dues schemes and rejected postal resort to the anti-remail provisions of the Universal Postal Convention.<sup>36</sup> The policy conclusions of the Postal Green Paper and the Statement of Objections paved the way for a new approach to terminal dues and remail in Europe. European reform, in turn, eventually prompted reform at the UPU.

The Commission’s actions in the early 1990s also induced to an unintended development in international postal law, elevation of the nonphysical remail doctrine. The IECC complaint noted, in particular, that post offices were using paragraph 4 of the Article 23 (of the 1984 UPU Convention) to intercept or discourage ABC remail. In both the Postal Green Paper and the initial response of the IECC complaint, the Commission made clear that it considered resort to paragraph 4 of Article 23 was never justified. Post offices responded by promising, in effect, to refrain from using paragraph 4 to intercept remail so long as they could continue to use paragraphs 1 to 3 of Article 23 to intercept “nonphysical remail”. This was an empty promise, since almost all large quantities of ABC remail can equally be characterized as “nonphysical ABCA remail” and intercepted using paragraphs 1 to 3 of Article 23. Nonetheless, in 1995, a newly constituted European Commission proved willing to accept this fig leaf and dismissed this portion of the IECC complaint based on the assurances of the post offices.<sup>37</sup> Thereafter, post offices relied on the nonphysical remail doctrine to define the scope of their authority under the anti-remail provision of the Universal Postal Convention.

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<sup>35</sup>See Postal Green Paper, pp. 210-12. The Postal Green Paper left open the question of whether UPU Article 25 should be used to turn back extra-Community remail, i.e., mail that a mailer residing in one European country posts in a country outside the European Union for delivery to addressees in a second European country; the Green Paper considered that such practices could pose a potential financial threat to Community post offices.

<sup>36</sup>For a summary of the IECC complaint, remail, and European competition law, see Tony Reeves, “An Introduction to EC Competition Rules in the Postal Sector”.

<sup>37</sup>See Joined Cases T-133/95 and T-204/95, *IECC v Commission*, [1998] ECR II-3645. After these cases were decided, the German post office withdrew its promise not to invoke paragraph 4 of the UPU anti-remail provision.

## 7. UPU SEOUL CONGRESS, 1994

Like the 1989 Washington Congress, the 1994 Seoul Congress was very concerned about remail. The Seoul Congress substantially revised both the terminal dues and anti-remail provisions of the Convention.

The new terminal dues scheme of the 1994 Convention and detailed regulations provided a modest increase in the base rate terminal dues rate to 3.427 SDR per kilogram.<sup>38</sup> For high volume exchanges (defined as in the 1989 Convention), the 1994 Convention established a “revision mechanism” that applied a linear formula if the average weight of inward mail drifted outside fairly narrowly defined limits. According to the revision mechanism, if the average weight of high volume mail was lower than 47.6 grams (i.e., greater than 21 items per kilogram) or higher than 71.4 grams (i.e., less than 14 items per kilogram), then terminal dues would be determined by the formula,  $1.00/\text{kg} + 0.140/\text{item}$ . Unlike the “correction mechanism” of 1989 Convention, the “revision mechanism” of the 1994 Convention was triggered by the average weight of all mail, not to the average weights of letter and printed matter mail calculated separately.

As a further protection against remail, the 1994 Convention added a new terminal dues provision for “bulk mail”. Bulk mail was defined as more than 1500 items received from the same sender on the same day or more than 5000 items received from the same sender in a two-week period.<sup>39</sup> A post office receiving bulk mail from another post office was authorized to charge 60 percent of domestic rates for priority mail,<sup>40</sup> expressed as a linear tariff, but no more than the terminal dues allowable by the formula  $1.25/\text{kg} + 0.175/\text{item}$ , that is, 25 percent more than the charge permitted by the “revision mechanism”. The higher terminal dues for bulk mail could be charged on mail received from any origin post office, without regard to whether the post offices exchanged more than 150 tonnes of mail. Hence, this provision served to protect post offices of industrialized countries against large amounts of remail posted in developing countries.

The 1994 bulk mail provision was the first occasion in which the UPU related terminal dues to domestic postage rates in individual countries. This was an important milestone in terminal dues reform. Nonetheless, UPU recognition of the variations in delivery costs among post offices retained a substantial level of standardization. Domestic tariffs vary not only in overall price level but also in the size of weight steps, the treatment of different sizes of mail (envelopes, large envelopes, and bulky mail), the classes of service offered, and the degree to which

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<sup>38</sup>1994 Conv. §§ 49, RE 4901, 4902, 4903, 4904. The terminal dues arrangements authorized by the 1994 Seoul Congress were not completed by Congress itself. Congress delegated the drafting and revision of key implementing regulations to a committee of the UPU, the Postal Operations Council.

<sup>39</sup>1994 Conv. §§ RE 804(8), RE 4903.

<sup>40</sup>The rate indicated is variously referred to as the “priority” or “letter” or “first class” rate in different countries.

additional weight implies higher postage rates. Rather than directing post offices to develop linear tariffs reflecting such variations,<sup>41</sup> the UPU adopted a standard linear tariff to be used as a template for the linear versions of all domestic tariffs. The standard linear tariff was adjusted up or down based on single variable, the postage rate charged for posting a letter weighing 20 grams.<sup>42</sup>

The 1994 Seoul Congress also introduced significant revisions in the anti-remail provision, Article 25 in the 1989 Convention. After much debate, the Congress adopted a variation of the Executive Council proposal put forward by the United States<sup>43</sup> and Japan. Changes in Article 25 made in the 1994 Universal Postal Convention are shown below:

1. A member country shall not be bound to forward or deliver to the addressee letter-post items which senders ~~resident~~ *residing* in its territory post or cause to be posted in a foreign country with the object of profiting by the ~~lower charges in force~~ *more favourable rate conditions* there.

2. ~~Paragraph~~ *The provisions set out under 1 shall be applied without distinction both to correspondence letter-post items made up in the sender's country where the sender resides of residence and then carried across the frontier and to correspondence letter-post items made up in a foreign country.*

3. The administration ~~concerned of destination may either return its item to origin or charge postage on the items at its internal rates.~~ *claim from the sender and, failing this, from the administration of posting, payment of the internal rates.* If neither the sender ~~refuses~~, *nor the administration of posting agrees to pay the postage,* the items may be disposed of in accordance with the internal legislation of the administration

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<sup>41</sup>In contrast, the UPU has always provided that each post office shall develop its own approach towards an "inward land rate" for delivery of international parcels. *See, e.g., 1999 Conv. § 56 (in the Parcel Post Manual).*

<sup>42</sup>Translation from a domestic tariff to an equivalent UPU linear tariff was accomplished as follows. Article 49(4)(1)(1) of the 1994 Conv. provided that the standard linear tariff for domestic tariffs would be 1/kg + 0.140/item (the same formula as in the "revision mechanism" applicable to high volume mail exchanges). This formula yields a terminal dues charge of SDR 0.160 for a 20-gram letter. In France, by way of illustration, the postage charge for collection and delivery of a 20-gram letter was SDR 0.347 (3 francs) in 1999. Regulation RE 4903, adopted by the Postal Operations Council (a permanent UPU committee composed of postal officials) to implement Article 49, permitted the French post office to collect a terminal dues charge on inward bulk mail equal to 67 percent of the first class letter rate (but no more than 1.460/kg + 0.204/item). Sixty-seven percent of the 20-gram French postage rate was SDR 0.232, 45 percent higher than the rate implied by the standard liner tariff, SDR 0.160. Accordingly, the UPU linear tariff corresponding to 67 percent of the French domestic letter tariff would be the standard linear tariff with each factor raised by 45 percent, or 1.43/kg + 0.203/item. *See International Bureau, Circular 319 (1999).* While the terminal dues rate implied by this formula corresponded to the French postage rate for a 20-gram letter, it may or may not have corresponded to the French postage rate for a 50- or 100-gram letter or a 200-gram magazine.

<sup>43</sup>In 1994, the U.S. Postal Service adopted a regulation defining a "resident" of the United States for the purposes of the UPU Convention to include any person who "has a place of business in the United States" or "is incorporated or otherwise in the United States." A "place of business" could include a hotel room if representatives of a foreign company spent more than 180 days in the U.S. 59 FR 11188 (10 Mar 1994). This broad interpretation of anti-remail article of the 1989 Convention helped lay the basis for modification of that article in the 1994 Seoul Congress.

~~concerned:~~ *these rates, within a time limit set by the administration of destination, the latter may return the items to the administration of posting, and shall be entitled to claim reimbursement of the redirection costs, or handle them in accordance with its internal legislation.*

4. A member country shall not be bound to forward or deliver to the addressees letter-post items which senders post or cause to be posted in large quantities in a country other than the country in which they reside, *without receiving appropriate remuneration.* The administration ~~concerned of destination may send back such items to origin or return them to the senders without repaying the prepaid charge~~ *claim from the administration of posting payment commensurate with the costs incurred and which may not exceed the higher of the following two amounts: either 80 percent of the domestic tariff for equivalent items, or 0.14 SDR per item plus one SDR per kg. If the administration of posting does not agree to pay the amount claimed, within a time limit set by the administration of destination, the administration of destination may either return the items to the administration of posting, and shall be entitled to claim reimbursement of the redirection costs, or handle them in accordance with its internal legislation.*

The most important change was specific endorsement of the nonphysical remail doctrine by changing the word *domiciliés* in the French text (the official language of the UPU) to *résidents*. The UPU Executive Council explained that this change “allows much wider application of the article, particularly in the case of the various branches of a multinational company.”<sup>44</sup> Paragraph 4 of Article 25 was rendered more useable by permitting post offices to apply higher terminal dues to remail compared to other international mail, a less drastic remedy than interception and return of mail (in any case, most such mail could be intercepted under paragraphs 1 to 3 using the nonphysical remail doctrine). As revised, paragraph 4 authorized post offices to charge remail either “80 percent of the domestic tariff for equivalent items” or the charge derived from the “revision mechanism” adopted for terminal dues applicable to high volume mail exchanges, in SDR, 1/kg + 0.140/item. Interestingly, the reference to use of the domestic tariff does not imply transformation into a standard linear formula.

#### 8. REIMS I AND REIMS II, 1995-1999

In early 1992, on the eve of publication of the Postal Green Paper, European post offices began work on a revised terminal dues agreement to be called REIMS, an acronym for Remuneration in the Exchange of International Mail Services. In the wake of the still unresolved 1988 IECC complaint, European post offices were under pressure from the European Commission to replace the CEPT agreement with a less anticompetitive approach to terminal dues. Not all were unwilling. As noted above, Nordic post offices had already agreed to an acceptable terminal dues scheme. In September 1991, the post offices of Denmark, Germany, and the Netherlands, put forward an elaborate study by a leading economic consultant that called for a new terminal dues system in the European Union in which terminal dues would be based

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<sup>44</sup> 1994 Seoul Congress, Doc 58, par. 5.

on a unspecified percentage of domestic postage rates.<sup>45</sup> Spurred by such influences, European post offices began work on a new terminal dues agreement under the umbrella of the International Post Corporation, a private corporation organized by twenty leading post offices, most European, to facilitate improvement in international postal services.

Negotiations over REIMS among post offices and between post offices and the European Commission dragged on for more than seven years. In February 1994, IPC provided the Commission with a summary briefing paper. On 17 January 1995, fourteen post offices (two non-EU) signed a preliminary agreement that set terminal dues equal to 80 percent of domestic postage rates after a six-year transition period. The fate of this proposal was in doubt from the beginning since several post offices indicated their participation was dependent on accession by other post offices who were not so inclined. Moreover, since REIMS was a price-fixing agreement under European competition law, it was necessary for the parties to seek approval of the European Commission.<sup>46</sup> After further haggling, a revised version was submitted to the Commission on 13 December 1995. This version, known as "REIMS I", went into effect on 1 January 1996 while Commission approval was pending. REIMS I lapsed on 30 September 1997, partly because the Spanish post office never agreed (a formal condition subsequent in the agreement) and partly because the Commission objected to several provisions as anticompetitive. In practical effect, REIMS I did little more than extend the anticompetitive CEPT terminal dues another two years, until the end of 1997.<sup>47</sup>

On 31 October 1997, a substantially revised agreement, called REIMS II, was notified to the Commission by thirteen post offices (two non-EU) post offices.<sup>48</sup> After the Commission indicated continuing objections, eleven post offices (two non-EU) proffered a modified REIMS II agreement in October 1998. Eventually, the revised REIMS II was joined by all EU post offices except the Dutch and by the post offices of Iceland and Norway. On September 15, 1999, the European Commission

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<sup>45</sup>"Approaches to Pricing for Intra-Community Postal Services" (1991). This proposal included a detailed study by Coopers & Lybrand Deloitte.

<sup>46</sup>Under European competition rules, the European Commission can declare prohibitions against anticompetitive agreements inapplicable if a specific agreement meets certain public interest criteria. *See* EC Treaty § 81(3).

<sup>47</sup>OJ C 42, 14.2.1996, p. 7 (notice of REIMS I). Subsequently, in announcing the filing of REIMS II, the Commission refers to "the low terminal dues that would still be applicable for several years under REIMS I" and quality of service rules in REIMS I that "would prevent any terminal dues increases during the transitional period." OJ C 53, 20.2.1998, p. 3. Apparently, the CEPT rates persisted unchanged at least until REIMS I expired on 30 September 1997; REIMS II, in turn, continued key provisions of REIMS I until December 31, 1997.

<sup>48</sup>OJ C 53, 20.2.1998, p. 3 (notice of REIMS II); OJ C 371, 1.12.1998, p. 7 (notice of revised REIMS II). In respect to both REIMS I and REIMS II, the European Commission requested public comment on the policy implications of the agreements without making public the text of the agreements, effectively rendering detailed or specific criticism impossible.

Table 3. Evolution of European terminal dues systems

Agreement	Terminal dues (SDR)
Nordic 1988 -	<ul style="list-style-type: none"> <li>• 60% domestic priority/nonpriority rates (weight steps, shape based).</li> <li>• Quality of service penalties based on standards in destination country (after 1/1/1991)</li> </ul>
CEPT 1988 to 1995	<ul style="list-style-type: none"> <li>• 1.225/kg + 0.120/item (declared anticompetitive by European Commission)</li> </ul>
REIMS I 1995 (never fully implemented)	<ul style="list-style-type: none"> <li>• Final TDs: 80% of domestic rates expressed as shape-based linear tariffs.</li> <li>• Optional TDs: domestic discount rates (“level 3 access”); discounts for prepared mail.</li> <li>• Transition: 6 years. CEPT TDs to 12/31/96; TDs increased by 15% (1997), 15% (1998), 20% (1999) and 20% (2000) until final TD level reached.</li> <li>• Quality of service: TDs reduced if agreed targets not met.</li> <li>• UPU §25 “integral” during transition, barred thereafter; parties limited to universal service providers.</li> </ul>
REIMS II 1997 (approved by Commission, 1999)	<ul style="list-style-type: none"> <li>• Standard TDs: 80% of domestic rates expressed as shape-based linear tariffs.</li> <li>• Optional TDs: domestic discount rates; discounts for prepared mail and non-priority mail.</li> <li>• Transition: 4 years. 1998 (55% domestic rates); 1999 (65%); 2000 (70%). Special rules and transition periods for post offices of Greece, Italy, and Spain.</li> <li>• Quality of service: TDs reduced if agreed targets not met.</li> <li>• UPU §25 barred after transition; parties limited to universal service providers.</li> </ul>

approved the revised REIMS II with additional modifications.<sup>49</sup>

As approved, REIMS II provided for introduction of terminal dues based on 80 percent of the domestic postage rates in the destination country. For the purpose of applying this standard, domestic tariffs were converted into linear equivalents. “Linearization” of domestic tariffs was substantially more sophisticated than in the 1994 UPU Convention. Separate linear tariffs were developed for different sizes of mail: letters, flats, and packets; in addition, different tariffs were applied to priority and nonpriority mail.<sup>50</sup> New terminal dues rates were to be phased in over a four-year transition period, during which post offices could set terminal dues at 55 percent of domestic postage rates in 1998 and 1999, 65 percent in 2000, and 70 percent in 2001.<sup>51</sup> Exceptional provisions were adopted for the post offices of Greece, Italy, and

<sup>49</sup>OJ L 275, 26.10.1999, p. 17.

<sup>50</sup>OJ L 275, 26.10.1999, p. 20 (par.19) states “Domestic tariffs usually distinguish between different weight steps (such as 20, 50 and 100 g for letters). According to the Agreement, these different tariffs are converted, on the basis of a standard structure, into linear tariffs for the purpose for the purpose of calculating terminal dues. In so doing, the Agreement distinguishes between three categories: Letters up to C5 size and a maximum weight of 100g; Flats up to C4 size and a maximum weight of 500 g; Packets of all shapes up to limits of weight and size set by the UPU.”

<sup>51</sup>Remarkably, as one condition of approval, the Commission required a one-year extension of the transition period (from three years to four years) even though it is apparent that the transition

Spain. Post offices whose domestic postage rates were below CEPT rates were allowed to maintain terminal dues at CEPT levels until 2002.

In addition to the standard terminal dues regime, an important feature of REIMS II was a guarantee of access to domestic discount postage rates. Access to domestic rates served to ensure that terminal dues levels were reasonable.<sup>52</sup> Moreover, destination post offices were authorized to offer discounts for various levels of mail preparation by origin post offices. As in the Nordic scheme, terminal dues were be subject to reduction if cross-border mail was not delivered within quality of service targets although, in REIMS II, the quality of service standards established in the agreement and varied by destination post offices. Post offices further agreed that, after the end of the transition period, they would refrain from resort to the anti-remail provisions of the Universal Postal Convention. By its terms, participation in the REIMS II agreement was limited to “operators (public or private) of a mandatory, universal postal service”.<sup>53</sup>

While REIMS II retained some of the elements of the CEPT system (in particular during the transition period), it represented a substantial and sophisticated move towards aligning terminal dues with domestic postage rates and eliminating restrictions on remail.

#### 9. UPU BEIJING CONGRESS, 1999

Remail and terminal dues provisions were major topics in the 1999 Beijing Congress, as in the two previous congresses. For the first time, the Beijing Congress agreed on different terminal dues systems depending not on the volume of mail exchanged between pairs of countries but on whether the destination country was classified as “industrialized” or “developing”. Even more fundamentally, the Beijing Congress declared that the terminal dues agreed upon were “transitional arrangements, moving towards a country-specific payment system.”<sup>54</sup> The Beijing Congress also adopted a minor, mildly procompetitive change to the anti-remail provision of the Convention.

Groundwork of terminal dues reform in the Beijing Congress was laid by a 1998 report, “The Need for Change”, prepared by a UPU working party led by the U.K. post office.<sup>55</sup> This document reviewed weaknesses of previous terminal dues

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period is characterized by extension of a price fixing scheme that distorts trade between Member States and that, in one form or another, had been in effect since the start of the CEPT agreement in 1988.

<sup>52</sup>So called “level 3 access”; indeed, REIMS II provides that parties shall “relax domestic regulations for other Parties, when these regulations, in particular ones not related to costs, applied to Parties, are not justified and could, in practice, bar them access to domestic rates.”

<sup>53</sup>The Commission held that this provision is not anticompetitive because “nothing in the agreement prevents the parties from entering into identical or similar agreements on terminal dues with third parties.” OJ L 275, 26.10.1999, p. 26 (par. 67).

<sup>54</sup>1999 Conv. § 47(3).

<sup>55</sup>CEP GT 1.1 1998.1-Doc 3 Annexes 1 (summary) and 2 (full report).

arrangements and, without saying so explicitly, made the case for aligning terminal dues with domestic postage rates in all countries. The report emphasized that post offices of industrialized countries had no choice but to raise terminal dues to the level of domestic postage rates to end incentives for ABA and ABC remail. The report recognized that developing countries have a relatively greater interest in terminal dues than industrialized countries noting that, in many developing countries, inward international mail is a substantially higher proportion of total mail than in industrialized countries.<sup>56</sup> In addition, in many developing countries, terminal dues, unlike domestic postage, are a source of precious hard currency. Nonetheless, the report argued that developing countries have an interest in adjusting terminal dues *down* to domestic postage rates to avoid ABB remail (posting inward international mail as domestic mail):

Since the Seoul Congress, . . . there has been a steady increase in ABB remailing. This phenomenon can largely be attributed to the fact that local postage rates in developing countries are invariably lower than the terminal dues rate for heavyweight items and consequently direct insert remailing by private and public operators is a common occurrence. Although remailing often contributes towards an increase in mail business, revenue from terminal dues decreases, resulting in an overall loss of revenue which can be ill afforded.

The report further suggested that aligning terminal dues with domestic postage was required by the principles of the General Agreement on Trade in Services, i.e., that “foreign suppliers must receive identical terms and conditions as national suppliers”.<sup>57</sup> The “Need for Change” was one step in a long negotiating process that ultimately led the Beijing Congress to adopt a terminal dues system sharply bifurcated between industrialized countries and developing countries.

For mail exchanged among twenty-four large industrialized countries,<sup>58</sup> including all fifteen Member States of the European Union, the 1999 Convention took the revolutionary step of tying terminal dues directly to domestic postage rates: “*Payment for letter-post items . . . shall be established on the basis of the application of the rates per item and per kilogramme reflecting the handling costs in the country*”

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<sup>56</sup>Of 69 developing countries surveyed, inward international mail was more than 40 percent of total mail in 16, more than 30 percent of total mail in 24, and more than 20 percent of total mail in 36. In the European Union, international mail, including intra-EU cross-border mail, is less than 4 percent of total mail.

<sup>57</sup>The report dismissed the possibility that terminal dues agreements among post offices might be inconsistent with competition rules with the legally dubious declaration that “Since the terminal dues system applies only to public postal operators that have government-imposed public service obligations and not to commercial operators, it does not in any way constitute a cartel or price fixing”. In fact, as noted above, the main stimulus for terminal dues reform in Europe was the susceptibility of the CEPT terminal dues agreement to challenge under European competition rules.

<sup>58</sup>The list of “industrialized countries” also includes overseas territories of large industrialized countries and small industrialized countries Andorra, Monaco, Liechtenstein, San Marino, and the Vatican.

*of destination; these costs must be in relation with the domestic tariffs. The rates shall be calculated in accordance with the conditions specified in the Letter Post Regulations.*”<sup>59</sup> Application of this principle was restrained, however, by upper and lower boundaries. The lower boundary was the same as the revision mechanism, in SDR, 1.491/kg + 0.147/item.<sup>60</sup> The upper boundary was set at 1.684/kg + 0.158/item (for 2001<sup>61</sup>) or 60 percent of the domestic priority postage rate, whichever is lower. As with the 1994 bulk mail provision, the domestic postage standard is implemented by converting domestic priority rates into a linear tariff using the postage rate for a 20-gram letter as the conversion factor. As in REIMS II, the 1999 Convention also provided that industrialized country post offices must permit access to domestic postage rates, an important check on terminal dues rates.<sup>62</sup> Although a dramatic break from the past, the practical scope of the 1999 UPU terminal dues provision for industrialized countries is limited by the fact that seventeen<sup>63</sup> of the twenty-four large industrialized country post offices rely on REIMS II to determine terminal dues on mail exchanged among themselves. The UPU provision applies only to mail exchanged between industrialized countries and the post offices of Australia, Canada, Israel, Japan, Netherlands, New Zealand, and the United States.<sup>64</sup>

For mail sent to industrialized countries from developing countries, the 1999 Convention maintained the same base terminal dues rate, SDR 3.427/kg, adopted in the 1994 Convention. Access to domestic postage rates is also guaranteed for developing country post offices. At the same time, the 1999 Convention adopted three rules to protect post offices in industrialized countries from a flood of remail sent through post offices in developing countries. First, the 1999 Convention applied industrialized country terminal dues rates to “bulk mail” (defined as in 1994).

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<sup>59</sup>1999 Conv. §48(1). A post offices may always waive terminal dues to which it is entitled or negotiate alternate terminal dues arrangements with another post office. 1999 Conv. § 47(6), (7). Although the 1999 Convention might be interpreting as authorizing post offices to establish their own cost-based terminal dues rates, the International Bureau of the UPU has periodically declared the appropriate terminal dues rates by country, setting them at the maximum permitted by the Convention. See, e.g., International Bureau, Circular 270 (2 Jul 2001).

<sup>60</sup>1999 Conv. RE 1009. The level of the minimum terminal dues rate is set by a regulation adopted by the Postal Operations Council, not by the Convention itself.

<sup>61</sup>This portion of the upper bound increases to 1.684/kg + 0.172/item in 2002 and 1.684/kg + 0.215/item in 2003. The limits in 2004 and 2005 are to be set by the Postal Operations Council.

<sup>62</sup>1999 Conv. § 47(4).

<sup>63</sup>The post offices of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Norway, Portugal, Spain, Sweden, Switzerland, and United Kingdom.

<sup>64</sup>Moreover, some of these post offices have specific terminal dues arrangements (e.g., Canada-United States) which supersede the UPU provisions. On the other hand, a developing country post office can opt for treatment as an industrialized country at any time. 1999 Conv. § 48(7).

Table 4. Summary of UPU terminal dues for industrialized country post offices

Convention	Terminal dues (SDR)
Washington, 1989	<ul style="list-style-type: none"> <li>• Special rule for “high volume” mail flow (more than 150 tonnes/year)</li> <li>• Correction mechanism formula, 1.258/kg + 0.143/item, simplified to 8.115/kg (letters); 2.058/kg (printed matter)</li> </ul>
Seoul, 1994	<ul style="list-style-type: none"> <li>• Special rule for “high volume” mail flow (more than 150 tonnes/year)</li> <li>• Revision mechanism, 1.00/kg + 0.140/item, simplified to 3.427/kg.</li> <li>• Bulk mail rate, 1.25/kg + 0.175/item or 60% domestic priority rate (linear), if lower.</li> <li>• Remail rate, 1.00/kg + 0.140/item or 80% equivalent domestic rate, if higher.</li> </ul>
Beijing, 1999	<ul style="list-style-type: none"> <li>• Special rule for “industrialized countries”.</li> <li>• 1.684/kg + 0.158/item or 60% domestic priority rate (linear), if lower, but not lower than 1.491/kg + 0.147/item.</li> <li>• “System harmonization” rule limits developing countries use of base TD rate.</li> <li>• Revision mechanism, bulk mail rates, and remail rate similar to 1994 Conv.</li> </ul>

Second, the 1999 Convention adopted a new “system harmonization” rule that limits the amount of mail that a developing country may send to an industrialized country using the base terminal dues rate to 110 percent of the amount of mail dispatched the year before. Third, the 1999 Convention retained the “revision mechanism” from the 1994 Convention according to which a destination post office may request that terminal dues be calculated using the formula 1.00/kg + 0.140/item if it receives more than 150 tonnes of mail whose average weight per piece is less than 47.6 grams (i.e., greater than 21 items per kilogram).<sup>65</sup>

For mail sent to developing countries, the 1999 Convention likewise retained the terminal dues of the 1994 Convention, SDR 3.427/kg. Post offices in developing countries also may invoke the bulk mail terminal dues rate and the revision mechanism in the same manner as an industrialized country post office if they receive bulk mail or a large amount of lightweight mail.

One of most notable provisions of the terminal dues scheme adopted by the Beijing Congress was the introduction of an explicit tax on international mail sent from industrialized countries to developing countries. Under the 1999 Convention, industrialized country post offices are obliged to pay into a special fund a tax equal to 7.5 percent of the applicable terminal dues payment. This fund, the Quality of Service Fund, was established to finance developmental projects in developing countries. It will be administered by the International Bureau under the direction of

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<sup>65</sup>1999 Conv. § 49. In addition, if a developing country sends unusually heavy mail to an industrialized country, the origin post office may request the benefit of the terminal dues formula, 1.00/kg + 0.140/item, whenever the average weight per items exceeds 71.4 grams (less than 14 items per kilogram).

a UPU committee of postal officials.<sup>66</sup> The concept of the Quality of Service Fund was developed hastily during preparations for the Beijing Congress. It was apparently first broached in a February 1999 meeting of the UPU's Council of Administration. At this time, the annual revenue from the proposed tax was estimated to be SDR 20 million.<sup>67</sup> The Beijing Congress did not address potential legal and political difficulties posed by an intergovernmental organization taxing international commerce and delegating administration of the tax fund to parties who may have a direct or indirect interest in expenditures. Nor did the Beijing Congress consider possible adverse consequences of the tax on mail flows from industrialized countries to developing countries even though there seems no way to distinguish between such a tax and the practice, criticized in the 1998 report "The Need for Change", of setting terminal dues levels above domestic postage levels in developing countries.

The Beijing Congress also amended the first sentence of paragraph 4 of the anti-remail provision of the Convention, renumbered as Article 43, as follows:

A member country shall not be bound to forward or deliver to the addressees letter-post items which senders post or cause to be posted in large quantities in a country other than the country where they reside ~~without receiving appropriate remuneration~~ if the amount of terminal dues to be received is lower than the sum that would have been received if the mail had been posted in the country where the senders reside.

According to the U.K. post office, author of this change, it was intended to prevent a destination post office from intercepting remail under circumstances in which it would receive the same terminal dues payment from the remailing post office and as from the post office where the sender resides. This may be considered mildly procompetitive in effect because it gives the sender greater choice. Nonetheless, this amendment appeared to demonstrate continuing support for the suppression of remail among UPU members.

At the signing of the 1999 Universal Postal Convention there was an unusual and interesting flurry of contentious declarations and reservations relating to terminal dues and remail provisions. Of these, the most controversial were filed by the United States. Thwarted in its efforts to promote basic reform of the Universal Postal Convention, the United States prepared both a declaration and a reservation. The declaration called attention to the need to bring terminal dues in line with the principles of the General Agreement on Trade in Services and to decrease reliance on the anti-remail provision of the Convention:

The United States of America supports the terminal dues system as adopted by the Beijing Congress, acknowledging it as a significant but incomplete measure that moves the system toward a sound economic basis for compensating postal administrations. It is the policy of the government of the

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<sup>66</sup>1999 Conv. § 50; 1999 Beijing Congress Doc 37 Annex 1.

<sup>67</sup>1999 Beijing Congress Doc 37 Annex 1, pars 2-3, citing CA 1999 Doc 14b Annex 3.

United States of America to pursue vigorously further terminal dues reform, which will maintain a viable, efficient and universal international mail service, provide proper compensation to postal administrations for the delivery costs they incur, and review the need for article [43] restrictions. Further, the United States of America anticipates that such a system should be adopted no later than the year 2005, and substantially earlier for exchanges of mail between industrialized countries.<sup>68</sup>

In its reservation, the United States reserved “ *the right to implement these terminal dues agreements in accordance with the provisions adopted in future negotiations involving the General Agreement on Trade in Services.* ”<sup>69</sup> Unlike a declaration, a reservation is legally binding on those that ratify the Convention. The United States explained this reservation as follows:

... some member countries of the World Trade Organization are considering the inclusion of postal services and express delivery services in the new round of General Agreement on Trade in Services (GATS) negotiations that will be launched in Seattle in November 1999. Because of the growing blur between private delivery services and competitive services of the postal operators, the exact scope of the talks is still unknown. In the view of the United States of America, its negotiators participating in the Seattle meeting need flexibility to negotiate without being limited by the decisions on terminal dues taken at the Beijing Congress.

It is also the view of the United States, however, that the UPU must monitor closely developments in WTO and in GATS and take these developments into account as it continues with its own further examination of the terminal dues system. It believes that important steps have been taken at the Beijing Congress toward the introduction of a more economically sound and cost-based terminal dues system. Nevertheless, further work is urgently needed to help developing countries participate in economically sound terminal dues arrangements and in eliminating market distortions and compensation inadequacies still inherent in the new UPU terminal dues structure.<sup>70</sup>

Despite its limited nature, the U.S. reservation provoked a strong reaction from other UPU members. Sixty countries—including nine Member States of the European Union—filed a “counter reservation” against the U.S. reservation<sup>71</sup> stating

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<sup>68</sup>Declarations Made on Signature of the Acts of the 1999 Beijing Congress, Declaration VII.

<sup>69</sup>1999 Conv., Prot Article XXIV(10).

<sup>70</sup>Beijing Congress, Proposal 23.20.914.

<sup>71</sup>A counter reservation appears to trump a reservation. In the 1994 Convention, several countries filed a reservation to Article 25 that limited to the terminal dues specified for bulk mail the amount that they would pay to a destination post office for delivery of ABC remail posted in large quantities. Other countries then filed a counter reservation to this reservation. 1994 Conv. Prot. VII, VII.5. On consultation, the International Bureau upheld the legal validity of the counter reservation: “Legally, the situation of the countries quoted in article VII.5 in relation to those quoted in article VII.4 was the following: only Article 25, and not Article VII.4, was applicable to them. That meant that those countries were authorized to claim payment amounting to as much as 80% of the domestic

that they “reserve the right to fully apply the provisions approved by the Beijing Congress regarding terminal dues in their mutual relations with the countries having signed these reservations”.<sup>72</sup> These countries thus insisted that they will not accept any effort to bring terminal dues into conformance with GATS principles prior to the effective date of the next Universal Postal Convention, 1 January 2006.

In another sign of discontent, Germany filed a reservation to the terminal dues provisions for 2004 and 2005 stating that, if the Postal Operations Council failed to define the relationship between industrialized country terminal dues and domestic tariffs for 2004 and 2005, the Germany “reserves the right to define itself the percentages pursuant to article 48.3 for the years 2004 and 2005 in accordance with the principles laid down in that article”.<sup>73</sup> In response, the Netherlands, United Kingdom, and United States filed a counter reservation declaring that notwithstanding Germany’s reservation to “to define unilaterally the percentages pursuant to article 48.3 for the years 2004 and 2005 [they] reserve the right to continue applying terminal dues rates based upon the methodology and percentages for converting domestic tariffs into terminal dues rates in effect for the years 2001 to 2003”.<sup>74</sup>

The Beijing Congress ended with a distinct sense that at least some key members considered additional reforms in provisions relating to terminal dues and remail imperative. To address such issues, the Beijing Congress formed a special High Level Group, which is presently studying possible provisions for the 2004 Congress to be held in Abidjan.

## 10. SUMMARY

The history of terminal dues and remail restrictions in international postal law offers a remarkable story of economic policy that stretches back almost a century. As early as 1924, the Universal Postal Union’s rejection of a terminal dues system aligned with domestic postage rates required adoption of restrictions on the free movement of mail and printing services among nations. As international commerce expanded in the 1980s, following a quickening of new technologies, post offices redoubled their efforts to prevent the use of remail to circumvent rules for the exchange of international mail prescribed by the UPU. These efforts were thwarted by two key governmental decisions. In 1986, the United States opened the market for substantial international remail services by permitting export of international remail. In 1992 and 1993, the European Commission, after long study, declared terminal dues arrangements and remail restrictions developed within the Remail Conference and the Universal Postal Union must yield to the principles of the

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rate applicable to equivalent items, or 0.14 SDR per item and 1 SDR per kilogramme. However, the administration of posting might refuse to pay the amount claimed”. CA 1996 Doc 2a at 26-28.

<sup>72</sup>1999 Conv., Prot Article XXIV(11).

<sup>73</sup>1999 Conv., Prot Article XXIV(7).

<sup>74</sup>1999 Conv., Prot Article XXIV(8).

European competition rules. In 1999, in the REIMS II terminal dues agreement in Europe and the Beijing Congress of the UPU, postal officials accepted the principle that terminal dues should be related to domestic postage. This was a major step, but not the final step, towards elimination of the distinctions between international and domestic mailer long perpetuated by international postal doctrines on terminal dues and remail.