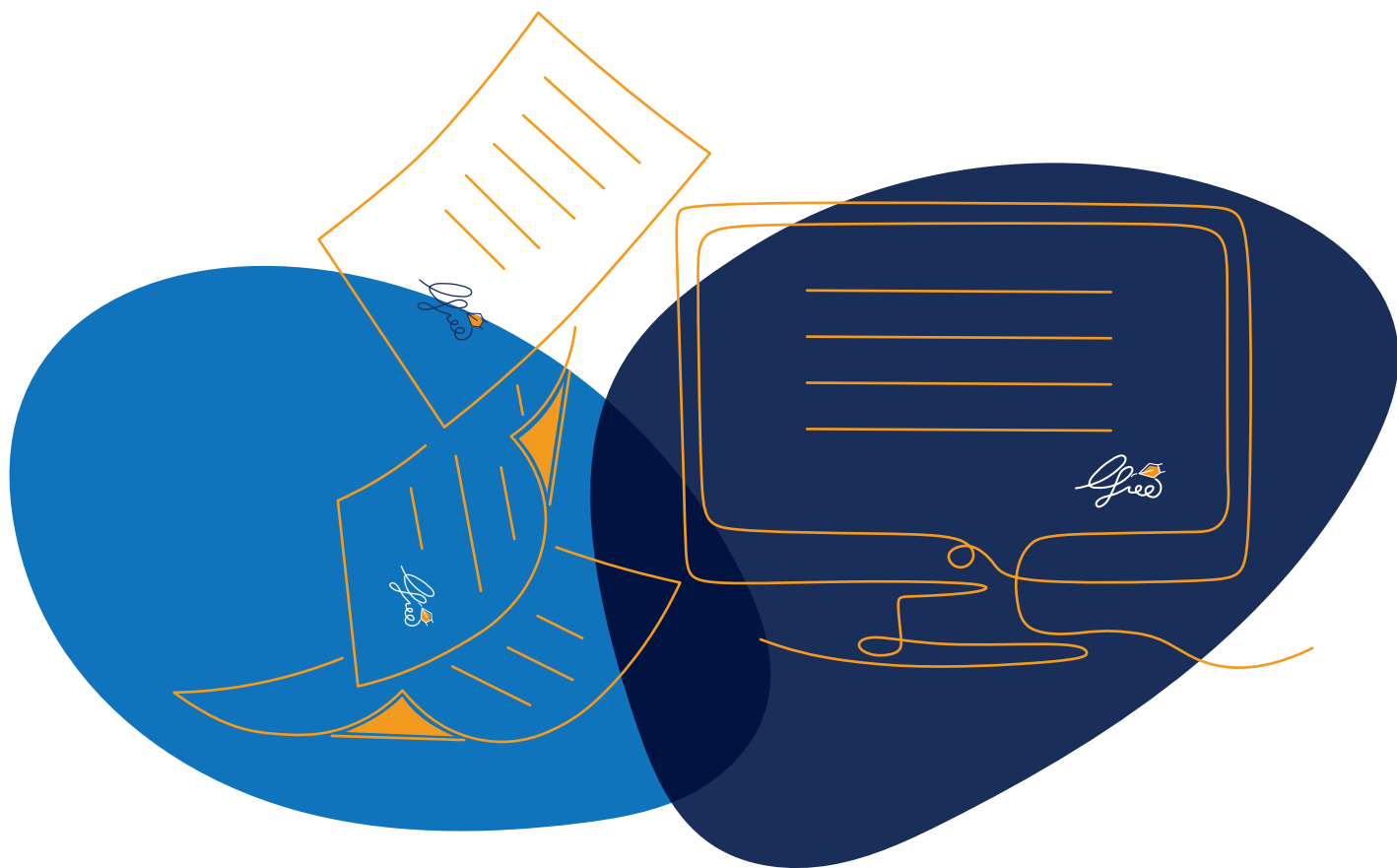


# Apostille Handbook

## Practical Handbook on the Operation of the Apostille Convention



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Second Edition

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## Foreword

Since 1893, the HCCH has been building bridges between legal systems for the benefit of individuals, families, and businesses. As an Organisation, it has grown both in size and relevance, working to ensure that the benefits of its Conventions and Instruments can be enjoyed across the globe, by all those living international lives or doing business across borders. This mission is well exemplified by the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention) — the HCCH Convention with both the highest number of Contracting Parties and, based on the data available, the HCCH Convention that is most frequently used in practice.

Today, the Apostille Convention spans all major regions of the world, encompassing countless languages, cultures, and legal systems. In 2021, we celebrated the sixtieth anniversary of the Apostille Convention, an auspicious occasion which coincided with the accession of the 121<sup>st</sup> Contracting Party. As we celebrate its 61<sup>st</sup> anniversary, I am very pleased to say that this number of Contracting Parties has continued to increase. With this expansion set to continue, the effective operation of the Convention is more important than ever.

Since its publication in 2013, the Apostille Handbook has become the primary source of information for Contracting Parties to the Convention and their Competent Authorities. Officials who issue and receive Apostilles, users of Apostille services, and all those interested in joining the Convention look to the Handbook for guidance on the implementation and practical operation of the Apostille Convention and the electronic Apostille Programme (e-APP). It is essential that this advice remains up to date and fit for purpose.

This second edition builds upon the robust foundation of the first. The revision is intended to respond to contemporary issues relating to the Convention, including by incorporating advice from recent meetings and reflecting on the experiences of the growing number of Contracting Parties.

I would like to extend my sincere thanks to the Members and Contracting Parties who provided comments and feedback throughout the drafting process and to the delegates at the 2021 meeting of the Special Commission for their participation and interest, all of which underpins the success of this new edition of the Handbook. I would also like to thank the publication and translation team for their excellent work, both at the Permanent Bureau: Lydie de Loof, Thomas Machuelle, and Ana Zanettin; as well as externally: Aurélie Mercier and Maria Cecilia Brusa.

Finally, I would like to acknowledge Brody Warren and Nicole Sims, the "Apostille Team" at the Permanent Bureau and thank them for their tremendous efforts in preparing this second edition. Developed with their expertise, I trust that this Handbook will continue to be an invaluable resource, ensuring the effective operation of the Convention into the future.

Dr Christophe Bernasconi | **Secretary General**

January 2023



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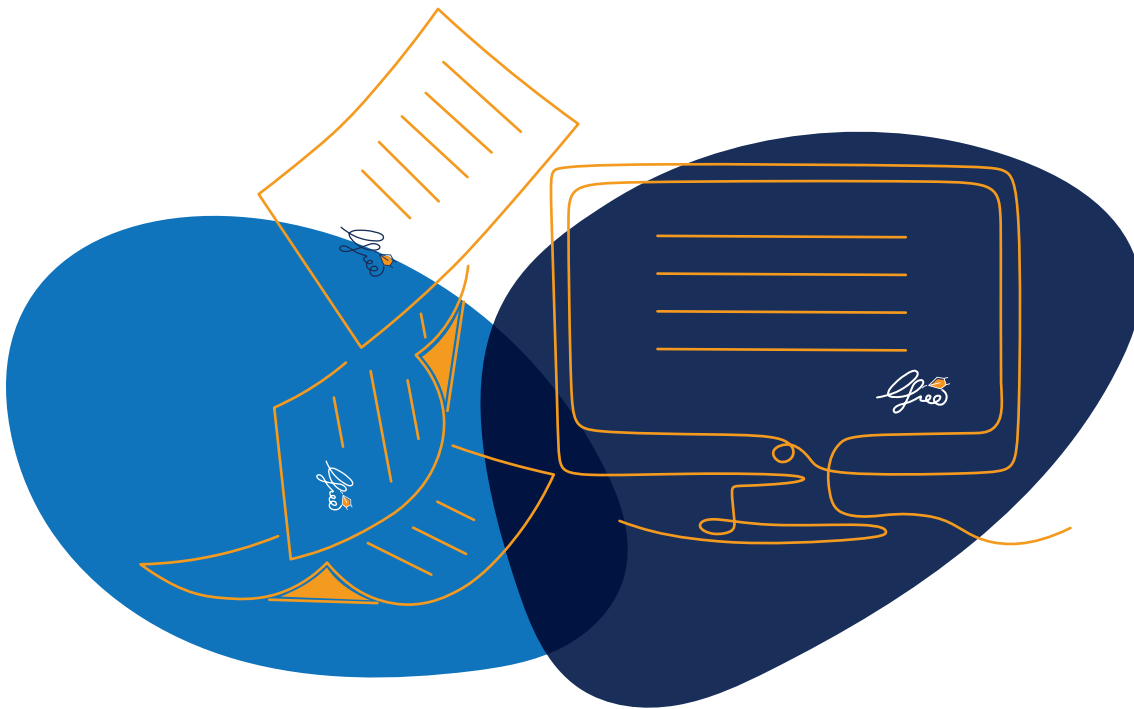
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# Introduction





The *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (hereinafter, the "Apostille Convention") is the most popular and most used of the HCCH Conventions. With over 120 Contracting Parties to date, individuals, families, and businesses from across the world benefit from the tens of millions of times the Convention is applied every year.

This Handbook, informed by the experiences of Contracting Parties, the guidance of the Special Commission on the practical operation of the Apostille Convention, and the expertise of the Permanent Bureau, is intended to assist all users of the Apostille Convention. This includes States interested in joining the Convention, Competent Authorities tasked with its effective operation, and all those seeking to rely on an Apostille.

A first edition was published in 2013 and became an invaluable resource in facilitating greater understanding of the Convention. This second edition builds upon the success of its predecessor by further simplifying the text for improved accessibility and updating information and resources to ensure the advice remains contemporary. Key changes include a greater focus on the electronic Apostille Programme (e-APP), further explanation of the role of diplomatic missions, and the incorporation of the outcomes of the Working Group on the Authentication of Documents Generated by Supranational and Intergovernmental Organisations, the Experts' Group on the e-APP and New Technologies, as well as meetings of the International Forum on the e-APP and the Special Commission on the practical operation of the Apostille Convention.

The Handbook is structured as follows:

Part One provides an overview of the Convention, its history and purpose.

Part Two examines the role, establishment, and operation of Competent Authorities.

Part Three describes the geographic, temporal, and substantive scope of the Convention.

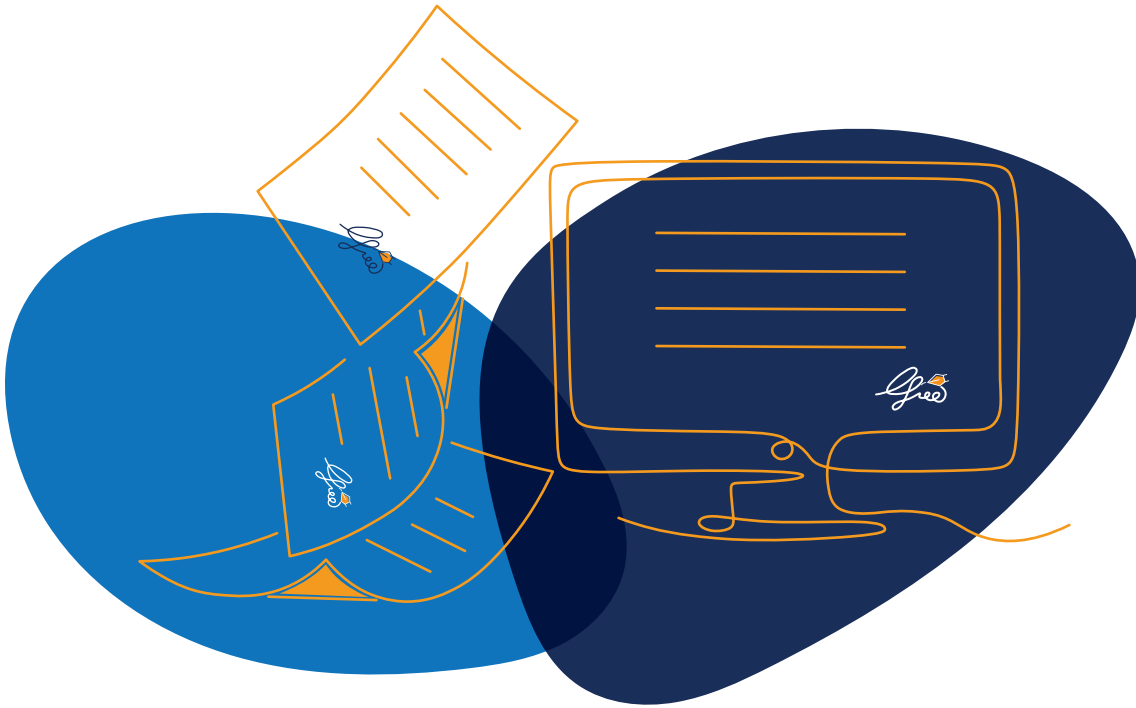
Part Four explains the process for issuing an Apostille in the State of Origin and is complemented by Part Five which explains the process for presenting an Apostille in the State of Destination.

Part Six focuses on the e-APP.

Other explanatory materials, referred to throughout the Handbook, are included as Annexes. These include the text of the Convention (Annex I) and its Explanatory Report (Annex II), information on joining the Convention (Annex III), recommended additional text for inclusion on an Apostille Certificate (Annex IV), and additional guidance on the e-APP (Annex V).



# Glossary





## Accession

An international act establishing consent to be bound by a treaty (see Art. 2 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*).

In the case of the Apostille Convention, Article 12(1) provides that any State, other than those for which the Convention is open for signature and ratification, may accede to the Convention. All States eligible to sign and ratify under Article 10 have done so, meaning that all other States wishing to join the Apostille Convention must now do so by accession. A State may accede by depositing an instrument of accession with the Depositary. More information on the accession procedure is available at Annex III.

## Allonge

A slip of paper, attached to the underlying public document, on which an Apostille is affixed. An allonge is used as an alternative to affixing the Apostille directly on the underlying document (see Art. 4(1) of the Apostille Convention).

## Apostille

A Certificate issued under Article 3(1) of the Apostille Convention, in the form of the model annexed to the Convention, certifying the authenticity of the origin of a public document.

## Apostille Convention (or Convention)

The *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*. This is an international treaty developed and adopted by the HCCH. The final text of the Apostille Convention was adopted by the HCCH at its Ninth Session on 26 October 1960 and was first signed on 5 October 1961, giving the Convention its date. In accordance with Article 11(1), the Apostille Convention entered into force on 24 January 1965, 60 days after the deposit of the third instrument of ratification. The full text of the Apostille Convention is set out at Annex I and is also available on the Apostille Section of the HCCH website.

## Apostillisation

The process of issuing an Apostille on a public document under the Apostille Convention for production abroad. A document for which an Apostille has been issued under the Apostille Convention is referred to as having been "apostilled".

## Applicant

The person making a request for an Apostille to be issued.

## Authentication (of a public document)

The process of verifying, or "authenticating", that a public document is genuine. The issuance of an Apostille is a type of authentication used between Contracting Parties to the Apostille Convention to certify the origin of a public document to be used abroad. Where the Apostille Convention does not apply, documents may be subject to a series of authentications as part of the legalisation process in order to be presented abroad.



## Capacity

The legal authority to perform a prescribed function, typically conferred upon a person by virtue of a position or role. In the context of the Apostille Convention (see Arts 2 and 3), capacity refers to the position with the legal authority to execute the underlying public document as defined by the law that applies in the territory where the document is executed.

## Certificate

A document or record confirming the authenticity of a fact, event, or item.

For the purposes of this Handbook, when capitalised, the term "Certificate" refers specifically to an Apostille. This distinguishes it from other types of certificates, such as an "official certificate" which is a public document referred to in Article 1(2)(d) of the Apostille Convention.

## Competent Authority

An authority designated by a Contracting Party under Article 6 of the Apostille Convention to issue Apostilles. A Contracting Party may determine how many Competent Authorities are designated and the extent of their competence (*e.g.*, issuing Apostilles only for certain types of public document). Information about Competent Authorities designated by Contracting Parties is available on the Apostille Section of the HCCH website.

## Conclusions and Decisions (C&D) / Conclusions and Recommendations (C&R)

The form in which outcomes of many HCCH meetings are developed and adopted. Under the HCCH Rules of Procedure, Special Commission meetings adopt C&R, as do meetings of Experts' Groups and Working Groups. These are then submitted to the Council on General Affairs and Policy for approval. Outcomes adopted in the form of C&D are reserved for specific meetings of HCCH Members, such as the Council on General Affairs and Policy.

Although strictly non-binding, C&R play an important role in ensuring the uniform interpretation and practical operation of the Apostille Convention. In practice, the e-APP Forum also adopts important guidance, generally in the form of C&R, however these do not carry the same authority as those authorised under the Rules of Procedure.

## Contracting Party

A Party to the Apostille Convention, whether by ratification, accession, or succession. A Party is considered a Contracting Party from the time of the deposit of their instrument. An updated list of all Contracting Parties is available on the status table available on the Apostille Section of the HCCH website.

## Council on General Affairs and Policy (CGAP)

The principal governing body of the HCCH, composed of all HCCH Members and established under Article 4 of the HCCH Statute. The Council on General Affairs and Policy meets annually to determine the work programme of the HCCH and oversees the effective operation of the Organisation by directing the activities of the Permanent Bureau.

## Depositary

An authority charged with the administration of an international treaty (see Art. 77 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*). In the case of the Apostille Convention and other HCCH Conventions and Instruments, the Depositary is the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

In fulfilment of its duties, the website of the Depositary provides the authoritative record of signatures, ratifications, accessions, and successions, as well as Convention notifications, designations, and declarations. The website is available at: <https://treatydatabase.overheid.nl/en>.

## Digital certificate

An electronic credential that links the identity of a signature to an individual or authority through public key infrastructure.

## Digital signature

A name, initial, mark, or symbol that is affixed to, or logically associated with, a document or other record in electronic form and authenticated using a digital certificate to evidence the signing of that document or record. For the purposes of this Handbook and to mirror the text of the Apostille Convention, the term includes a "digital seal" or "digital stamp".

## e-Apostille

A Certificate issued under Article 3(1) of the Apostille Convention, when issued in electronic form. It is signed with a digital signature. Subject to domestic law or policy, e-Apostilles may be issued on electronic public documents or on paper public documents that have been scanned into electronic form or otherwise digitised. The issuance of e-Apostilles is one of the two components of the e-APP (the other being the operation of e-Registers).

## e-APP (electronic Apostille Programme)

An initiative aimed at promoting and facilitating in the implementation of technology under the Apostille Convention. The e-APP comprises two components: the issuance of e-Apostilles and the operation of e-Registers. These components can be implemented separately or together.

## e-APP Forum (International Forum on the e-APP)

A meeting organised by the Permanent Bureau to exchange information and experience in relation to the e-APP and the practical operation of its components. Information relating to meetings of the e-APP Forum is available on the Apostille Section of the HCCH website.

## e-Register

An e-Register is the register kept under Article 7 of the Apostille Convention, when that register is kept in electronic form and publicly accessible online. An e-Register may include records of both paper Apostilles and e-Apostilles. The operation of e-Registers is one component of the e-APP (the other being the issuance and use of e-Apostilles).

## Electronic Signature

A name, initial, mark, or symbol that is affixed to, or logically associated with, a document or other record in electronic form, to evidence the signing of that document or record. For the purposes of this Handbook and to mirror the text of the Apostille Convention, the term includes an “electronic seal” or “electronic stamp”.

## Execution (of a public document)

The formal act of creating a public document. This generally involves drafting the document, affixing the signature of the issuing official and / or the seal or stamp of the issuing authority. The execution of a public document is governed by the law that applies in the territory where the document is executed.

## Explanatory Report

The report drawn up by Mr Yvon Loussouarn that describes the background and preparatory works of the Apostille Convention and provides article-by-article commentary on its text. The full text of the Explanatory Report is set out at Annex II and available on the Apostille Section of the HCCH website.

## Hague Conference on Private International Law (HCCH)

An intergovernmental organisation with a mandate to work for the progressive unification of the rules of private international law (see Art. 1 of the HCCH Statute). In fulfilment of its mandate, the Organisation develops and adopts HCCH Conventions and Instruments and supports their promotion, implementation, and operation. The website is available at: <https://www.hcch.net/>.

## HCCH Conventions and Instruments

International treaties developed and adopted by the HCCH, such as the Apostille Convention. A complete list of HCCH Conventions and Instruments is available on the HCCH website.

## HCCH Member

A State or Regional Economic Integration Organisation that has formally accepted the HCCH Statute (Art. 2).

Being a Member of the HCCH should not be confused with being a Contracting Party to the Apostille Convention (or any other HCCH Convention). A Member does not have to be (or become) party to the Apostille Convention and a Contracting Party to the Apostille Convention does not have to be (or become) a Member of the HCCH.

## Legalisation

The process of certifying a public document for production abroad. It generally comprises multiple discrete authentications, including by the Embassy or Consulate of the place in which the document is to be presented. The Apostille Convention abolishes the requirement of legalisation and replaces the process with the issuance of a single Apostille. Apostillisation therefore has the same legal effect and outcome as legalisation.

### National Organ (or Contact Organ)

An authority designated by a Member under Article 7 of the HCCH Statute, primarily for the purpose of correspondence with the Permanent Bureau. National Organs are designated by Member States and Contact Organs by Member Organisations. In practice, National and Contact Organs are responsible for coordinating participation in the work of the HCCH on behalf of the Member they represent, and overseeing activities in relation to promotion, implementation, and operation of HCCH Conventions and Instruments.

### Notarial act

An instrument or certificate drawn up by a notary that may perfect, record, or verify an obligation, fact, or agreement. This should be distinguished from situations where an "act" is used to refer to a function that a notary is authorised to perform.

### Objection

The process by which one Contracting Party objects to the accession of a new Contracting Party. According to Article 12 of the Apostille Convention, this objection must be raised and notified to the Depositary within six months of the formal notification of the acceding Party having deposited its instrument of accession. If an objection is raised within this period, the Apostille Convention does not enter into force between the newly acceding Party and the Contracting Party that raised the objection. This does not affect the entry into force between the newly acceding Party and all other Contracting Parties that did not raise an objection or Parties that raised an objection outside the objection period. Objections can be withdrawn at any time, and the Apostille Convention will then enter into force between the two Parties on the day the Depositary receives notification of the withdrawal.

### Permanent Bureau

The secretariat of the HCCH. Among its responsibilities, the Permanent Bureau monitors the promotion, implementation, and operation of the Apostille Convention, as it does for all HCCH Conventions and Instruments. This includes supporting Members and Contracting Parties, as well as organising meetings of the Special Commission and e-APP Forum.

### Principles and Practices (P&P)

A document compiling advice relevant to the implementation of the e-APP, the full title of which is "The e-APP: Key Principles and Good Practices". It was endorsed by the Experts' Group on the e-APP and New Technologies, approved by the Special Commission in 2021, and endorsed by the Council on General Affairs and Policy in 2022. The full text of the Principles and Practices document is set out at Annex V and available on the Apostille Section of the HCCH website.

### Production (of a public document)

The act of presenting a public document in the State of destination. The production of a public document may be required or provided for by the law of the State of destination or by other arrangement. In this Handbook, "producing" is distinguished from "executing" the document.

## Public document

A public document is a document executed by an authority or individual acting in an official capacity. This comprises a broad range of documents, including the categories of documents listed in Article 1(2) of the Apostille Convention. For the purposes of the Apostille Convention, the law of the State of origin determines whether a document is public in nature.

## Ratification

An international act establishing consent to be bound by a treaty (see Art. 2 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*).

In the case of the Apostille Convention, Article 10 provides that States that were represented at the Ninth Session of the HCCH (*i.e.*, the meeting that adopted the final text in 1960) could sign and ratify the Convention, as well as Iceland, Ireland, Liechtenstein, and Türkiye. These States have all joined the Apostille Convention; all other States wishing to join must do so by accession.

## Recipient

The person or authority receiving the apostilled public document in the State of destination.

## Register

A database or index required under Article 7 of the Apostille Convention in which a Competent Authority records the particulars of each Apostille issued.

## Special Commission (SC)

A body established under Article 8 of the HCCH Statute to prepare draft Conventions or to study other questions of private international law, such as reviewing the practical operation of HCCH Conventions. Special Commissions are composed of experts designated by HCCH Members and, if applicable, Contracting Parties to the relevant Convention. Other interested States and Organisations may attend as Observers. In this Handbook, "Special Commission" (or "SC") refers to the Special Commission on the practical operation of the Apostille Convention unless otherwise specified.

## State of destination

A Contracting Party where a public document is to be produced.

## State of origin

The Contracting Party from which the public document emanates and the Competent Authority of which is requested to issue an Apostille.

### Status table

A list of Contracting Parties maintained by the Permanent Bureau based on information provided by the Depositary. The status table is available on the Apostille Section of the HCCH website and includes important information relating to each Contracting Party, including:

- the method used to join the Apostille Convention (ratification, accession, succession);
- the date of entry into force of the Apostille Convention;
- the authorities designated as competent to issue Apostilles (Competent Authorities); and
- any declarations, reservations, or notifications it has made under the Convention.

### Succession

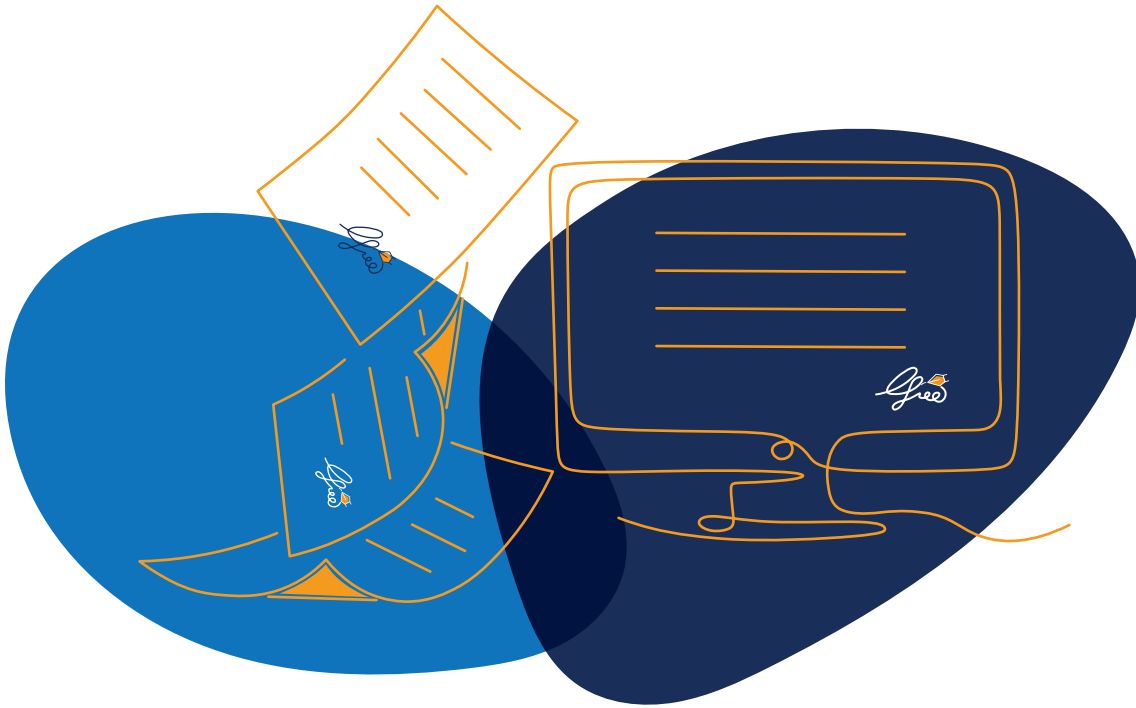
An international act by which one State replaces another in the responsibility for the international relations of a territory (see Art. 2 of the *Vienna Convention of 23 August 1978 on Succession of States in respect of Treaties*).

### Underlying public document

The public document to which an Apostille relates, or for which an Apostille is to be issued.



# Part One



## About the Apostille Convention



## About the Apostille Convention

- 1 Origins and growth of the Convention
- 2 Purpose of the Convention
- 3 Effect of an Apostille
- 4 Monitoring the practical operation of the Convention

## 1. Origins and growth of the Convention

- 1 Historically, the legalisation process has been a cause of inconvenience for persons and businesses needing to use public documents across borders. In the early 1950s, at the invitation of the Council of Europe, the HCCH began work to develop a Convention that would simplify the authentication of public documents to be produced abroad.<sup>1</sup>
- 2 The proposal was considered at the Eighth Session of the HCCH held in 1956,<sup>2</sup> and a Special Commission met in The Hague in 1959 to develop a preliminary draft Convention. This draft was refined and the final text of the Convention was approved by the HCCH at its Ninth Session on 26 October 1960. The Convention was signed by six States on 5 October 1961,<sup>3</sup> the date that is reflected in its full title. In accordance with Article 11(1), the Convention entered into force on 24 January 1965, 60 days after the deposit of the third instrument of ratification.<sup>4</sup>
- 3 The *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* has become commonly known as the Apostille Convention. This is a reference to the Certificate issued under the Convention.<sup>5</sup>
- 4 More information on the history and preparatory work is available in the Explanatory Report by Mr Yvon Loussouarn.<sup>6</sup> A collection of documents and minutes of the Ninth Session is contained in the *Actes et documents de la Neuvième session*, Tome II.
- 5 The Apostille Convention is the most widely ratified and acceded to of all the Conventions adopted under the auspices of the HCCH. It has over 120 Contracting Parties, representing all major regions and legal systems of the world, making it one of the most successful treaties in the area of international legal and administrative cooperation.

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<sup>1</sup> The original suggestion formed part of a broader proposal from the United Kingdom to the Council of Europe. Following an exchange with the Minister of Foreign Affairs of the Netherlands, the Secretary General of the Council of Europe agreed to put the proposal forward for consideration by the delegates at the Seventh Session of the HCCH. See HCCH, *Actes de la Septième session (1951)*, The Hague, Imprimerie Nationale, 1952, pp. 277 *et seq.* (available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Publications" then "Proceedings of the Diplomatic Sessions").

<sup>2</sup> See HCCH, *Actes de la Huitième session (1956)*, The Hague, Imprimerie Nationale, 1957, pp. 356 *et seq.* (available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Publications" then "Proceedings of the Diplomatic Sessions").

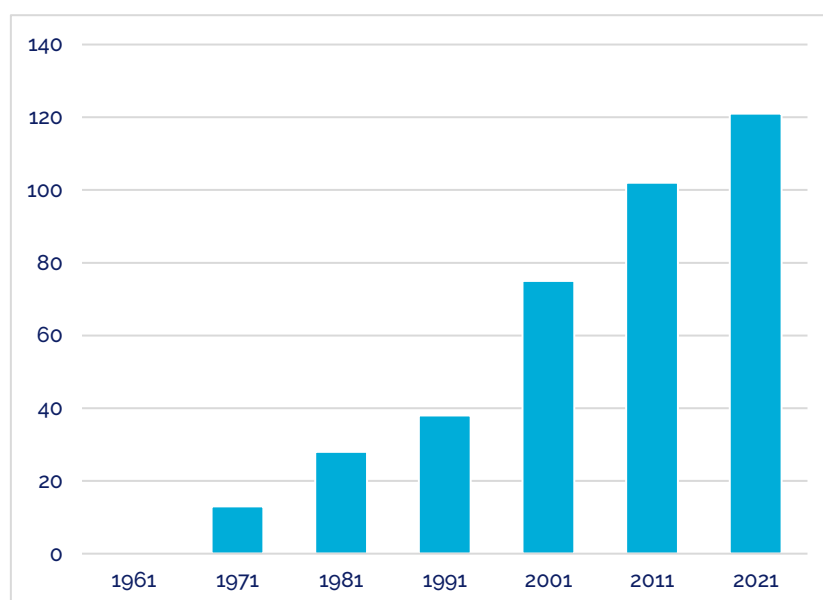
<sup>3</sup> Austria, Germany, Greece, Luxembourg, Switzerland, and Yugoslavia all signed on the same day.

<sup>4</sup> The three instruments of ratification were from France, United Kingdom, and Yugoslavia. The date of deposit and entry into force for Yugoslavia is not listed on the HCCH website.

<sup>5</sup> For a discussion of the terminology, see HCCH, *Actes et documents de la Neuvième session (1960)*, Tome II, *Legalisation*, The Hague, Imprimerie Nationale, 1961, p. 27 (available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Publications" then "Proceedings of the Diplomatic Sessions").

<sup>6</sup> Y. Loussouarn, "Explanatory Report on the HCCH 1961 Apostille Convention", in *Actes et documents de la Neuvième session (1960) (ibid.)*. Available at Annex II.

- 6 While the Convention was adopted over half a century ago, it continues to attract new Contracting Parties. Of the Parties that had joined the Convention by October 2021, when the 60<sup>th</sup> anniversary of the Convention was celebrated,<sup>7</sup> more than two-thirds of them had joined in the preceding 30 years.



- 7 The Convention applies to public documents and Apostilles can be used whenever public documents need to be produced abroad. This may occur in a multitude of situations, including: international marriages; international relocations; applications for studies, residency or citizenship in a foreign place; intercountry adoption procedures; international business transactions and foreign investment procedures; enforcement of intellectual property rights abroad; and foreign legal proceedings. As a result, tens of millions of Apostilles are issued around the world each year, making the Apostille Convention the most widely applied of the HCCH Conventions.
- 8 While the Convention was drafted with a paper environment in mind, the advent of new technologies has changed how public authorities operate. In response to the increasing use of electronic public documents – recognising that neither the spirit nor the letter of the Convention constitutes an obstacle to the usage of modern technology<sup>8</sup> – the electronic Apostille Programme (e-APP) was launched in 2006 to support the electronic issuance and verification of Apostilles. It is designed to ensure the continued effective operation of the Convention through the implementation of

<sup>7</sup> The 60<sup>th</sup> anniversary of the Convention was celebrated during the October 2021 meeting of the Special Commission, at which Indonesia deposited the instrument of accession to the Convention, becoming the 121<sup>st</sup> Party.

<sup>8</sup> See C&R No 4 of SC 2003.

two components: the issuance of electronic Apostilles (e-Apostilles) and the operation of electronic registers of Apostilles (e-Registers) that can be accessed online by recipients to verify an Apostille they have received. Since its launch, over 40 Contracting Parties have implemented one or both components of the e-APP.

## 2. Purpose of the Convention

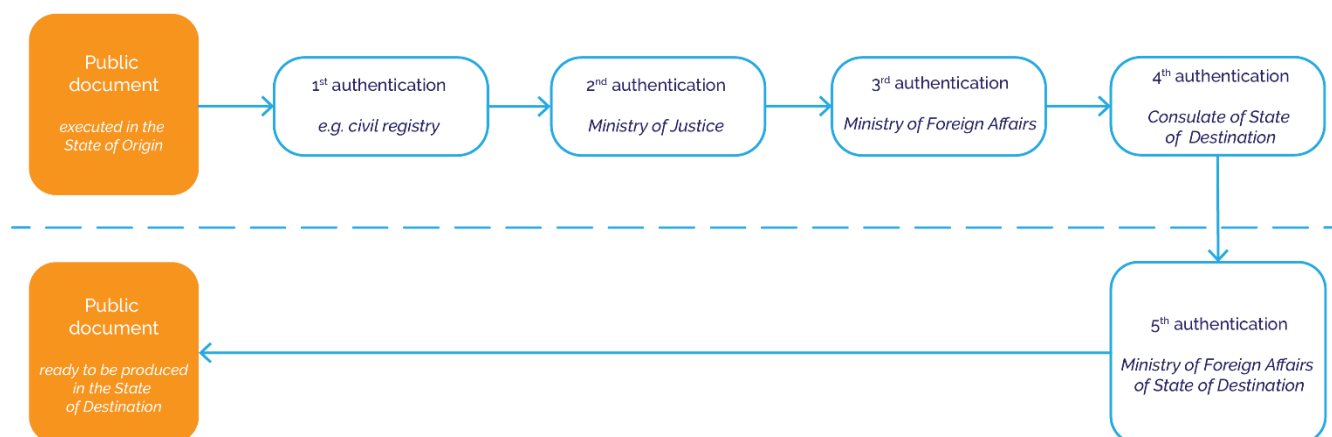
### A. Abolishing the requirement of legalisation

- 9 Legalisation describes the process by which the signature / seal / stamp on a public document is certified as authentic. The Apostille Convention seeks to abolish this legalisation process and, in its place, provides Contracting Parties with the option of requiring a single formality: the issuance of an authentication certificate (an Apostille).<sup>9</sup> Apostillisation therefore has the same effect and outcome as legalisation.
- 10 Generally, a public document may be produced in the State in which it is executed without the need for its origin to be certified. When the document is produced abroad, its origin may require certification as the recipient may not be familiar with the identity or official capacity of the person signing the document, or the identity of the authority whose seal / stamp it bears. As a result, some States or authorities require that the origin of a foreign public document be certified by an official who is familiar with the document. In practice, a series of public officials operate along a "chain" up to a point where the ultimate certification is readily recognised by an official of the State of destination and can be given legal effect. This procedure is known as legalisation.
- 11 While differences exist among States, the legalisation chain typically involves a number of links, which result in a cumbersome, time-consuming, and costly process. While Embassies and Consulates of the State of destination accredited to the State of origin are best situated to facilitate authentication, they do not maintain samples of the signatures / seals / stamps of every authority or public official in the State of origin, so intermediate authentication is required. Depending on the law of the State of origin, a series of authentications may be required before the document can be presented to the Embassy or Consulate for authentication. After the document has been authenticated by the Embassy or Consulate of the State of destination accredited to the State of origin, it may need to be presented to the Ministry of Foreign Affairs in the State of destination for a final authentication.

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<sup>9</sup> The wording of Art. 3(1) and the caveat in Art. 3(2) make it clear that the issuance of an Apostille is a maximum rather than a minimum requirement. See also Explanatory Report, paras 31-39.

### Example of the Legalisation Process



- 12 While some States do not impose the requirement of legalisation on foreign public documents that are produced in their territory,<sup>10</sup> individuals and businesses still benefit when these States join the Convention as Contracting Parties because other Contracting Parties may impose a legalisation requirement.

## B. Facilitating the use of public documents abroad

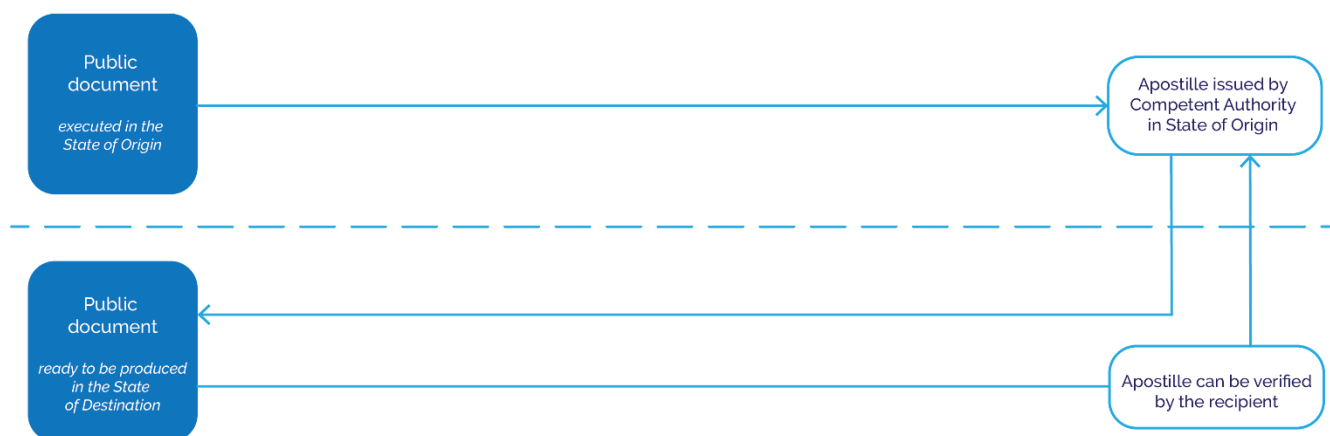
### (a) One-step process established by the Convention

- 13 The simplified procedure under the Convention has the same result as legalisation: the Apostille, issued by a designated authority (the Competent Authority), certifies the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.<sup>11</sup> By introducing this simplified process, the Convention reduces the costs and timeframes associated with document authentication and facilitates the use of public documents abroad.

<sup>10</sup> This is particularly the case for States with a common law tradition.

<sup>11</sup> Art. 3(1).

### The Apostille Process



- 14 Ideally, public documents should be apostilled directly, without the need for prior authentication within the State of origin. This one-step process is how Apostilles are issued by most Contracting Parties and reflects the simplicity that the drafters sought to achieve when the Convention was being developed.<sup>12</sup>
- 15 Some Contracting Parties still require some or all public documents to be authenticated by one or more authorities (e.g., professional or regional authentication bodies) before being apostilled. This is usually the case when the Competent Authority does not have the capacity to verify the origin of all public documents for which it has competence to issue Apostilles. While the multi-step process is not necessarily inconsistent with the Convention, it maintains cumbersome aspects of the legalisation chain that the Convention was designed to abolish and may lead to confusion about the underlying document to which the Apostille relates. Contracting Parties are encouraged to eliminate, to the extent possible, intermediate certification.<sup>13</sup>

#### (b) *Obligation to prevent legalisation where the Convention applies*

- 16 Under Article 9, Contracting Parties are required to take necessary steps to prevent their diplomatic and consular agents from performing legalisations where the Convention applies. At the implementation stage, this typically includes a Contracting Party informing its Embassies and Consulates abroad about the upcoming entry into force of the Convention. Compliance with the requirements of Article 9 should be

<sup>12</sup> See Explanatory Report, paras 1-6.

<sup>13</sup> See C&R No 12 of SC 2021.

continuously monitored,<sup>14</sup> where applicable through the development of directives or guidance.

(c) *Relationship with domestic law and other treaties*

- 17 The Convention does not itself require a foreign public document to be apostilled before being produced in the State of destination; any such requirement is a matter for the domestic law of the State of destination. Contracting Parties are free to eliminate, limit, or further simplify authentication requirements, or simply not impose any requirements, through formal or informal agreements – in any form – recognised by domestic law or policy. Similarly, the Convention does not preclude Contracting Parties from agreeing (e.g., in the form of a bilateral or multilateral treaty<sup>15</sup>) to eliminate, limit, or further simplify authentication requirements.<sup>16</sup> While there is no obligation to inform the Permanent Bureau of such agreements, Contracting Parties are encouraged to provide this information so that the Permanent Bureau can make it available to other Contracting Parties.
- 18 Several HCCH Conventions establishing legal cooperation mechanisms eliminate the requirement of legalisation or similar formality (including apostillation) for public documents within their scope.<sup>17</sup>
- 19 Interestingly, the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, the “1993 Adoption Convention”) does not abolish legalisation or similar formalities. As a significant number of public documents are exchanged in intercountry adoption procedures carried out under the 1993 Adoption Convention, the Apostille Convention has great potential to streamline

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<sup>14</sup> See C&R No 55 of SC 2021.

<sup>15</sup> A number of multilateral, regional and bilateral treaties seek to eliminate authentication requirements for certain categories of documents. For example:

- the International Commission on Civil Status has concluded the *Athens Convention of 15 September 1977 on the exemption from legalisation of certain records and documents*, which abolishes the requirement of legalisation or similar formality for certain civil status documents;
- the Council of Europe has concluded the *European Convention of 7 June 1968 on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers*, which abolishes the requirement of legalisation or similar formality for documents executed by diplomatic or consular agents;
- within Member States of the Southern Common Market (Mercosur), documents transmitted under the *Protocol of Las Leñas of 27 June 1992 on Judicial Cooperation and Assistance in Civil, Commercial, Labour and Administrative Matters* are exempt from authentication or similar formality;
- a number of instruments adopted by the European Union (EU) in the area of judicial cooperation abolish the requirement of legalisation or similar formality among EU Member States for documents coming within their scope, including Regulation (EU) No 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012, which has the effect of eliminating the need for Apostilles for certain public documents.

<sup>16</sup> See Arts 3(2) and 8. See also Explanatory Report, paras 31-39 and paras 51-53.

<sup>17</sup> See, e.g., Art. 3, *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (hereinafter, the “1965 Service Convention”); Art. 23, *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter, the “1980 Child Abduction Convention”).

and facilitate its operation. Contracting Parties to the 1993 Adoption Convention are encouraged to join the Apostille Convention.<sup>18</sup>

- 20 Similarly, no provision is made in the *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (hereinafter, the “2019 Judgments Convention”). While there was a “no legalisation” article included in an earlier draft of the 2019 Judgments Convention, the November 2017 meeting of the Special Commission on the Recognition and Enforcement of Foreign Judgments chose to delete it.<sup>19</sup> In doing so, the Special Commission noted the role of the Apostille Convention in ensuring the authenticity of a document's origin. Contracting Parties to the 2019 Judgments Convention are encouraged to join the Apostille Convention.<sup>20</sup>

### 3. Effect of an Apostille

#### A. What is an Apostille?

- 21 An Apostille is the Certificate issued under Article 3(1) of the Convention to certify the authenticity of the origin of a public document. Apostilles may be issued and presented in all Contracting Parties to the Convention.

#### B. Certification of origin and not content

- 22 The effect of an Apostille is limited, certifying only the authenticity of the *origin* of the underlying public document. It does so by certifying the authenticity of the signature on the document, the capacity in which the person signing the document acted and, where appropriate, the identity of the seal or stamp which the document bears.<sup>21</sup>
- 23 An Apostille does not relate in any way to the *content* of the underlying public document.<sup>22</sup> While the public nature of the document may imply that its content is true and correct, an Apostille does not enhance, or add any legal significance to, the legal effect that the signature / seal / stamp would produce without an Apostille. In this regard, the Special Commission recommends that Competent Authorities include a note on their Apostilles about this limited effect.<sup>23</sup>

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<sup>18</sup> See C&R No 6 of SC 2021; C&R No 42 of the Adoption SC 2010; C&R No 7 of the Adoption SC 2015 SC.

<sup>19</sup> See Work. Doc. No 182 of October 2017 for the attention of the Third Meeting of the Special Commission on the Recognition and Enforcement of Foreign Judgments (13-17 November 2017) (available on the HCCH website at [www.hcch.net](http://www.hcch.net) under the “Judgments Section” then “Preparatory work”).

<sup>20</sup> See C&R No 6 of SC 2021.

<sup>21</sup> Art. 5(2). See also C&R No 39 of SC 2021. For example, if an Apostille is placed on a birth certificate, this certifies the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. It *does not* certify that the information on the birth certificate, including the name and date of birth, are true and correct.

<sup>22</sup> See C&R No 39 of SC 2021.

<sup>23</sup> See C&R No 48 of SC 2021.



### C. No certification of domestic execution

- 24 Domestic law or policy will determine the formal requirements for executing public documents and whether any defects invalidate the public nature of the document. This includes the extent to which a Competent Authority is responsible for scrutinising documents for such defects; the Convention imposes no obligation upon a Competent Authority to do so. Because an Apostille does not have any legal effect beyond certifying the authenticity of the origin of a public document, its issuance does not cure any defects in the document.

### D. No effect on admissibility or probative value

- 25 The Convention does not affect the right of the State of destination to determine the admissibility and probative value of foreign public documents.<sup>24</sup> For example, the authorities in the State of destination may determine whether a document fulfils necessary requirements under domestic law or policy and whether the document has been forged or altered.
- 26 Contracting Parties may establish time limits on the acceptance of foreign public documents (e.g., the document must be produced within a certain period of time after its execution). These limits cannot be imposed on the acceptance of the Apostille itself.
- 27 It remains for the laws of evidence of the State of destination to determine the extent to which a foreign public document may be used to establish the existence of a fact.

### E. No expiry

- 28 A validly issued Apostille has effect for as long as it is identifiable and remains attached to the underlying public document. Accordingly, an Apostille may not be rejected solely on the basis of its age. However, this does not prevent authorities in the State of destination, on the basis of their domestic law or policy, from establishing time limits on the acceptance of the underlying public document.

## 4. Monitoring the practical operation of the Convention

### A. Role of the Permanent Bureau

- 29 The Permanent Bureau conducts and coordinates activities aimed at promoting, implementing, supporting, and monitoring the practical operation of the Convention. It responds to queries from Contracting Parties concerning the application of the Convention, conducts missions to advise on the effective implementation and

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<sup>24</sup> See C&R No 38 of SC 2021.

operation of the Convention, and prepares and organises meetings of the Special Commission and the e-APP Forum.

- 30 The Permanent Bureau has neither the mandate nor the power to police the operation of the Convention. In case of a difference of opinion between Contracting Parties as to the interpretation or application of the Convention, the Permanent Bureau may contact the relevant authorities or officials of the Contracting Parties concerned to discuss the matter and propose solutions.
- 31 The Permanent Bureau does not issue Apostilles, keep a register for Apostille verification, or provide direct assistance or advice to applicants, including with respect to the application of the Convention by Contracting Parties and their Competent Authorities. Members of the public and legal practitioners should visit the HCCH website or contact the relevant authority in the State concerned.
- 32 Resources on the Convention are available on the Apostille Section of the HCCH website. This includes current information on the list of Contracting Parties, contact details for Competent Authorities, information on the e-APP, and explanatory materials.
- 33 Competent Authorities are invited to contact the Permanent Bureau for matters relating to the effective operation of the Convention. This may include to update contact details or to discuss the adoption of new Apostille Certificates, the implementation of the e-APP, or difficulties with the acceptance of Apostilles.

## B. Role of the Special Commission

- 34 Meetings of the Special Commission allow for in-depth discussion and considered assessments of important issues relating to the practical operation of the Convention. These meetings are prepared by the Permanent Bureau.
- 35 Special Commission meetings are attended by experts and representatives, including from National Organs and Competent Authorities. At the time of publication, the Special Commission had met on five occasions: in 2003, 2009, 2012, 2016, and 2021.<sup>25</sup> The meeting in 2012 was the first to be dedicated exclusively to the practical operation of the Apostille Convention.<sup>26</sup>
- 36 The Special Commission adopts Conclusions and Recommendations which are subsequently approved by the Council on General Affairs and Policy. These Conclusions and Recommendations establish good practices for Competent Authorities and have become extremely valuable in addressing operational issues, as well as assisting with the uniform interpretation and application of the Convention.

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<sup>25</sup> The early operation of the Apostille Convention was also discussed during the first meeting of a Special Commission on the practical operation of an HCCH Convention, held in 1977 in relation to the 1965 Service Convention (see, *supra*, note 17). See, *Report on the Work of the Special Commission on the Operation of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (1977), pp. 10-11 (available on the HCCH website at [www.hcch.net](http://www.hcch.net) under the "Service Section" then "Practical Operation Documents").

<sup>26</sup> At the meetings in 2003 and 2009, the Apostille Convention was reviewed in conjunction with other HCCH Conventions on legal cooperation.

The Special Commission also determines future work to be carried out by the Permanent Bureau and Contracting Parties, subject to the overall work programme as set by the Council on General Affairs and Policy.

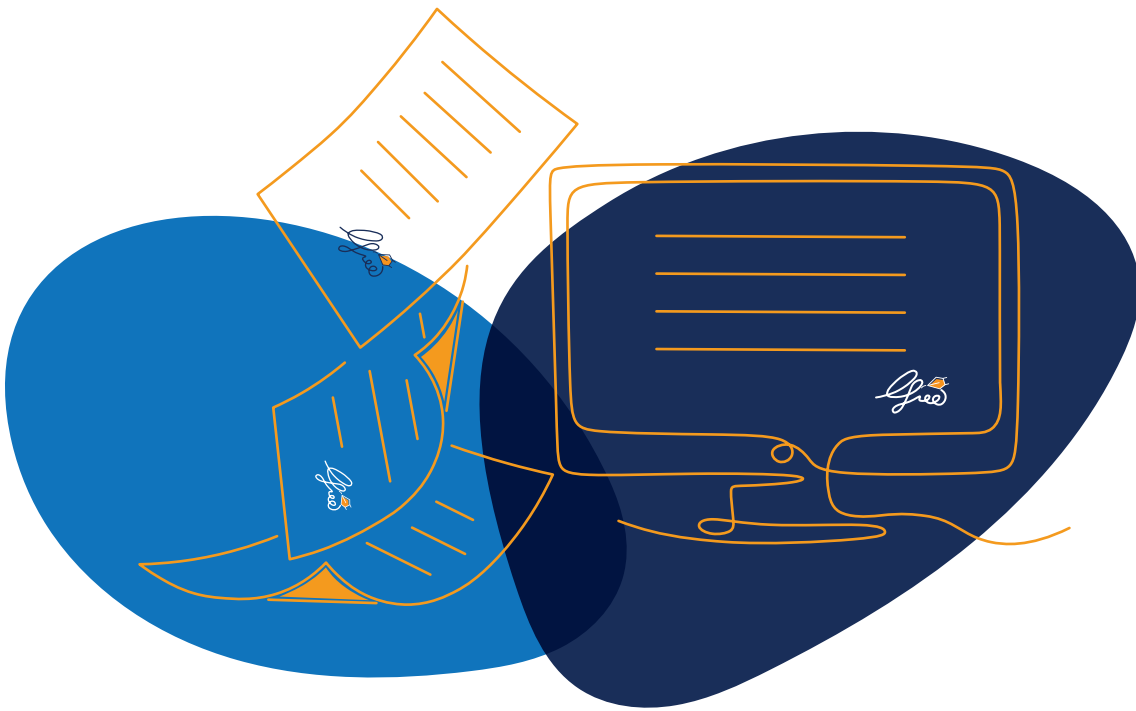
### C. Role of the e-APP Forum (International Forum on the e-APP)

- 37 In line with the development and expansion of the e-APP, the Permanent Bureau organises regular meetings of the e-APP Forum. These meetings provide an opportunity to exchange information and experience specifically in relation to the e-APP and the practical operation of its components. It has also proven useful for discussion of related matters such as electronic notarisation and digital authentication. As these meetings are often outside the formal schedule of the meetings of the Special Commissions of the HCCH, they are organised by the Permanent Bureau in conjunction with Contracting Parties, resulting in greater frequency of meetings and opportunities to host outside of the Netherlands. At the time of publication, the e-APP Forum had been held on 12 occasions in 11 locations.
- 38 The outcomes of e-APP Forum meetings are generally documented in the form of Conclusions and Recommendations, which reflect the discussion of experiences and good practices relating to the implementation of the e-APP. Given the informal nature of the e-APP Forum, its work remains subject to the authority of the Special Commission and the Council on General Affairs and Policy. At the Tenth (The Hague) Forum, recognising the value of its previous meetings, all existing e-APP Forum Conclusions and Recommendations were compiled a single omnibus, which was subsequently endorsed by the Special Commission.<sup>27</sup> This document – along with the Conclusions and Recommendations of past meetings of the e-APP Forum – is available on the Apostille Section of the HCCH website.

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<sup>27</sup> See C&R No 21 of SC 2016.

## Part Two



## Competent Authorities

## Competent Authorities

- 1 Role of Competent Authorities
- 2 Competent Authorities' operations
- 3 Changes to Competent Authorities
- 4 Diplomatic missions as issuing authorities
- 5 Combating fraud

## 1. Role of Competent Authorities

- 39 Pursuant to Article 6 of the Convention, each Contracting Party is required to designate one or more authorities who are competent to issue Apostilles. Each Contracting Party is free to determine the number and identity of Competent Authorities.<sup>28</sup> Competent Authorities may include legal bodies, such as Ministries and Departments, or specific officials identified by the title of their position.
- 40 The system of Competent Authorities is central to the sound operation of the Convention. They perform three fundamental functions:
- a) Verifying the authenticity (origin) of public documents.
  - b) Issuing Apostilles.
  - c) Recording Apostilles issued in a register in order to verify, at the request of the recipient, the validity of an Apostille.

In fulfilling these functions, Competent Authorities perform a number of interrelated tasks, including receiving requests for Apostilles, following-up with domestic officials and authorities that issue public documents, filling in and attaching Apostilles to the underlying public document, handling payments (if applicable), and verifying Apostilles upon request.

## 2. Competent Authorities' operations

### A. Resources and statistics

- 41 Each Contracting Party is responsible for the organisation of its Competent Authorities. They should be sufficiently staffed and resourced to perform the necessary functions. This includes access to equipment and software to issue Apostilles and to maintain electronic databases of sample signatures / seals / stamps, as well as electronic registers of Apostilles. Competent Authorities should also have access to means of communication, such as telephone and e-mail.
- 42 It is useful for Competent Authorities to record the overall number of Apostilles issued in order to monitor and respond to the demand for Apostille services. This may include information about the categories of public documents or States of destination for which Apostilles are most frequently issued. The statistical data collected by Competent Authorities also assists the Permanent Bureau with its role monitoring the practical operation of the Convention.

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<sup>28</sup> See C&R No 41 of SC 2021.

## B. Instructions and training

- 43 Competent Authorities should develop instructions on their internal procedures and best practices to guide staff members in processing requests for Apostilles. This should include guidance on how to identify categories of public documents that may be apostilled as well as prescribing uniform practices for attaching Apostilles. This should be supported by ongoing training for staff members.
- 44 In practice, Contracting Parties have organised activities (with or without the involvement of the Permanent Bureau) that bring together representatives from Competent Authorities to share experiences and exchange information. The Special Commission has noted the efforts of Competent Authorities and National Organs in conducting educational outreach activities regarding the Convention and its operation, including programmes aimed at increasing the acceptance of Apostilles.<sup>29</sup>

## C. Service delivery

- 45 In practice, most Apostille services are delivered by one or several of the following methods:
- the applicant requests and / or receives an Apostille over the counter at the premises of the Competent Authority;
  - the applicant requests and / or receives an Apostille by mail; or
  - the applicant requests and / or receives an e-Apostille online or by e-mail.
- 46 Each Contracting Party has discretion to determine the Apostille service delivery model it uses to appropriately respond to the demand. In this context, the Special Commission has welcomed efforts to decentralise the provision of Apostille services.<sup>30</sup> This can be done by either designating additional Competent Authorities or by opening local offices of an existing Competent Authority. Decentralising services, especially in combination with the harmonisation of systems across offices and authorities, increases efficiency and facilitates access for the public.
- 47 Competent Authorities are encouraged to consider developing a standard Apostille request form to assist applicants and ensure the Competent Authority has all the information it needs to issue the Apostille. Subject to applicable data protection laws, relevant information may include:
- the applicant's name and contact information;
  - the number and description of documents for which an Apostille is requested; and

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<sup>29</sup> See C&R No 35 of SC 2021.

<sup>30</sup> See C&R No 42 of SC 2021.

- the name of the State of destination.<sup>31</sup>

Where relevant, the Competent Authority may also request payment details and the preferred method of delivery.

## D. Public information

- 48 Information on the delivery of Apostille services should be publicly available for the benefit of individuals and businesses that may use Apostilles, as well as professional groups that are involved in the circulation of public documents (e.g., lawyers and notaries). Competent Authorities may maintain a website complemented by printed material that is available at the office of the Competent Authority and / or via officials and authorities that execute public documents that are frequently apostilled.
- 49 Relevant information to provide on a website or in printed material includes:
- contact details of the Competent Authority (street and postal address, telephone, e-mail, fax, contact person) and opening hours;
  - how to request an Apostille (incl. access to an online or downloadable request form and a checklist of things to do before making a request);
  - the categories of public documents for which the Competent Authority is competent to issue Apostilles (with a referral to other Competent Authorities of the Contracting Party where necessary or to diplomatic missions if the Convention does not apply and legalisation is required);
  - the type of services available (e.g., over-the-counter, mail, e-Apostilles, as well as any priority processing services) and expected turnaround times;
  - basic information about the operation of the Convention and the effect of an Apostille (incl. policies applicable to apostillation);
  - any applicable fees and accepted forms of payment;
  - how to verify an Apostille (either via an e-Register or by contacting the relevant Competent Authority);
  - a sample Apostille or an image of a sample Apostille; and
  - a referral to the Apostille Section of the HCCH website.
- 50 Competent Authorities are also encouraged to provide the Permanent Bureau with a hyperlink to the relevant website.<sup>32</sup>

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<sup>31</sup> While a Competent Authority may use this information to determine whether an Apostille may be issued, the Competent Authority should not refuse to issue an Apostille if the applicant does not specify the State of destination.

<sup>32</sup> See C&R No 17 of SC 2021.



### 3. Changes to Competent Authorities

51 Contracting Parties must notify changes in their designated Competent Authorities to the Depositary.<sup>33</sup> This includes instances where:

- a new Competent Authority is designated;
- an existing Competent Authority ceases to be designated as such; or
- the competence of an existing Competent Authority is modified (*e.g.*, the category of documents for which it has competence to issue Apostilles is changed).

This would also include instances where there has been a substantial change in the structure of a designated Competent Authority (*e.g.*, if government departments have merged).

52 The notification to the Depositary should include, where applicable, the name and the full contact details of each new Competent Authority (incl. the name and e-mail address of the contact person) and the classes of documents for which it has competence to issue Apostilles. The designation becomes effective the day the Depositary receives the notification with the changes.

53 Minor changes to the name or contact details of a designated Competent Authority, or the establishment of regional offices within a Competent Authority, are not considered changes to a designation, and therefore do not need to be notified to the Depositary. Contracting Parties are still strongly encouraged to provide this information to the Permanent Bureau, both for communication purposes and to ensure the provision of up-to-date information on the Apostille Section of the HCCH website.

### 4. Diplomatic missions as issuing authorities

54 Some Contracting Parties have diplomatic missions that issue Apostilles under the Convention. The Special Commission has recognised the value of this practice.<sup>34</sup>

55 A diplomatic mission may issue Apostilles in one of two ways:

- a) a Contracting Party designates each individual diplomatic mission as a Competent Authority in its own right; or
- b) a Contracting Party has a single designated Competent Authority which, under its internal law, is able to decentralise its Apostille processes and services via its diplomatic missions (*e.g.*, the Ministry of Foreign Affairs).

56 The Convention does not stipulate the location in which an Apostille should be issued, nor does it preclude the designation of a Competent Authority that is

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<sup>33</sup> Art. 6(2).

<sup>34</sup> See C&R No 13 of SC 2021.

physically located in the territory of another State. Thus, diplomatic missions may issue Apostilles, as long as the nuances in relation to territory in Article 1(1) and exclusions in Article 1(3)(a) are considered.<sup>35</sup> Such a practice is not inconsistent with the Convention provided that:

- the Competent Authority only issues Apostilles for the categories of public documents for which it has competence to issue Apostilles; and
- the Competent Authority is able to verify the origin of each public document for which an Apostille is issued.

57 The Convention may apply so long as an applicant provides a public document that was already executed in the territory of the home State, or a diplomatic mission retrieves a public document that was already executed in the territory of its home State.<sup>36</sup> For this reason, it is important that diplomatic missions issuing Apostilles have adequate systems and procedures in place to verify the origin of the public document.

58 The Permanent Bureau encourages the use of an e-Register to avoid or minimise rejections of Apostilles, in particular those that will be issued by diplomatic missions abroad.

59 Arrangements where diplomatic and consular missions issue Apostilles should be distinguished from situations where these missions act only as intermediaries to assist applicants in obtaining Apostilles (e.g., forwarding applications and transmitting Apostilles once issued) as they are not Competent Authorities and are merely facilitating the process. Despite this distinction, the Special Commission has noted the value of diplomatic missions in the Apostille process and encouraged Contracting Parties to consider involving their diplomatic missions, whether as issuing authorities or intermediaries for applicants, subject to legal requirements and practical limitations.<sup>37</sup>

## 5. Combating fraud

60 To ensure that the Apostille Convention continues to operate effectively, it is important to maintain confidence in the Apostille process. Examples of activities that may undermine confidence in the Apostille process include:

- purporting to be an authority that is competent to issue Apostilles where this is not the case;<sup>38</sup>
- issuing a certificate purporting to be an Apostille where the person or authority issuing the certificate is not (or no longer is) a Competent Authority;

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<sup>35</sup> See, in the context of Art. 1(3)(a), C&R No 14 of SC 2021. See also, *infra*, paras 123 *et seq.*

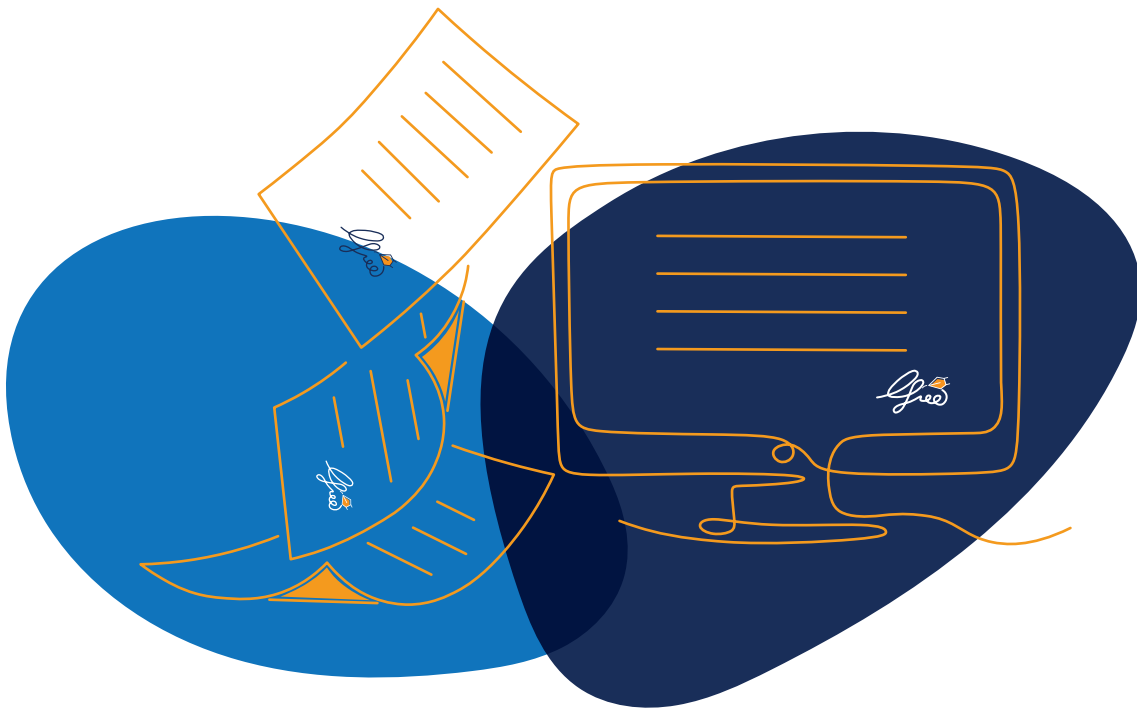
<sup>36</sup> See C&R No 14(a) of SC 2021.

<sup>37</sup> See C&R No 13 of SC 2021.

<sup>38</sup> Noting that services to assist persons in obtaining Apostilles may nevertheless be acceptable.

- using an Apostille as evidence of the content of the underlying public document or, in the case of Apostilles issued for official certificates, the document to which the official certificate relates;
  - detaching an Apostille from the underlying public document and reattaching it to another document; and
  - using an Apostille to lend legitimacy to a false document (*e.g.*, fake academic credentials issued by a “diploma mill”).
- 61 These activities are contrary to the Convention and Apostilles issued or used as a result are invalid. Although the Convention does not provide penalties or other sanctions for these activities, they may be provided for under domestic law or policy.
- 62 The Convention does not make provision for the policing of the Apostille system. In particular, the Permanent Bureau has neither the mandate nor the power to police the operation of the Convention. However, Competent Authorities are encouraged to bring matters relating to the effective operation of the Convention to the attention of the Permanent Bureau or the relevant authorities of their State for discussion at meetings of the Special Commission.

## Part Three



## Scope of the Convention

## Scope of the Convention

- 1 Geographic scope of the Convention
- 2 Temporal scope of the Convention
- 3 Substantive scope of the Convention

- 63 Before issuing an Apostille, a Competent Authority must be satisfied that the Convention applies. In this regard, three matters need to be considered:
- a) The *geographic* scope: where the Convention applies.
  - b) The *temporal* scope: when the Convention applies.
  - c) The *substantive* scope: the documents to which the Convention applies.
- 64 For a quick answer to where and when the Convention applies, check the status table on the Apostille Section of the HCCH website.

## 1. Geographic scope of the Convention

### A. Who are Contracting Parties?

- 65 The Convention only applies if both the State in whose territory the public document was executed (the "State of origin") and the State in whose territory the public document is to be produced (the "State of destination") are Parties to the Convention. That is, Contracting Parties for which the Convention is in force.
- 66 When checking the status table on the Apostille Section of the HCCH website, the following are important considerations:
- Both the State of origin and the State of destination must be listed on the status table.<sup>39</sup>
  - Only after the listed date of entry into force does the Convention apply to the relevant Party. A State that is becoming party to the Convention is listed on the status table when they first deposit their instrument of accession, approximately eight months before the entry into force.
  - If one of the Parties has joined the Convention by accession, check whether the other Party has raised an objection or otherwise made a declaration related to that accession. The Convention does not apply between Parties if an objection has been raised.
- 67 If a public document was executed or has to be produced in a State that is not a party to the Convention (or if the Convention does not apply because of an objection), the applicant seeking to have the document authenticated should contact the Embassy or Consulate of the State of destination accredited to the State of origin in order to find out what options are available. The Permanent Bureau does not provide any assistance in such cases.

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<sup>39</sup> This is irrespective of whether they are listed as HCCH Members or non-Members. Membership of the Organisation is separate from being a Contracting Party to the Apostille Convention.

## B. Overseas territories

- 68 The Convention only applies to public documents which have been executed "in the territory" of a Contracting Party.<sup>40</sup>
- 69 The default position is that the Convention does not apply to "overseas territories", which are referred to as "territories for the international relations of which [a State] is responsible".<sup>41</sup> The Convention allows a Contracting Party to extend the Convention to its overseas territories:
- by declaration at the time of the signature, ratification, or accession;<sup>42</sup> or
  - by notification to the Depositary at any other time thereafter.<sup>43</sup>
- 70 Details about extensions are available on the status table on the Apostille Section of the HCCH website and on the Depositary website.
- 71 Whether the territory of a Contracting Party is an overseas territory (and how those territories are referred to) is a matter for the law of that State.<sup>44</sup> Competent Authorities that have questions as to whether the application of the Convention has been extended to a particular territory should first check the status table. If a Competent Authority still has questions, it should contact the Ministry of Foreign Affairs of its State or the Depositary.

## C. Only among Contracting Parties

- 72 Article 1 of the Convention makes it clear that the Apostille system was designed to operate only between Contracting Parties to the Convention.

### (a) *No Apostilles from non-Contracting Parties*

- 73 Certificates purporting to be Apostilles issued by States that are not party to the Convention – including States that have joined the Convention but for which the Convention has not yet entered into force – have no effect under the Convention. Contracting Parties that become aware of instances of authorities of non-Contracting Parties to the Convention issuing certificates purporting to be Apostilles, or giving effect to Apostilles issued by Contracting Parties, are encouraged to share this information with the Permanent Bureau.<sup>45</sup>
- 74 Competent Authorities may only start issuing Apostilles after the Convention has entered into force for their State.

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<sup>40</sup> Art. 1(1).

<sup>41</sup> Art. 13(1).

<sup>42</sup> Art. 13(1).

<sup>43</sup> Art. 13(2).

<sup>44</sup> A. Aust, *Modern Treaty Law and Practice*, 3<sup>rd</sup> ed., London, Cambridge University Press, 2013, p. 179.

<sup>45</sup> See C&R No 60 of SC 2021.

*(b) No Apostilles for non-Contracting Parties*

- 75 The Convention gives no effect to Apostilles produced in a non-Contracting Party.
- 76 As a matter of public international law, the Convention (and its simplified authentication process) cannot be the source of legal authority in a State for which it is not in force. While such a State may give effect to Apostilles under its domestic law or policy, the Permanent Bureau does not support this practice, and instead encourages such States to join the Convention.
- 77 The Special Commission has noted, in order to assist applicants and avoid unnecessary delays and complications in producing the public document abroad, that it is often helpful for Competent Authorities to enquire about the State of destination of the public document to be apostilled.<sup>46</sup> The Permanent Bureau recommends that Competent Authorities not issue Apostilles when the applicant indicates that the intended State of destination is not party to the Convention (or is a State in relation to which the Convention does not apply as a result of an objection to accession). An exception is where the State of destination is in the process of becoming party to the Convention and the Competent Authority is satisfied that the document will only be produced after the Convention has entered into force.<sup>47</sup>

*(c) No Apostilles between Parties where there is an objection*

- 78 The Convention gives no effect to Apostilles produced in a Contracting Party where the Convention is not in force between it and the State of origin as a result of an objection.
- 79 The Convention allows an existing Contracting Party to raise an objection to the accession of a new Contracting Party.<sup>48</sup> This objection must be raised and notified to the Depositary within six months of the formal notification of the acceding State having deposited its instrument of accession (the "objection period"). Information on objections is available on the status table on the Apostille Section of the HCCH website.
- 80 If an objection is raised within the objection period, the Convention does not enter into force between the newly acceding State and the Contracting Party that raised the objection (the "objecting State").<sup>49</sup> Competent Authorities in the newly acceding State should not issue Apostilles when an applicant indicates that the intended State of destination is an objecting State and vice versa. The Convention will still enter into force between the newly acceding State and all other Contracting Parties that did not raise an objection or Parties that raised an objection outside the objection period.

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<sup>46</sup> See C&R No 44 of SC 2021.

<sup>47</sup> See also, *infra*, para 97.

<sup>48</sup> Art. 12(2).

<sup>49</sup> Art. 12(3).



- 81 Where a State has objected to the accession of a Contracting Party, including based on the issue of statehood, the subsequent entry into force of the Convention for that Contracting Party cannot prejudice the position of the objecting State.<sup>50</sup>
- 82 A Contracting Party may withdraw an objection at any time by notification to the Depositary. The Convention will then enter into force between that Party and the acceding Party on the day the Depositary receives notification of the withdrawal. Only Apostilles issued after this date will be recognised between the two Parties, even if the Convention entered into force between other Contracting Parties at an earlier time.
- 83 Objections are rare, especially considering the number of Parties that have joined the Convention. Moreover, of the Contracting Parties that have raised an objection, a number have subsequently withdrawn their objection following consultation with the relevant acceding Party. The Special Commission has encouraged objecting Parties to periodically consider whether it may be appropriate to withdraw their objections.<sup>51</sup>

*(d) No Apostilles for internal use*

- 84 An Apostille is only designed to produce effects abroad. An Apostille produces no effect in the State of origin and Contracting Parties are not required to give any effect to Apostilles issued by their own Competent Authorities. Competent Authorities may consider including additional text on the Apostille to this effect.<sup>52</sup>
- 85 When diplomatic missions issue documents for use in their home State, these do not need to be apostilled as they would be considered domestic documents.

*(e) Using the Apostille Certificate in the legalisation process*

- 86 Some Contracting Parties use a single certificate to certify the origin of public documents destined for both Contracting and non-Contracting Parties. This allows the official or authority in the State of origin to authenticate public documents without the need to distinguish between those States that are party to the Convention and those that are not.
- 87 Despite their appearance, certificates issued for non-Contracting Parties are not Apostilles and have no effect under the Convention. Accordingly, in order for the underlying document to be produced abroad in a non-Contracting Party, it might still be subject to the legalisation process under domestic law or policy, including being presented to the Embassy or Consulate of the State of destination or accredited to the State of origin for further authentication.

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<sup>50</sup> See C&R No 5 of SC 2021.

<sup>51</sup> See C&R No 59 of SC 2021.

<sup>52</sup> See, *infra*, paras 234 *et seq.* Additional text recommended by the Permanent Bureau is also set out at Annex IV.

- 88 This practice has been noted by the Special Commission<sup>53</sup> and is not contrary to the Convention, as long as the Apostille Certificate is not sought to be given effect under the Convention.
- 89 If a State wishes to use a single certificate as both an Apostille and as part of the legalisation process in the non-Contracting Party, the Permanent Bureau strongly recommends that additional text is included on the certificate to inform the user of the requirements of legalisation if the underlying document is to be produced in a non-Contracting Party.<sup>54</sup>

## 2. Temporal scope of the Convention

### A. When does the Convention enter into force for a Contracting Party?

- 90 There is a period of time that must elapse before the Convention enters into force for a Contracting Party. The length of this period depends on how the Party joins the Convention:
- For a Party that joins by ratification, the Convention enters into force on the 60<sup>th</sup> day following the deposit of the instrument of ratification.<sup>55</sup>
  - For a Party that joins by accession, the Convention enters into force on the 60<sup>th</sup> day after the expiry of the six-month objection period following the deposit of the instrument of accession.<sup>56</sup>
- 91 Details about the entry into force of the Convention for each Contracting Party are available on the status table on the Apostille Section of the HCCH website. New Contracting Parties are listed in the status table upon the deposit of their instrument of accession, approximately eight months before the relevant entry into force date.

### B. Public documents executed before the Convention's entry into force in the State of origin

- 92 An Apostille may be issued for a public document that was executed before the entry into force of the Convention for the State of origin. The Convention does not prescribe a time limit within which an Apostille should be issued after the execution of the underlying public document.

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<sup>53</sup> See C&R No 54 of SC 2021.

<sup>54</sup> See also C&R No 48 of SC 2021 and, *infra*, paras 234 *et seq.* Additional text recommended by the Permanent Bureau is also set out at Annex IV.

<sup>55</sup> Art. 11(2). All States eligible to join the Convention by ratification have done so.

<sup>56</sup> Art. 12(3). See also, *supra*, paras 78 *et seq.*

### C. Public documents legalised before the Convention's entry into force in the State of destination

- 93 From the date of entry into force of the Convention in the State of destination, the only formality that may be required to certify the authenticity of the origin of a public document is the addition of an Apostille.<sup>57</sup>
- 94 In situations where a public document is legalised for production in a certain State, and the Convention enters into force for that State, there is nothing in the Convention preventing the State of destination from requiring the document to be apostilled. This is notwithstanding the fact that legalisation would have been sufficient to certify the origin of the document preceding the Convention's entry into force. In the interests of users, the Permanent Bureau recommends that newly acceding Parties continue to give effect to legalisations done before the entry into force of the Convention, at least for a reasonable period of time thereafter.
- 95 This situation also highlights the need for newly acceding Parties to publicise their accession to the Convention and its upcoming entry into force, in particular among Embassies and Consulates. This ensures that persons seeking to authenticate documents receive correct advice.
- 96 The Permanent Bureau also recommends that, where appropriate, Competent Authorities consider issuing Apostilles to applicants seeking to produce documents in a State that is in the process of becoming a Party to the Convention, provided that the document is only to be produced in that State after the Convention enters into force there. Contracting Parties are listed in the status table on the Apostille Section of the HCCH website upon deposit of their instrument of accession, approximately eight months before the relevant entry into force date.

### D. Apostilles issued before the Convention's entry into force in the State of destination

- 97 An Apostille validly issued by a Contracting Party must be given effect by another Contracting Party.<sup>58</sup> For any State of destination, this obligation commences from the date of entry into force of the Convention and applies regardless of the status of the Convention for that Party at the time the Apostille was issued. This means an Apostille issued by a Contracting Party before the entry into force in the State of destination must be recognised from the date the Convention enters into force.

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<sup>57</sup> Art. 3(1).

<sup>58</sup> Art. 3(1).

## E. Apostilles issued in successor States

- 98 If the Convention is in force for a Contracting Party at the time an Apostille is validly issued by one of its Competent Authorities, the Apostille must be given effect by other Contracting Parties. If a State (the “predecessor State”), or a territory of a State, is succeeded by another State (the “successor State”), Apostilles issued by the predecessor State before the date of succession remain valid.
- 99 The Convention remains in force for a successor State if they make a formal declaration to that effect to the Depositary. In the interests of legal certainty, successor States are encouraged to make a declaration of succession within a reasonable time.
- 100 Following a declaration of succession, the Convention will retroactively enter into force for the successor State from the date of succession of that State.<sup>59</sup> Until the making of such a declaration, the Convention will be considered suspended between that State and other Contracting Parties.<sup>60</sup>
- 101 A successor State may also accede to the Convention. Unlike a declaration of succession, an accession to the Convention has no retroactive effect. Instead, the date of entry into force of the Convention will be determined by Article 12. Apostilles that are issued between the date of succession and the entry into force of the Convention will have no effect. Similarly, an Apostille issued by another Party will have no effect in the acceding State during that period.

## 3. Substantive scope of the Convention

### A. Public documents

- 102 The purpose of the Convention is to facilitate the use of public documents abroad. In this spirit, the concept of public documents should be given a broad interpretation with a view to ensuring that as many documents as possible benefit from the simplified authentication process under the Convention. This is consistent with preparatory work for the Convention<sup>61</sup> and has been supported by the Special Commission.<sup>62</sup>
- 103 The term “public document” extends to all documents other than those issued by persons in their private capacity.<sup>63</sup> Therefore, any document executed by an authority

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<sup>59</sup> Art. 23(1), *Vienna Convention of 23 August 1978 on Succession of States in respect of Treaties*, United Nations Treaty Series, vol. 1946, p. 3.

<sup>60</sup> Art. 23(2), *Vienna Convention (ibid.)*.

<sup>61</sup> The drafters of the Convention hesitated between the terms “public document” (in French “*acte public*”) and “official document” (in French “*document officiel*”). With a view to better serving the purpose of the Convention, the former expression was adopted because of its wider meaning. See Explanatory Report, paras 7-9.

<sup>62</sup> See C&R No 36 of SC 2021.

<sup>63</sup> See Explanatory Report, paras 7-9.

or person in an official capacity (*i.e.*, acting in the capacity of an officer authorised to execute the document) is a public document.

- 104 As a general rule, if a document was subject to legalisation before the entry into force of the Convention, or if it is still subject to legalisation because it is to be produced in a non-Contracting State, it is likely to be a public document under the Convention.

## B. Determining the public nature of a document

- 105 Whether a person is acting in a private or in an official capacity is determined by the law of the State of origin. It follows that the question of whether a document is public for the purposes of the Convention is determined by the State of origin.<sup>64</sup>
- 106 An Apostille may not be rejected on the basis that the underlying document is not considered to be a public document under the law of the State of destination, although that law may determine the legal effect given to the underlying document.<sup>65</sup>
- 107 The Convention does not authorise the issuance of an Apostille for a document that is not a public document under the law of the State of origin, even if the document is a public document under the law of the State of destination. If and when such documents need to be authenticated, the Competent Authority should refer the applicant to the Embassy or Consulate of the State of destination accredited to the State of origin. Alternatively, the Competent Authority may wish to refer the applicant to a notary in order to determine whether the document can be notarised, in which case an Apostille may be issued for the notarial certificate.

## C. Public documents listed under Article 1(2)

- 108 It is not possible to establish a complete list of public documents that may be executed by Contracting Parties, nor to list all officials and authorities which may execute public documents. To provide some guidance and certainty, the Convention lists four categories of documents that are considered public documents.<sup>66</sup>
- “(a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server (*“huissier de justice”*);
  - (b) administrative documents;
  - (c) notarial acts;

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<sup>64</sup> See C&R No 37 of SC 2021.

<sup>65</sup> See C&R Nos 37 and 38 of SC 2021. See also *Nimpuno v Ismail Ayob and Partners and Others : In re: Ismail Ayob and Partners v Nimpuno* (6825/2021) [2022] ZAGPJHC 855 (2 November 2022), para. 16.

<sup>66</sup> Art. 1(2).

- (d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures."

- 109 The specific documents that fall within each listed category is determined by the law of the State of origin and may vary among Contracting Parties. In practice, most documents that are apostilled under the Convention fall within one of these listed categories.
- 110 The list in Article 1(2) is not exhaustive; its purpose is simply to ensure these categories of documents are treated as public documents by all Contracting Parties, despite differences in domestic law or policy. The Convention applies to a document that is considered a public document under the law of the State of origin, even if it does not fall into one of the categories listed in Article 1(2).

*(a) Article 1(2)(a): Documents emanating from an authority or an official connected with the courts or tribunals of the State*

- 111 The expression "courts or tribunals" (*"juridiction"* in the French text) should be interpreted broadly. It may apply to judicial courts and tribunals, as well as to administrative and constitutional tribunals, and to official religious courts (where applicable). Court decisions clearly fall within this category.
- 112 Whether a person or body may be regarded as an authority or an official connected with a court or tribunal is determined by the law of the State of origin. For example, lawyers (attorneys) may be regarded by some Contracting Parties as public authorities or officials and may execute public documents for which an Apostille may be issued. In Contracting Parties where this is not the case, documents emanating from lawyers (attorneys) may need to be notarised and an Apostille issued for the notarial certificate.

*(b) Article 1(2)(b): Administrative documents*

- 113 An administrative document is a document that is issued by an administrative authority. Whether a person or body is administrative is to be determined by the law of the State of origin. In some Contracting Parties, this may include religious authorities.
- 114 Administrative documents typically include civil status documents, extracts from official registers, grants of licence and patent, as well as certificates from administrative authorities.
- 115 Under Article 1(3)(b), the Convention does not strictly apply to administrative documents dealing directly with commercial or customs operations.<sup>67</sup>

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<sup>67</sup> See C&R No 14 of SC 2021. See also, *infra*, paras 123 *et seq.*

*(c) Article 1(2)(c): Notarial acts*

- 116 A notarial act is an instrument or certificate drawn up by a notary that may perfect, record, or verify an obligation, fact, or agreement. When authenticated by the signature and official stamp / seal of the notary, the notarial act is a public document under Article 1(2)(c) of the Convention.
- 117 In some jurisdictions, the term "notarial act" refers to a function that the notary is authorised to perform, such as certifying the genuine nature of a signature. These are not notarial acts for the purposes of Article 1(2)(c) and will instead fall under Article 1(2)(d).

*(d) Article 1(2)(d): Official certificate on private documents*

- 118 Where a document does not fall within the scope of the Convention, domestic law or policy may provide for a certificate executed by an official to be placed on the document. This may relate to, for example, the genuine nature of the signature it bears or that the document is a true copy of another document. This official certificate is a public document under Article 1(2)(d) of the Convention.
- 119 In the case of an official certificate, it is the certificate that is the public document for the purposes of the Convention, rather than the document to which it relates. That is, the Apostille will certify the authenticity of the origin of the official certificate, not the document that was certified.
- 120 The Convention does not specify the officials who may be competent to place official certificates on documents. Whether an official is competent to place an official certificate on a document is to be determined by the law of the State of origin.
- 121 The document that is certified by an official certificate does not itself need to be executed in the territory of the State of the person issuing the official certificate, nor that of the Competent Authority. Accordingly, it is possible for an official certificate to be apostilled even though the document to which it relates is a foreign document. Whether official certificates may be issued for foreign documents is to be determined by the law of the State where the official certificate is to be issued.
- 122 In practice, this is an important category of public documents as it indirectly extends the benefits of the Convention to private documents, thereby facilitating their circulation and use abroad.

## **D. Documents excluded under Article 1(3)**

- 123 The Convention lists two categories of documents to which the Convention does not apply (see Art. 1(3)):
- "(a) to documents executed by diplomatic or consular agents;
  - (b) to administrative documents dealing directly with commercial or customs operations."

- 124 The Special Commission has determined that these exclusions should be construed extremely narrowly and has called for flexibility in their application.<sup>68</sup> Each category was excluded from the scope of application of the Convention for practical purposes to avoid unnecessary formalities and must be read in this spirit. Recipients are therefore encouraged to accept Apostilles issued for documents that would otherwise be excluded under this Article.<sup>69</sup>
- 125 The test for determining whether to apostillise a particular category of public document should be whether the category required legalisation before the Convention entered into force for the State where the document has been executed. Conversely, if a particular category of documents did not require legalisation before entry into force of the Convention, it should not require an Apostille.

(a) *Article 1(3)(a): Documents executed by diplomatic or consular agents*

i. General rule

- 126 Documents executed by diplomatic or consular agents are generally considered documents of the sending State (*i.e.*, home State of the diplomatic or consular agent)<sup>70</sup> and foreign documents in the host State (where they are executed). The drafters of the Convention considered that it would be inappropriate to require an Apostille for these documents, as this would involve sending the document back to a Competent Authority in the sending State. Applying the rules of the Convention to these documents was therefore considered unnecessarily cumbersome.
- 127 For this reason, the Convention does not abolish legalisation for documents executed by diplomatic or consular agents. If such a document needs to be produced in the State to which the diplomatic or consular agent is accredited, it will usually be sufficient for the document to be presented to the Ministry of Foreign Affairs in that State for authentication.
- 128 If the document is to be produced in another State, some Contracting Parties have adopted the practice where it is first presented to the Ministry of Foreign Affairs for authentication, and that authentication is then apostillised by a Competent Authority in the host State.
- 129 The provision of notarial services is a traditional consular function recognised by Article 5(f) of the *Vienna Convention of 24 April 1963 on Consular Relations* (provided that there is nothing contrary thereto in the laws and regulations of the host State).<sup>71</sup> A notarial certificate is accepted in the home State of the consular agent who executed it without any further formality. The Apostille Convention does not affect this function.

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<sup>68</sup> See C&R No 14 of SC 2021.

<sup>69</sup> See C&R No 14 of SC 2021.

<sup>70</sup> See Explanatory Report, paras 7-9.

<sup>71</sup> United Nations, *Treaty Series*, vol. 596, p. 261.



- 130 The exclusion of documents executed by diplomatic or consular agents from the Apostille Convention is further complemented by the *European Convention of 7 June 1968 on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers*, concluded by the Council of Europe.<sup>72</sup> Unlike the Apostille Convention, the European Convention does not provide Parties the option of requiring a simplified formality, but rather eliminates all legalisation requirements.

## ii. Civil status documents

- 131 Typically, local authorities issue civil status documents such as birth, death, and marriage certificates, regardless of the nationality of persons involved. The geographic location of the relevant event is the primary consideration in determining which authorities are responsible for recording the event.
- 132 Foreign Embassies and Consulates accredited to the State in which the event occurred may be responsible for executing, for example, citizenship and identity documents on behalf of nationals of their home State. Under Article 1(3)(a), these documents would ordinarily fall outside the scope of the Convention.<sup>73</sup>
- 133 Separately, as part of the services offered to nationals of the host State, Embassies and Consulates may assist in obtaining civil status documents from their home State, such as extracts of civil registries maintained by an authority in the home State. These documents may fall within the scope of the Convention as they are not actually "executed" by the Embassy or Consulate, but merely "issued" or "retrieved" by them. This has been confirmed by the Special Commission.<sup>74</sup> In these circumstances, the law of the home State will determine whether the document is a public document for the purposes of the Convention. In this regard, it is recalled that some Parties do not require Apostilles for extracts of foreign public documents generated by foreign Embassies and Consulates located in their territory.

### (b) Article 1(3)(b): Administrative documents dealing directly with commercial or customs operations

- 134 Administrative documents dealing directly with commercial or customs operations were excluded from the scope of application of the Convention as the States negotiating the Convention (primarily European States) did not require such documents to be legalised or already subjected the production of such documents to simplified formalities.<sup>75</sup> These States did not want to impose additional formalities where such formalities did not otherwise exist.<sup>76</sup> The negotiators wanted to avoid the

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<sup>72</sup> *European Treaty Series* (ETS) No 63.

<sup>73</sup> See also, *supra*, paras 123 *et seq.*

<sup>74</sup> See C&R No 14(a) of SC 2021.

<sup>75</sup> For example, pursuant to Art. VIII(1)(c) of the 1947 *General Agreement on Tariffs and Trade* (GATT) (entered into force on 1 January 1948), in which States Parties to that agreement recognise the "need for minimising the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements".

<sup>76</sup> See Explanatory Report, paras 7-9.

exclusion being interpreted too generally: the qualifying adjective “administrative” and the adverb “directly” both restrict the exclusions under this Article.<sup>77</sup>

- 135 Much has changed since the conclusion of the Convention: the vast majority of Contracting Parties did not participate in negotiating the Convention and some require administrative documents dealing directly with commercial or customs operations to be legalised.
- 136 In practice, a number of Contracting Parties apply the Convention to administrative documents that are essential to the operations of cross-border trade and commerce, such as import / export licences, certificates of origin, and health and safety certificates. This is on the basis that these documents are regarded as being of a public nature under their domestic law or policy, and these documents previously required legalisation.
- 137 The application of the Convention to these documents is considered valid as it supports the purpose of the Convention to abolish legalisation and to facilitate the use of public documents abroad. This interpretation has been recalled by the Special Commission, which has acknowledged the importance of facilitating the circulation of these documents in international trade and commerce.<sup>78</sup>
- 138 Where a free trade agreement applies, documents relating to customs operations are often not subject to legalisation or other equivalent formality due to the simplification and harmonisation of customs procedures. In most cases, customs administrations verify these documents by contacting the relevant authorities in the exporting country.<sup>79</sup>

## E. Specific categories of public document

### (a) Civil status documents

- 139 Civil status documents, including birth, death, and marriage certificates, are administrative documents under Article 1(2)(b) and are therefore public documents for the purposes of the Convention.

### (b) Copies

#### i. Certified copies of original public documents

- 140 Contracting Parties have adopted different approaches to certifying copies of public documents. Depending on the nature of the authority certifying the copy and the status of the copy under domestic law or policy (e.g., where the copy is considered a

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<sup>77</sup> *Id.*

<sup>78</sup> See C&R No 14(b) of SC 2021.

<sup>79</sup> See the *International Convention on the Simplification and Harmonization of Customs Procedures* (as amended) (Revised Kyoto Convention) adopted in 1974 and amended in 1999 (entered into force on 3 February 2006).

duplicate original), a Competent Authority may decide to issue an Apostille that relates to either the certificate or the copy itself.<sup>80</sup>

- 141 The Special Commission has also recognised the right of Contracting Parties to decline to issue an Apostille for the certified copy of a document on the grounds of public policy.<sup>81</sup>
- 142 Making copies of certain categories of public documents may be prohibited by virtue of domestic law or policy.

## ii. Simple photocopies

- 143 The Convention may apply to a simple photocopy of a document (*i.e.*, a photocopy that is not certified) if the law of the State of origin considers the photocopy itself to be a public document.<sup>82</sup>
- 144 In most Contracting Parties, a simple photocopy is not considered a public document and will need to be appropriately certified before an Apostille is issued.

## iii. Printed copies

- 145 The Convention may apply to a simple paper copy of an electronic public document (created by printing an electronic public document) if the law of the State of origin considers the printed copy itself to be a public document. Otherwise, a certified copy may be required.

## iv. Scanned copies

- 146 The Convention may apply to a scanned public document if the law of the State of origin considers the scanned copy itself to be a public document. This is different to an electronic public document which is initially executed in electronic form.
- 147 If a scanned copy is not considered a public document under domestic law or policy, it may need to be electronically certified (*e.g.*, by e-notarisation or other electronic authentication recognised in the State of origin). In such cases, the electronic certificate becomes the public document for the purposes of the Convention.
- 148 The law of the State of origin determines how and by whom paper public documents are to be scanned or digitised.<sup>83</sup> For example, the law may provide that a scanned copy will only be considered a public document if the scanning is done by an official or authority, such as the official who executed the original document, or the Competent Authority when issuing the Apostille.

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<sup>80</sup> See C&R No 37 of SC 2021.

<sup>81</sup> See C&R No 45 of SC 2021.

<sup>82</sup> See C&R No 37 of SC 2021.

<sup>83</sup> See C&R No 37 of SC 2021; C&R No 10 of the Tenth e-APP Forum (The Hague).

(c) *Criminal and police records*

- 149 Criminal and police records may emanate from authorities or officials connected with courts or tribunals and fall within Article 1(2)(a), or fall within the scope of the term “administrative documents” under Article 1(2)(b), and are public documents for the purposes of the Convention.

(d) *Educational documents (including diplomas)*

- 150 Educational institutions may issue a range of documents, including diplomas, certificates of attendance and achievement, and extracts of academic records.
- 151 Whether an educational document is considered a public document is determined by the law of the State of origin.<sup>84</sup> In some Contracting Parties, an educational document may be considered to be a public document for the purposes of the Convention by virtue of the status of the issuing educational institution. In other Contracting Parties, the educational document may be considered a private document, in which case it will need to be certified before an Apostille is issued.
- 152 This certification practice has led to some instances where fake academic credentials benefit from the Apostille process through notarisation. Because the effect of an Apostille is limited to the origin of the document to which it relates, if a notarial certificate issued for a fraudulent educational document is valid, then there is nothing in the Convention to prevent an Apostille being issued for the notarial certificate. Similarly, when asked to issue an Apostille for a notarial certificate, Competent Authorities are not required to consider or assess the content of the document to which the notarial certificate relates.<sup>85</sup> An Apostille does not certify the content of the underlying public document and thus cannot lend legitimacy to fake credentials.
- 153 The Special Commission has recalled that it is not the responsibility of the Competent Authorities to assess the content of public documents for which they are requested to issue an Apostille.<sup>86</sup> However, educational documents are commonly subject to additional certification. Competent Authorities are encouraged to take steps outside the process of issuing an Apostille to deal with instances of fraud or other violations of relevant domestic law or policy.<sup>87</sup> This could include requiring a copy of the diploma to come directly from the educational institution, refusing to issue an Apostille, or referring the matter to the relevant authorities for further investigation and possible prosecution.

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<sup>84</sup> See C&R No 37 of SC 2021.

<sup>85</sup> See C&R No 43 of SC 2021.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

(e) *Electronic documents*

- 154 In many Contracting Parties, the law provides for the execution of public documents in electronic form with an electronic or digital signature.
- 155 Electronic documents should be distinguished from scanned copies of documents which are created by scanning a paper public document.
- 156 Electronic documents can only be apostilled if the State of origin has implemented the e-Apostille component of the e-APP. This allows an Apostille to be issued for the electronic public document in its original format, allowing the user to retain the benefits of electronic documents. Otherwise, the document must be produced in a different form.

(f) *Expired documents*

- 157 Some public documents are stated to have a limited period of validity (e.g., criminal records, identity documents, travel documents, and provisional court orders). Although the expiration of a validity period may terminate the effect of the public document in the State of origin, it does not ordinarily deprive the document of its public nature unless otherwise determined by the law or policy of the State of origin. As long as the expired document is still a public document, it may be apostilled. This result underscores the notion that an Apostille only certifies the origin, not the content, of the underlying public document.

(g) *Extradition matters*

- 158 The Special Commission has recognised that there is nothing in the Convention that precludes its application to documents relating to extradition, including extradition requests.<sup>88</sup>
- 159 An extradition treaty between Contracting Parties or the laws of a Contracting Party may abolish legalisation formalities or provide for a specific form of authentication for extradition requests and supporting documentation.
- 160 As the Convention does not affect the right of the State of destination to determine the admissibility and probative value of foreign public documents, the Convention does not prevent Contracting Parties from imposing additional requirements on the production of certain foreign public documents in order for those documents to be admitted into evidence or given probative value.
- 161 A number of Contracting Parties have made declarations excluding or clarifying the use of Apostilles in extradition requests. This information can be found on the status table on the Apostille Section of the HCCH website.

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<sup>88</sup> See C&R No 40 of SC 2021.

*(h) Foreign documents*

- 162 Competent Authorities may only issue Apostilles for public documents emanating from their State.<sup>89</sup> A Competent Authority may not issue an Apostille for a foreign public document.
- 163 In the case of diplomatic missions, a document executed within the mission is considered a foreign document to the host State. Sovereign powers of the host State do not extend to diplomatic missions in its territory.<sup>90</sup> The practical result is that although these public documents are executed "in the territory of" the host State,<sup>91</sup> they "emanate" from the State that the diplomatic mission represents.<sup>92</sup> Subject to the Contracting Parties' application of the Article 1(3)(a) exclusion, the Convention may apply to these documents.<sup>93</sup>
- 164 Documents executed by one State may be certified by another State. Such certifications may then be properly apostilled in the latter State, provided that the Convention is in force and the certificate is considered to be a public document under the law of that State.

*(i) Foreign language documents*

- 165 The law of the State of origin determines whether a document executed in a language other than the official language of that State may be considered a public document. Contracting Parties may limit the scope of public documents to documents that are executed in their official language(s).
- 166 Apostilles may be drawn up in an official language of the State of origin and may not be rejected in the State of destination for this reason. However, the law of the State of destination determines what effect to give an underlying public document that is in a foreign language.
- 167 It is not necessary for a Competent Authority to know and understand what a public document says in order to issue an Apostille: what matters is that the Competent Authority is able to verify the origin of the public document. Some Competent Authorities may require a translation in order to assess whether a document is fraudulent, offensive, or otherwise ineligible for an Apostille under domestic law or policy.

*(j) International organisation documents*

- 168 The Convention does not directly address documents executed by international organisations (such as intergovernmental and supranational organisations). Some of

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<sup>89</sup> Art. 3(1).

<sup>90</sup> See Art. 22, *Vienna Convention of 18 April 1961 on Diplomatic Relations*, United Nations, *Treaty Series*, vol. 500, p. 95.

<sup>91</sup> Art. 1(1).

<sup>92</sup> Art. 3(1). See also, *supra*, paras 131 *et seq.*

<sup>93</sup> See C&R No 14 of SC 2021. See also, *supra*, paras 123 *et seq.*

these organisations regularly execute documents that are of a public-like nature, such as patents, court documents, educational documents, and other administrative documents.

- 169 On the recommendation of the Special Commission, the Council on General Affairs and Policy mandated the convening of a Working Group to explore the possibility of applying the Convention to these documents.<sup>94</sup> The Working Group recommended the following options with respect to supranational and intergovernmental organisations:<sup>95</sup>
- The relevant Competent Authority of the host State, in possession of the required sample signatures / seals / stamps of the officials that issue such documents for the organisation in question, may directly apostillise the documents.
  - A notary of the host State may first authenticate the document, or a copy of the document, and this notarial authentication is subsequently apostillised by the relevant Competent Authority.
  - A government office or authority, which holds the required sample signatures / seals / stamps of the officials that execute such documents for the organisation in question, may be designated by the host State to act as an intermediary for the purposes of authenticating such documents and this authentication is subsequently apostillised by the relevant Competent Authority.
- 170 The Working Group also recalled that an Apostille validly issued by one Contracting Party must be accepted in other Contracting Parties and, in particular, cannot be rejected on the sole ground that it relates to a document of a supranational or intergovernmental organisation.<sup>96</sup> These recommendations were approved by the Council on General Affairs and Policy.<sup>97</sup>

#### (k) *Medical documents*

- 171 Documents executed by a medical practitioner or body may be public documents for the purposes of the Convention if the practitioner or body is considered to be acting in an official capacity under the law of the State of origin.<sup>98</sup>

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<sup>94</sup> See C&R No 11 of SC 2016; C&R No 27 of CGAP 2017.

<sup>95</sup> See "Report of the Working Group on the Authentication of Documents Generated by Supranational and Intergovernmental Organisations", Prel. Doc. No 7 of December 2017 for the attention of the Council of March 2018 on General Affairs and Policy, C&R No 3 (available on the HCCH website at [www.hcch.net](http://www.hcch.net), under "Governance" then "Council on General Affairs and Policy").

<sup>96</sup> *Ibid.*, C&R No 4.

<sup>97</sup> See C&R No 35 of CGAP 2018.

<sup>98</sup> See C&R No 37 of SC 2021.

(l) *Multiple documents / signatures*

- 172 In principle, an Apostille certifies the authenticity of the signature / seal / stamp of a single official or authority, as suggested by Article 5 and the Model Apostille Certificate. In cases where multiple public documents issued by various public officials or authorities are presented for apostillisation, or where a single document with multiple signatures / seals / stamps is presented, a separate Apostille should be issued for each signature / seal / stamp requiring authentication. In these situations, the Special Commission suggests that those Competent Authorities which charge a fee for issuing Apostilles could charge a single, reduced fee for apostillising multiple documents instead of an individual fee for each document apostilled.<sup>99</sup>
- 173 Some Competent Authorities issue a single Apostille for a bundle of documents that are executed by the same official / authority in order to offer Apostille services at a reduced cost to the applicant. It would also be possible for the applicant to have the bundle of documents notarised, in which case a single Apostille may eventually be issued for that single notarial certificate.

(m) *Offensive documents*

- 174 As a public document is determined by the capacity in which it was executed, the offensive nature of the content of the document will not deprive the document of its public nature unless otherwise determined by the law or policy of the State of origin. Nonetheless, a Competent Authority may refuse to issue an Apostille for a public document the content of which is offensive as a matter of internal procedure.
- 175 If an Apostille has been issued on an offensive document, the State of destination cannot refuse to accept the Apostille but may similarly choose not to recognise the underlying public document as a matter of internal procedure.

(n) *Old documents*

- 176 The age of a document will not deprive it of its public nature unless otherwise determined by the law or policy of the State of origin.
- 177 In practice, it may be difficult for a Competent Authority to verify the origin of an old document, especially as more authorities and institutions begin to transition to issuing electronic documents. To overcome this difficulty, the issuing authority or its successor may be able to verify and certify the authenticity of the document, in which case the certification will become the public document for the purposes of the Convention.

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<sup>99</sup> See C&R No 56 of SC 2021.



(o) *Passports and other identification documents*

- 178 The law of the State of origin determines whether passports and other documents that identify the bearer may be considered a public document. However, as placing an Apostille on an original identity document may not be practical (or legal), Contracting Parties may employ different methods of issuing copies of these documents for authentication. The method of making such copies and their legal significance depends on the law of the State of origin.
- 179 The Special Commission has noted that Contracting Parties may refuse to issue Apostilles for certified copies of public documents as a matter of public policy.<sup>100</sup> On this basis, a Competent Authority may refuse to issue an Apostille in order to avert the fraudulent or otherwise unlawful use of a copied passport, including a foreign passport (e.g., where the law of the State of origin prohibits the making of such copies).

(p) *Patents and other documents relating to intellectual property rights*

- 180 Grants of patents or other intellectual property rights are administrative documents under Article 1(2)(b) and are therefore public documents for the purposes of the Convention.
- 181 While these documents can be vital to international commerce, they are not documents "dealing directly with commercial or customs operations", and therefore do not fall within the Article 1(3)(b) exception.<sup>101</sup>

(q) *Private documents*

- 182 The Convention only applies to public documents, which are defined as all documents other than those executed by persons in their private capacity.<sup>102</sup> The latter category is therefore clearly outside of the scope of the Convention.
- 183 The law of the State of origin determines whether a person is acting in an official capacity and therefore whether a person is acting in a private capacity. In general, a person is not acting in an official capacity if acting in their own name alone, or on behalf of a private entity (e.g., as a company director or trustee).
- 184 An otherwise private document will not be considered a public document solely because the law of the State of origin prescribes certain form and content requirements in order for the document to be legally valid.

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<sup>100</sup> See C&R No 45 of SC 2021.

<sup>101</sup> See Explanatory Report, paras 7-9.

<sup>102</sup> *Id.*

*(r) Religious documents*

- 185 The law of the State of origin may consider religious documents, as well as documents executed by official religious courts, to be of a public nature and therefore a public document under the Convention.

*(s) Translations*

- 186 The nature of translations differs between Contracting Parties. In some Contracting Parties, a translation may be of a public nature where it is executed by an official translator. This may include sworn, affirmed, and accredited translators. The law of the State of origin determines who is an official translator, the formal requirements of the translation, and whether such a document is a public document.<sup>103</sup>
- 187 Where the translation itself is not a public document, it may still benefit from the Apostille process:
- The translator may swear an affidavit (or make a similar declaration) attesting to the accuracy of the translation before a notary. In this case, the notarial act or notarial certificate becomes the public document for the purposes of the Convention and the translation is produced abroad with the apostilled notarial act or notarial certificate.
  - The translation may be certified by an official authority. In this case, the certificate of the official authority becomes the public document for the purposes of the Convention, and the translation is produced abroad accompanied by the apostilled certification.

*(t) Unsigned documents or documents without a seal / stamp*

- 188 Both a document that is unsigned, or a document that has been signed but does not bear a seal or stamp, may be a public document for the purposes of the Convention, if the law of the State of origin considers it to be of a public nature.<sup>104</sup> The Competent Authority must still be able to verify the origin of the document.

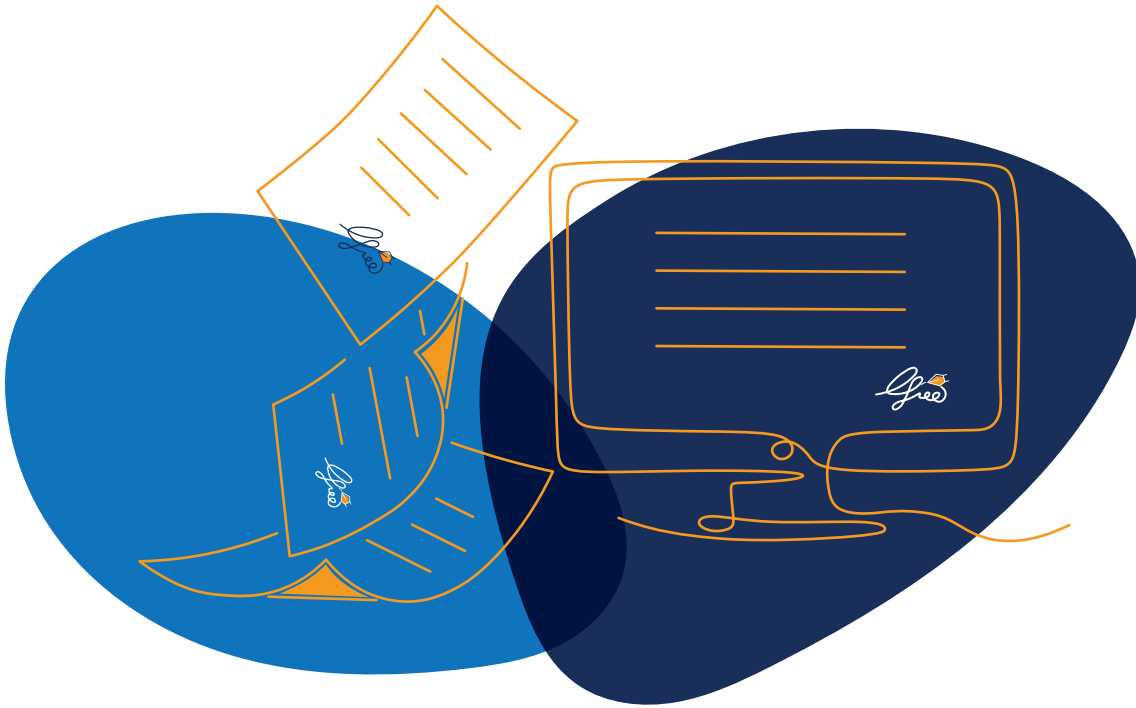
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<sup>103</sup> See C&R No 37 of SC 2021.

<sup>104</sup> While the placement of the words "where appropriate" in Art. 3 would imply that documents must have a signature but not a seal / stamp, the express reference to "unsigned documents" in Art. 7 confirms that a document without a signature but with a seal / stamp may nonetheless fall within the scope of the Convention. See also Explanatory Report, paras 10-30.



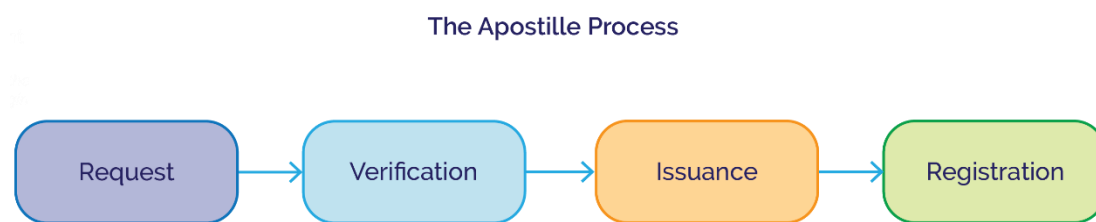
## Part Four



Process in  
the State of Origin

## Process in the State of Origin

- 1 Requesting an Apostille
- 2 Verifying the origin of the public document
- 3 Issuing an Apostille
- 4 Registering the Apostille
- 5 Verifying the issuance of an Apostille



## 1. Requesting an Apostille

### A. Who may request an Apostille?

- 189 An Apostille may be requested by either the person who executed the document or any bearer of the document.<sup>105</sup>
- 190 The Convention does not distinguish between individuals or legal persons (e.g., a company) nor prescribe any eligibility requirements for the applicant. The Convention does not require the applicant to state reasons for the request.
- 191 The Convention does not require the applicant to be the person who intends to produce the public document abroad. Accordingly, an Apostille may be issued at the request of an agent or proxy of the person who intends to use it. However, as a matter of internal procedure, the Competent Authority may require an agent or proxy to provide evidence that they are authorised to make the request by the person who intends to use the Apostille.
- 192 In some Contracting Parties, third party commercial entities offer services to assist persons in obtaining Apostilles and other relevant documents. The Convention neither endorses nor prohibits such practices, which are acceptable if permitted by, and undertaken in accordance with, the relevant applicable law. The Apostille must still be issued by a Competent Authority in accordance with the Convention.

## 2. Verifying the origin of the public document

### A. Origin of the public document

- 193 An Apostille certifies the origin of the public document for which it has been issued. This includes, where applicable:<sup>106</sup>
- a) the authenticity of the signature on the underlying public document;
  - b) the capacity in which the person signing the document has acted; and

<sup>105</sup> Art. 5(1).

<sup>106</sup> Art. 5(2).

c) the identity of the seal or stamp which the document bears.

- 194 It is crucial for the Competent Authority to be satisfied of the origin of the document for which it issues an Apostille. Each Competent Authority should establish clear procedures to be followed to verify the origin of the underlying public document before an Apostille is issued.
- 195 The Special Commission has recalled the fundamental role of Competent Authorities to verify the origin of all documents presented as public documents, whether paper or electronic, prior to issuing an Apostille.<sup>107</sup>
- 196 Recalling that the purpose of the Convention is to simplify the authentication process, the Special Commission has encouraged Contracting Parties to eliminate intermediate certification of a public document prior to the issuance of an Apostille.<sup>108</sup>

## B. Signatures / seals / stamps

- 197 In order to authenticate the underlying public document, Competent Authorities have traditionally kept a database of sample signatures / seals / stamps of the officials and authorities that execute the public documents for which they have competence to issue Apostilles. In this way, the document could be authenticated by a visual comparison.
- 198 With the increasing use of information technology, the visual comparison is becoming less relevant, as signatures / seals / stamps can be authenticated electronically and, in some cases, automatically. For Contracting Parties that exclusively use electronic public documents, maintaining a database may no longer be necessary to verify the origin of a public document, as digital signatures carry a certificate which confirms the origin and authenticity of the signatory.

### (a) Using and maintaining a database

- 199 A database of signatures / seals / stamps is distinct from the register of Apostilles that is maintained by each Competent Authority. The database is used *before* issuing an Apostille to certify the origin of the underlying public document whereas a register is used by the recipient to verify an Apostille *after* it has been issued.<sup>109</sup>
- 200 The database may be maintained in paper or electronic format. The Permanent Bureau welcomes the trend towards electronic databases. Electronic databases are easier to use, particularly when several officials work across one or multiple Competent Authorities where a high volume of Apostilles issued, and easier to update.
- 201 For Contracting Parties that have several Competent Authorities, it is good practice to maintain a single, central database that can be accessed by all Competent

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<sup>107</sup> See C&R No 43 of SC 2021.

<sup>108</sup> See C&R No 12 of SC 2021.

<sup>109</sup> See, *infra*, paras 267 *et seq.*

Authorities. Such centralised databases are easier to update and enable a Competent Authority located in one part of a State to verify the origin of a public document that has been executed in a different part (if it is appropriate for the Competent Authority to do so).

- 202 Competent Authorities should ensure that the database of sample signatures / seals / stamps is updated whenever there are changes to the identity of officials and authorities. It is the responsibility of each Contracting Party to ensure this is done in an accurate and timely manner.
- 203 An Apostille should not be issued until the Competent Authority has had the opportunity to verify the signature / seal / stamp. It is good practice for Competent Authorities to have a procedure in place for situations where a Competent Authority is presented with a public document executed by a person who is not recorded in the database. This may occur, for example, when a person has only recently been granted the authority to issue public documents.

*(b) Verifying digital signatures*

- 204 While a digital signature can easily and reliably be verified with its associated certificate, the Competent Authority may still need to verify that the relevant person or authority has the capacity to execute public documents. This may be done in various ways, including by scanning a Quick Response (QR) code or through automated verification mechanisms.
- 205 The Permanent Bureau recommends digital certificates accredited to an organisation or institution rather than individual officers. This minimises the information Competent Authorities are required to maintain in relation to verifying officers.

*(c) Origin cannot be verified*

- 206 If the signature / seal / stamp on the document cannot be verified through a database or digital certificate, the Competent Authority should not issue an Apostille. The Competent Authority may wish to notify the official or authority that purportedly executed the document in instances of suspected fraud.
- 207 If there are doubts about the origin, the Competent Authority should contact the official or authority that purportedly executed the document to verify its origin and, if appropriate, update the database or other records.
- 208 When a significant amount of time has elapsed since the execution of a public document, a Competent Authority may not have a sample of the relevant signature / seal / stamp in its database. This may also be the case if the public document was issued before the State of origin became a Contracting Party and developed the necessary database. In such situations, the Competent Authority should make reasonable efforts to verify the signature / seal / stamp by contacting the authority



or its successor to enquire if the origin of the document can be verified with their assistance.<sup>110</sup>

- 209 If the Competent Authority is subsequently unable to verify the origin of the document, it should refuse to issue the Apostille and the public document may have to be reissued.

### C. No verification of content

- 210 It is not a Competent Authority's responsibility or duty under the Convention to verify the content or the validity of the public document.<sup>111</sup> This is due to the limited effect of an Apostille to certify the authenticity of the *origin* of the underlying public document.<sup>112</sup> Similarly, in the case of "official certificates" under Article 1(2)(d) of the Convention, the Competent Authority is not required to verify the content of the document to which the certificate relates.<sup>113</sup>
- 211 In practice, most Competent Authorities do not verify the content and validity of public documents. However, in accordance with domestic law or policy, some do so to satisfy themselves that the document is a public document.
- 212 Matters relating to the content of the underlying public document are outside the scope of the Convention and should be treated as such. Competent Authorities are nonetheless encouraged to take steps outside the process of issuing an Apostille to deal with instances of fraud or other violations.<sup>114</sup> Some Competent Authorities have the power under domestic law or policy to impose sanctions on persons who wrongfully execute a public document or may follow up the matter with the relevant regulatory body. Similarly, the Competent Authority may pursue lines of enquiry to determine whether or not a document is a forgery or has been altered, thereby depriving it of its public nature.<sup>115</sup>

## 3. Issuing an Apostille

### A. Authority to issue

- 213 An Apostille may only be issued by a Competent Authority.<sup>116</sup> The designation and internal organisation of Competent Authorities are matters for each Contracting Party in accordance with domestic law or policy.<sup>117</sup>

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<sup>110</sup> See also, *supra*, paras 176 and 177.

<sup>111</sup> See C&R No 43 of SC 2021.

<sup>112</sup> See C&R No 39 of SC 2021.

<sup>113</sup> See C&R No 42 of SC 2021.

<sup>114</sup> See C&R No 43 of SC 2021.

<sup>115</sup> See, *e.g.*, *supra*, paras 152 and 153.

<sup>116</sup> Art. 3(1).

<sup>117</sup> See Explanatory Report, paras 42-45.

- 214 Within a designated Competent Authority, the authority of a particular person to issue Apostilles is a matter for domestic law or policy.

## B. Paper Apostilles versus e-Apostilles

### (a) *Paper Apostilles on paper documents*

- 215 When a public document is executed in paper form an Apostille will also be issued, in most cases, in paper form. As more Contracting Parties implement e-Apostilles, the Permanent Bureau expects this will be overtaken as the most common form of document.

### (b) *Paper Apostilles on electronic documents*

- 216 Wherever possible, the Apostille should be attached directly to the underlying public document, including when that document is in electronic form.<sup>118</sup> As e-Apostilles offer the optimal solution for apostillising public documents executed in electronic form, where a Competent Authority does not issue e-Apostilles, it may resort to reproducing the electronic public document in paper form to have an Apostille attached. This process should be discouraged because all added value of the electronic format is lost. Contracting Parties facing this challenge are encouraged to implement the e-Apostille component of the e-APP as soon as possible.<sup>119</sup> In the short term and in the absence of alternatives, an e-Register may assist in facilitating the verification of an Apostille attached to a reproduced electronic document and therefore reduce the risk of rejection in these cases.

### (c) *e-Apostilles on paper documents*

- 217 Some Contracting Parties will convert a paper public document into electronic form through scanning. An e-Apostille is then issued, provided the scanned copy is itself considered to be a public document by virtue of domestic law or policy. In some Contracting Parties, a scanned copy will only be a public document if scanned by an official or authority.
- 218 Some Contracting Parties exclusively issue e-Apostilles for both electronic and paper public documents. In these jurisdictions, paper Apostilles are no longer issued.
- 219 In most cases, the signature / seal / stamp on these documents must be verified against the database in the same way as a paper document as there is no digital signature attached to the scanned copy.

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<sup>118</sup> See C&R No 53 of SC 2021.

<sup>119</sup> See C&R No 27 of SC 2021.

(d) *e-Apostilles on electronic documents*

- 220 When a public document is executed in electronic form and the State of origin has implemented the e-Apostille component of the e-APP, the Apostille should also be issued in electronic form. This is the optimal solution for the benefit of both applicants and Competent Authorities and should be promoted among all Contracting Parties.<sup>120</sup>

## C. Form requirements

(a) *The original Model Apostille Certificate*

- 221 The Annex to the Convention provides the following Model Apostille Certificate:

<b>APOSTILLE</b> (Convention de La Haye du 5 octobre 1961)	
1. Country: ..... This public document	
2. has been signed by .....	
3. acting in the capacity of .....	
4. bears the seal/stamp of ..... .....	
<b>Certified</b>	
5. at .....	6. the .....
7. by ..... .....	
8. N° .....	
9. Seal/stamp: .....	10. Signature: .....

- 222 The purpose of the Model Apostille Certificate is to ensure that Apostilles issued by Contracting Parties are clearly identifiable by all other Parties, thereby facilitating the circulation of public documents abroad. Apostilles issued by Competent Authorities should conform as closely as possible to the Model Apostille Certificate.<sup>121</sup> In particular, an Apostille must:
- bear the title in French "Apostille (Convention de La Haye du 5 octobre 1961)"; and

<sup>120</sup> *Id.*

<sup>121</sup> See C&R No 46 of SC 2021.

- contain the 10 numbered standard informational items.

(b) *Language of the standard items*

- 223 The title of the Apostille must be in French: "Apostille (Convention de La Haye du 5 octobre 1961)".<sup>122</sup> The 10 numbered standard informational items may be in English, French, or an official language of the issuing Competent Authority. It may also appear in any other second language.<sup>123</sup> There is no specific requirement for the informational items to be included in the language of the State of destination.
- 224 The Permanent Bureau has developed a bilingual Model Apostille Certificate in which the 10 numbered standard informational items are in English and French. It has also developed a collection of trilingual Model Apostille Certificates where the items appear in English, French, and a third language. These bilingual and trilingual Model Apostilles Certificates are available on the Apostille Section of the HCCH website.

APOSTILLE (Convention de La Haye du 5 octobre 1961)			
1. Country: Pays :			
This public document Le présent acte public			
2. has been signed by a été signé par			
3. acting in the capacity of agissant en qualité de			
4. bears the seal / stamp of est revêtu du sceau / timbre de			
Certified Attesté			
5. at à		6. the le	
7. by par			
8. N° sous n°			
9. Seal / stamp: Sceau / timbre :		10. Signature: Signature :	

APOSTILLE (Convention de La Haye du 5 octobre 1961)			
1. Country: Pays / País:			
This public document Le présent acte public / El presente documento público			
2. has been signed by a été signé par ha sido firmado por			
3. acting in the capacity of agissant en qualité de quien actúa en calidad de			
4. bears the seal / stamp of est revêtu du sceau / timbre de y está revestido del sello / timbre de			
Certified Attesté / Certificado			
5. at à / en		6. the le / el día	
7. by par / por			
8. N° sous n° bajo el número			
9. Seal / stamp: Sceau / timbre : Sello / timbre:		10. Signature: Signature : Firma:	

- 225 With a view to facilitating the use of Apostilles and encouraging their acceptance abroad, the Special Commission has encouraged Competent Authorities to adopt multilingual Model Apostille Certificates.<sup>124</sup> This is particularly relevant in the view of the different languages, alphabets, and scripts used among Contracting Parties. While the inclusion of additional languages is at the discretion of each Competent

<sup>122</sup> Art. 4(2).

<sup>123</sup> Art. 4(2).

<sup>124</sup> See C&R No 16 of SC 2021.

Authority, the use of multilingual Apostille Certificates can assist in reducing the risk of Apostilles being rejected.

*(c) Numbers*

- 226 Each of the 10 standard informational items should be numbered from 1 to 10 as indicated in the Model Apostille Certificate. While Apostilles can be drawn up in different languages and the character or numeral systems may vary, preserving uniformity in the numbering is important to facilitate use of Apostilles among Contracting Parties.

*(d) Size and shape*

- 227 The Model Apostille Certificate is described in the Annex to the Convention as a square with sides at least nine centimetres long.
- 228 In practice, the size and shape of Apostilles varies between Competent Authorities. In many cases, the Apostille is in the form of a rectangle on an A4 page. A range of factors may affect how a Certificate is presented, including the number of languages included, the accommodation of certain design features, or differences in stationery. This practice reflects the intention of the drafters that the dimensions of the Apostille should be flexible, with the drafters specifically rejecting a proposal to provide uniform dimensions.<sup>125</sup>
- 229 Variations in the size and shape are not valid grounds for rejecting an Apostille.<sup>126</sup> However, it should be noted that if the size and shape of the Apostille vary too greatly from the Model Apostille Certificate such that it is no longer clearly identifiable as an Apostille under the Convention, the Apostille risks being rejected in the State of destination.

*(e) Frame*

- 230 The Model Apostille Certificate depicts a frame around the title and the 10 numbered standard informational items. Provided the Certificate is otherwise clearly identifiable as an Apostille, the inclusion of a frame is at the discretion of the Competent Authority.

*(f) Design*

- 231 There are no formal requirements concerning design features for an Apostille Certificate and, in practice, the appearance of Apostille varies between Competent Authorities. This includes the use of different fonts, colours, the incorporation of the

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<sup>125</sup> See Actes et documents de la Neuvième session (*op. cit.* note 5), pp. 107-109.

<sup>126</sup> See C&R No 50 of SC 2021.

emblem or logo of a Competent Authority or Contracting Party, as well as letterheads, watermarks, or other security features.

- 232 Competent Authorities should ensure uniformity in the appearance of the Apostilles they issue. In particular, the design of Apostilles should not vary depending on the category of underlying public document or based on the preferences of the applicant. Variations in the design of Apostilles issued by a Competent Authority may lead to confusion in States of destination.
- 233 For this reason, Contracting Parties are encouraged to harmonise the design of their Apostilles, including where there are multiple Competent Authorities. Where this is not possible, each individual Competent Authority should endeavour to use a consistent design.

*(g) Additional text*

- 234 In addition to the title and the 10 numbered standard informational items, the Apostille may include additional text.<sup>127</sup> To ensure the Certificate remains clearly identifiable as an Apostille, any additional text should be placed outside the area containing the 10 numbered standard informational items and in such a way that does not interfere with the integrity of those items.<sup>128</sup> In particular, if the 10 numbered standard informational items are enclosed in a frame, the additional text should be outside that frame.<sup>129</sup>
- 235 The Special Commission strongly encourages those Competent Authorities that have not done so to consider adding text outside the area containing the 10 numbered standard informational items, clarifying the nature and effect of an Apostille.<sup>130</sup> The inclusion of additional text facilitates the production of public documents abroad by providing the bearer or recipient with information about the Apostille. It may also assist Competent Authorities in combating attempts by others to misrepresent the effect of the Apostille.
- 236 Competent Authorities may wish to consider including the following additional text:<sup>131</sup>
- a notice about the limited effect of an Apostille;
  - the web address (URL) of the Competent Authority's e-Register where the Apostille may be verified;
  - a notice that the Apostille has no effect in the State of origin; or

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<sup>127</sup> Additional text recommended by the Permanent Bureau is also set out at Annex IV.

<sup>128</sup> See C&R No 48 of SC 2021.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

- for certificates used both as an Apostille and in the legalisation process, a notice explaining the distinction and, in cases where the Convention does not apply, directing the applicant to the Embassy or Consulate of the State of destination accredited to the State of origin.
- 237 The inclusion of additional text is not compulsory and Competent Authorities are free to employ text as they deem necessary. Competent Authorities are encouraged to share any additional text they wish to use with the Permanent Bureau.

## D. Completing the Apostille

### (a) *Filling in the standard items*

- 238 Once the Competent Authority is satisfied of the origin of the document for which an Apostille is requested, the Competent Authority completes the Apostille by filling in the 10 numbered standard informational items. Each item should be filled to the extent that the relevant information is available. Where information is not available or needed, this should be clearly indicated (e.g., with a mark, symbol, or by writing "not applicable" or "N/A") rather than being left blank.<sup>132</sup> This is particularly important for unsigned documents and documents without a seal / stamp.

Item	Information to be completed
No 1 – "Country"	Insert the name of the State of origin (the State of the issuing Competent Authority).
No 2 – "has been signed by"	Insert the name of the person or authority that signed the underlying public document.
No 3 – "acting in the capacity of"	Insert the capacity in which the person signing the underlying public document acted (i.e., the title of the position held by the official).
No 4 – "bears the seal / stamp of"	Insert the name of the person or authority which has affixed the seal / stamp on the underlying document.  What constitutes a seal / stamp depends on the law of the State of origin, and some Competent Authorities treat the emblem or logo of the issuing authority as its seal / stamp.
No 5 – "at"	Insert the name of the place where the Apostille is being issued (the city where the Competent Authority is located).

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<sup>132</sup> See C&R No 49 of SC 2021.

Item	Information to be completed
No 6 – “the”	Insert the date on which the Apostille is being issued.
No 7 – “by”	<p>Insert the title / name of the Competent Authority and / or the name of the authorised officer issuing the Apostille.</p> <p>Practice among Competent Authorities in filling in this numbered standard informational item varies. Some Competent Authorities insert the title / name of the Competent Authority (noting that some Competent Authorities are officials identified by the title of the position whereas others are bodies identified by their name) <i>and</i> the name of the authorised officer issuing the Apostille. Other Competent Authorities insert either the title / name of the Competent Authority <i>or</i> the name of the authorised officer.</p> <p>The Convention does not require the authorised officer to be named. It is recommended the name of the issuing officer is included in either item No 7 or in item No 10.</p>
No 8 – “No”	Insert the number of the Apostille.
No 9 – “Seal / stamp”	Affix the seal / stamp of the Competent Authority.
No 10 – “Signature”	<p>Practice among Competent Authorities in filling in this numbered standard informational item varies. For most Competent Authorities, the authorised officer issuing the Apostille applies his or her own signature. Many of these also add the name of the officer in the signature field.</p> <p>The Convention does not require the authorised officer to be named. It is recommended the name of the issuing officer is included in either item No 7 or in item No 10.</p>

*(b) Language of information added*

- 239 The Competent Authority may fill out the 10 numbered standard informational items in English, French, or an official language of the issuing Competent Authority. The Special Commission has encouraged Contracting Parties that use the language of the issuing Competent Authority to consider filling out the items in an additional language, such as English, French, or a language of the State of destination.<sup>133</sup>

*(c) Numbering*

- 240 The number on the Apostille is critical in allowing a recipient to verify the Apostille.<sup>134</sup> The Convention does not specify how Apostilles are to be numbered; it is up to each

<sup>133</sup> See C&R No 47 of SC 2021.

<sup>134</sup> Under Art. 7(2).



Competent Authority to determine a system for numbering. Each Apostille should have a unique number. In practice, Competent Authorities use an alphanumeric system.

- 241 It is recommended that Apostilles are numbered non-sequentially (or otherwise randomly) to avoid “fishing expeditions” (*i.e.*, attempts by users of an e-Register to collect information about Apostilles that they have not received).<sup>135</sup>

*(d) Applying the signature*

- 242 The Convention does not specify how Apostilles are to be signed. It is the law applicable to the Competent Authority that determines how an Apostille may be signed and the validity of the signature.<sup>136</sup>
- 243 In practice, paper Apostilles are signed by hand, using a rubber stamp, or using a printer. e-Apostilles are signed using a digital signature. Whether an electronic or digital signature is the functional equivalent of a wet signature is a matter for domestic law or policy.

*(e) Multiple documents / signatures*

- 244 An Apostille only authenticates the signature / seal / stamp of a single official or authority. As a result, Competent Authorities may not issue a single Apostille for multiple documents that are executed by different officials. In the interests of expediency, some Competent Authorities issue a single Apostille for multiple documents that have been bundled together where each document in the bundle is executed by the same official or authority.<sup>137</sup>

## E. Attaching the Apostille to the underlying public document

- 245 Apostilles should be attached to the public document by being placed either directly on the document or on a separate slip of paper (an “*allonge*”) which is then affixed to the document.<sup>138</sup>
- 246 Whether in paper or electronic form, the Apostille must be attached to, or logically associated with, the underlying public document.<sup>139</sup>

*(a) Methods to attach the Apostille*

- 247 The Convention does not specify how the Apostille is to be attached to the underlying public document or how the *allonge* is to be affixed. It is the discretion of

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<sup>135</sup> See C&R No 29 of the Tenth e-APP Forum (The Hague).

<sup>136</sup> See C&R No 51 of SC 2021.

<sup>137</sup> See also, *supra*, paras 172 and 173.

<sup>138</sup> Art. 4(1).

<sup>139</sup> See C&R No 53 of SC 2021.

each Competent Authority to determine the methods for attaching Apostilles. In all cases, the Apostille should be securely attached to the document.

- 248 Apostilles should be attached in a way that shows when tampering has occurred.<sup>140</sup> The easiest and most secure way to attach an Apostille is by issuing e-Apostilles.

(b) *Placement of an Apostille*

- 249 For a multi-page document or bundles of documents with a single certification, the Apostille should be placed on the signature page of the document. If an *allonge* is used, this should be affixed to the front or back of the document.<sup>141</sup> An Apostille should not conceal the signature / seal / stamp or any content of the document.
- 250 If attaching the Apostille to a particular document is not practical (or not permitted by the law of the State of origin), the Competent Authority may wish to instruct the applicant to obtain a certified copy of the document to be apostilled instead.
- 251 Detaching the Apostille from the underlying public document invalidates the Apostille. Competent Authorities should inform applicants that the Apostille must remain attached to the underlying document.

## F. Charging a fee

- 252 The Convention does not address the fees that Competent Authorities may charge for issuing Apostilles. It is the discretion of the Contracting Party to determine whether to charge a fee and, if so, the amount. In practice, most Competent Authorities charge a fee.
- 253 Fees may be consistent or offered on a scale. For example, some Competent Authorities' fees differ based on factors such as:
- the type of applicant (e.g., a business or an individual);
  - the size or transactional value of the document being apostilled;
  - the number of documents that the applicant is requesting to be apostilled; or
  - the category of document being apostilled.
- 254 Some Competent Authorities also offer priority processing services at a premium. Others charge a reduced or capped fee for documents that are to be produced abroad for a particular purpose, such as an intercountry adoption procedure.
- 255 The Special Commission has suggested that Competent Authorities should charge a single, reduced fee when apostilling multiple documents instead of an individual fee for each document apostilled.<sup>142</sup>

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<sup>140</sup> *Id.*

<sup>141</sup> See C&R No 52 of SC 2021.

<sup>142</sup> See C&R No 56 of SC 2021.

- 256 In all cases, the fees charged for issuing an Apostille should be reasonable.<sup>143</sup> Information provided by Contracting Parties on the fees charged by their Competent Authorities is available on the Apostille Section of the HCCH website.

## G. Refusing to issue an Apostille

### (a) *Refusing issuance*

- 257 While the text of the Convention does not expressly provide grounds on which a Competent Authority may refuse to issue an Apostille, issuance may nonetheless be refused in a limited number of circumstances based on the application of the Convention. These include instances where:
- the public document is to be produced in a State that is not party, or is in the process of becoming party, to the Convention;
  - the public document is an excluded document under Article 1(3);
  - the document is not a public document under the law of the State of origin;
  - the Competent Authority is not competent to issue an Apostille for documents of the relevant category, or emanating from the relevant territory; or
  - the Competent Authority is unable to verify the origin of the public document for which the Apostille is requested.
- 258 Domestic law or policy may permit or require a Competent Authority to refuse to issue an Apostille on additional grounds. For example, the issuance of an Apostille may be refused if:
- the applicant is an agent or proxy of the person who intends to use the Apostille and does not provide evidence that they are authorised by that person to request the Apostille;
  - the applicant does not pay the prescribed fee;
  - the contents of the underlying public document (or in the case of a notarial certificate, the document to which the notarial certificate relates) are offensive or otherwise contrary to domestic law or policy; or
  - the Competent Authority suspects that the underlying public document is fraudulent.
- 259 The Special Commission has noted that the issuance of an Apostille may be refused for certified copies of public documents as a matter of public policy.<sup>144</sup> On this basis, a Competent Authority may refuse to issue an Apostille in order to prevent the fraudulent or otherwise unlawful use of the copied document.

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<sup>143</sup> *Id.*

<sup>144</sup> See C&R No 45 of SC 2021.

*(b) Further assistance to applicants*

- 260 Where a Competent Authority refuses to issue an Apostille in one of the circumstances listed above, the Permanent Bureau is unable to provide advice or assistance to applicants. This is a matter between the State of origin and the State of destination.

**i. The State of destination is not party to the Convention**

- 261 If an Apostille is not issued because the State of destination is not party to the Convention, the Competent Authority is encouraged to refer the applicant to the Embassy or Consulate of the State of destination accredited to the State of origin for advice on alternative options.

**ii. The document is not a public document**

- 262 If an Apostille is not issued because the document is not a public document, or because the document to be apostilled is an excluded document, the Competent Authority may wish to refer the applicant to a notary in order to determine whether the document can be notarised, in which case an Apostille may eventually be issued for the notarial certificate.

**iii. Competent Authority not competent to issue the Apostille**

- 263 If an Apostille is not issued because the Competent Authority does not have the necessary competence to issue an Apostille for the specific document for which a request is made (*e.g.*, on the basis of the category of document or the territory in which the document was executed), it should refer the applicant to the correct Competent Authority.

**iv. Unable to verify the origin of the document**

- 264 If an Apostille is not issued because the Competent Authority is unable to verify the origin of the document, it may wish to refer the applicant to an authority that is able to certify the authenticity of the document (*e.g.*, the official or authority that executed the document, its successor, or a responsible agency). In some Contracting Parties, applicants may consult a notary to determine whether the document can be notarised. In these cases, an Apostille may eventually be issued for the certificate of either the authority or the notary.

*(c) Public documents that have already been legalised*

- 265 A public document may need to be produced in multiple States, and therefore may be subject to both legalisation and apostillisation. There is nothing in the Convention to prevent a Competent Authority from issuing an Apostille for a public document that has already been legalised, provided that the Apostille relates to the public document and not the other authentications that may have been placed on the document as part of the legalisation process.

## H. Revoking an Apostille

- 266 If an Apostille that has been issued is invalidated by reason of domestic law or policy, there is nothing in the Convention that precludes the issuing Competent Authority from revoking or annulling the Apostille. This may be required when error or fraud is detected after issuance.

## 4. Registering the Apostille

### A. Requirement to keep a register

- 267 The Convention requires each Competent Authority to keep a register recording the particulars of each Apostille it issues.<sup>145</sup>
- 268 Aside from the obligations under the Convention, the register acts as an essential tool to combat fraud by allowing recipients to verify the validity of an Apostille.
- 269 This register is distinct from the database of sample signatures / seals / stamps that is maintained by each Competent Authority. The database is used *before* issuing an Apostille to certify the origin of the underlying public document whereas a register is used by the recipient to verify an Apostille *after* it has been issued.<sup>146</sup>

### B. Form of the register

#### (a) *Non-publicly accessible registers*

- 270 There is nothing in the Convention prescribing the form in which the register must be kept; it is the discretion of the Contracting Party. At the time of the negotiation of the Convention, the drafters had a paper register in mind. With the increasing use of information technology, more Competent Authorities are moving towards a registers kept in electronic form.
- 271 Keeping registers in electronic form has a number of advantages compared to paper registers:
- ease of recording particulars of each Apostille issued;
  - ease of verifying an Apostille when requested;
  - automatic generation of statistics on Apostilles services delivered by Competent Authorities; and
  - accessibility across multiple Competent Authorities.

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<sup>145</sup> Art. 7(1).

<sup>146</sup> See, *supra*, paras 199 *et seq.*

- 272 It is important to note that a register in electronic form is *distinct* from an e-Register. While the wording of Article 7 ensures that the register is available to any interested person, there is no requirement under the Convention for a register to be openly accessible to the public.

(b) *e-Registers*

- 273 An e-Register is an electronic register that is publicly accessible online. It allows recipients to verify Apostilles they have received. This enhances accessibility for users and protects the integrity of the process. An e-Register can be used to record the issuance of both paper Apostilles and e-Apostilles.
- 274 Each Contracting Party may determine which categories of Apostilles are available for verification on its e-Register. For example, some Contracting Parties have separate e-Registers for separate Competent Authorities, whereas others only record Apostilles issued after a certain date.

### C. Information to be recorded in the register

- 275 A Competent Authority is required to record the following particulars of each Apostille issued:<sup>147</sup>

- the number of the Apostille (as inserted at standard informational item No 8);
- the date of the Apostille (as inserted at standard informational item No 6);
- the name of the person who has signed the underlying public document (as inserted at standard informational item No 2);
- the capacity in which the person who has signed the underlying public document acted (as inserted at standard informational item No 3); and
- in the case of unsigned public documents, the name of the authority which has affixed the seal or stamp (as inserted at standard informational item No 4).

If using an e-Register, this information must also be available for the recipient to view and confirm.

- 276 Any other information is included at the discretion of the Competent Authority. For example, the Competent Authority may record additional information in the register, such as the nature of the underlying public document or the name of the person who requested the Apostille.
- 277 Some Competent Authorities provide an image of the Apostille and / or the attached underlying public document, in order to facilitate a visual comparison for verification purposes.

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<sup>147</sup> Art. 7(1).

## D. Retention period

- 278 The Convention does not specify the period of time for which the information recorded in the register must be kept. However, as an Apostille has no expiration, records in the register should be retained for as long as possible, subject to legal requirements and practical limitations.<sup>148</sup>

## 5. Verifying the issuance of an Apostille

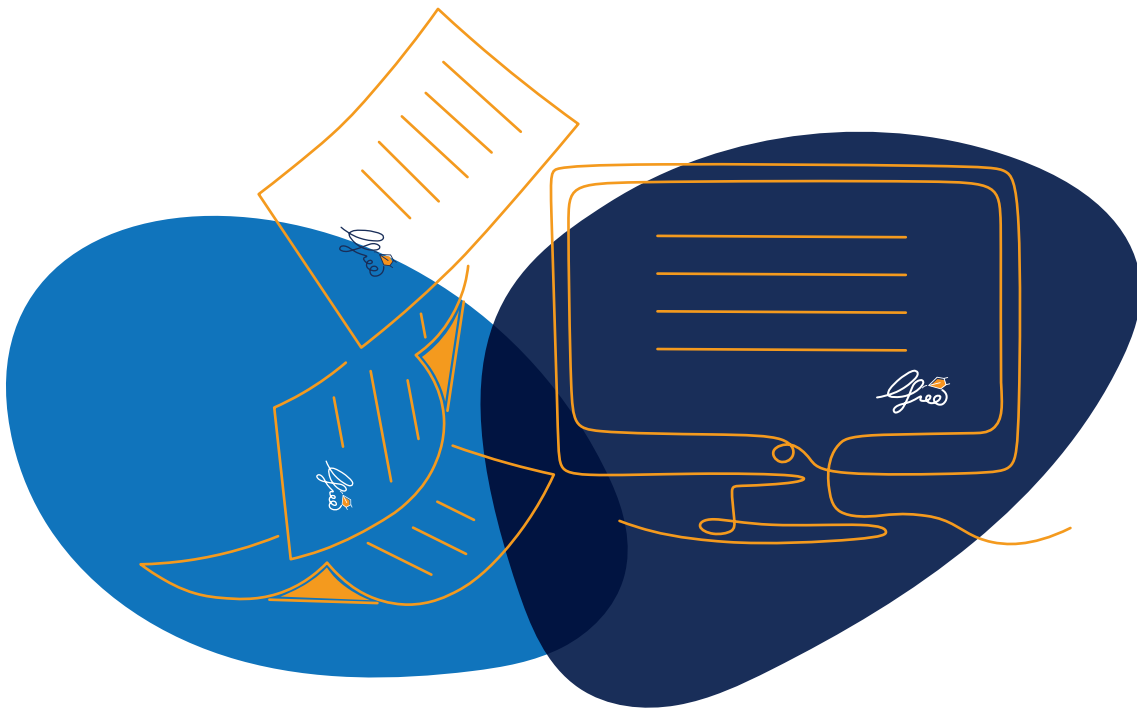
- 279 At the request of any interested person, the Competent Authority which has issued the Apostille is required to verify whether the particulars of the Apostille correspond with those in the register.<sup>149</sup>
- 280 If the register is not an e-Register, the request may be made directly to the Competent Authority that issued the Apostille. The Competent Authority will then manually check the register and verify the details. If the Competent Authority operates an e-Register, the verification process can be completed by the user online.
- 281 There is no requirement for the person making the request to prove the legitimacy of their interest.

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<sup>148</sup> See C&R No 57 of SC 2021.

<sup>149</sup> Art. 7(2).

## Part Five



## Presentation in the State of Destination



## Presentation in the State of Destination

- 1 Accepting Apostilles
- 2 Rejecting Apostilles

## 1. Accepting Apostilles

- 282 Each Contracting Party is obliged to give effect to Apostilles, whether paper or electronic, that have been issued by other Contracting Parties in accordance with the Convention.<sup>150</sup> This obligation does not apply where the Convention is not in force between two Contracting Parties, for example, as a result of an objection to accession.

## 2. Rejecting Apostilles

### A. Possible grounds for rejecting Apostilles

- 283 The Convention does not specify any grounds on which a Contracting Party may reject an Apostille. As a rule, Apostilles should be routinely accepted unless there are serious defects with the Apostille or its issuance. If a receiving authority has doubts about the validity of an Apostille, it should take reasonable steps to resolve any issues, including contacting the Competent Authority that issued the Apostille, before resorting to rejecting the Apostille. This approach also respects the sovereignty of the State of origin to determine when to issue an Apostille.
- 284 The following section sets out possible grounds for rejecting an Apostille. This applies only to the Apostille Certificate and does not refer to the content of the underlying document, which remains the discretion of the law of the State of destination.

#### *(a) Issuing State not a party to the Convention*

- 285 An Apostille must be rejected if it has been issued by a State that is not party to the Convention.<sup>151</sup> Certificates purporting to be Apostilles that are issued by States that are not party to the Convention can be given no legal effect under the Convention. Contracting Parties are invited to contact the Permanent Bureau if they become aware of such attempts.

#### *(b) Apostilled document not a public document of the State of origin*

- 286 An Apostille may be rejected if it relates to a document that was not issued by the State of origin (*i.e.*, a foreign public document).

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<sup>150</sup> Art. 3(1). See also C&R No 30 of SC 2021.

<sup>151</sup> See, *supra*, paras 65 *et seq.*

- 287 If a document has been executed in one State and subsequently certified in the State of origin, the certification may be properly apostilled in the latter State, and therefore should be accepted by the State of destination.

*(c) Apostille issued by an authority other than a Competent Authority*

- 288 An Apostille may be rejected if it was issued by an authority that was not a Competent Authority under the Convention. Information on the designation of Competent Authorities is available on the Apostille Section of the HCCH website and on the Depositary website.

*(d) Apostille issued by a Competent Authority outside its competence*

- 289 An Apostille may be rejected if it was issued by a Competent Authority for a category of public document for which it did not have competence. Information on the designation of Competent Authorities and, where applicable, the categories of public documents for which they are competent, is available on the Apostille Section of the HCCH website and on the Depositary website.

*(e) Ten standard items not included*

- 290 An Apostille may be rejected if it does not include an area with the 10 numbered standard informational items.
- 291 Additional text outside the area containing the 10 numbered standard informational items is not a valid ground for rejecting an otherwise validly issued Apostille.<sup>152</sup>

*(f) Apostille detached from document*

- 292 An Apostille may be rejected if it is not attached to, or logically associated with, the underlying public document.<sup>153</sup> This includes instances where the Apostille has become detached.

*(g) Forged or altered Apostilles*

- 293 An Apostille may be rejected if it has been forged or altered. If a recipient of an Apostille has concerns about its authenticity or integrity, they can verify its particulars against the register kept by the issuing Competent Authority including, where available, an e-Register.

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<sup>152</sup> See C&R No 50 of SC 2021.

<sup>153</sup> See C&R No 53 of SC 2021. See also, *supra*, paras. 245 *et seq.*

## B. Invalid grounds for rejecting Apostilles

### (a) *Underlying document not a public document under the law of the State of destination*

- 294 An Apostille may not be rejected because the underlying document is not a public document under the law of the State of destination. It is the law of the State of origin that determines the public nature of the underlying document.<sup>154</sup>
- 295 The Apostille does not in any way affect the admissibility, or probative value of the underlying document under the law of the State of destination.<sup>155</sup>

### (b) *Size, shape, and design*

- 296 An Apostille may not be rejected on the basis of its size, shape, or design as long as it is clearly identifiable as an Apostille issued under the Convention.<sup>156</sup> In particular, an Apostille may not be rejected because:
- it is not square-shaped;
  - it has sides that are more or less than nine centimetres long; or
  - it has no frame around the title and area containing the 10 numbered standard informational items.
- 297 Formal defects may appropriately be reported to the Competent Authority that issued the Apostille.

### (c) *Additional text*

- 298 An Apostille may not be rejected because it contains additional text outside the area containing the 10 numbered standard informational items.<sup>157</sup>

### (d) *Apostille is an e-Apostille*

- 299 A fundamental principle under the Convention is that Contracting Parties must accept a validly issued Apostille.<sup>158</sup> If an e-Apostille is validly issued in the State of origin, this has the same weight as any other Apostille issued and must be treated as such by other Contracting Parties. This also avoids the implication that an e-Apostille is in any way inferior to a paper Apostille.

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<sup>154</sup> See C&R No 37 of SC 2021.

<sup>155</sup> See C&R No 38 of SC 2021.

<sup>156</sup> See C&R No 50 of SC 2021.

<sup>157</sup> *Id.*

<sup>158</sup> See C&R No 30 of SC 2021.

- 300 To facilitate the acceptance of e-Apostilles, Contracting Parties are encouraged to inform other Contracting Parties when they begin issuing e-Apostilles. The Permanent Bureau has a notification system for this purpose and Contracting Parties are encouraged to inform the Permanent Bureau of these developments in a timely manner.<sup>159</sup>
- 301 This does not prevent authorities in the State of destination from rejecting the underlying electronic public document on the basis of their domestic law or policy because the document is required to be produced in paper form.<sup>160</sup>
- 302 The Special Commission has encouraged Contracting Parties to take active steps to ensure incoming e-Apostilles are able to be accepted.<sup>161</sup> This may include working with relevant authorities to ensure that legal frameworks and procedures are compatible with the acceptance of e-Apostilles and receipt of electronic public documents.<sup>162</sup> Should difficulties arise in this context, it is good practice to resolve these directly with the authorities of the issuing Contracting Party and to inform the Permanent Bureau of issues that become systemic.<sup>163</sup>

*(e) Methods of attachment to the underlying public document*

- 303 An Apostille may not be rejected because it has been attached to the underlying public document by a method that is different from that used by the Competent Authorities in the State of destination.<sup>164</sup>

*(f) No translation*

- 304 An Apostille may not be rejected because it is drawn up in a language other than the language of the State of destination. The Convention allows an Apostille to be drawn up in the official language of the Competent Authority that issues it.<sup>165</sup> The Convention also provides that no further formality may be required, which includes translation.<sup>166</sup>
- 305 This does not prevent authorities in the State of destination from rejecting the underlying public document on the basis of their domestic law or policy because it is in a language other than the official language of the State of destination and that it is not accompanied by a translation.<sup>167</sup>

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<sup>159</sup> See C&R No 26 of SC 2021.

<sup>160</sup> See C&R No 38 of SC 2021.

<sup>161</sup> See C&R No 30 of SC 2021.

<sup>162</sup> See P&P No 4(b).

<sup>163</sup> See P&P No 4(c).

<sup>164</sup> See C&R No 50 of SC 2021.

<sup>165</sup> Art. 4(2).

<sup>166</sup> Art. 3(1).

<sup>167</sup> See C&R No 38 of SC 2021.

*(g) Old Apostilles*

- 306 An Apostille may not be rejected on the basis of its age. Under the Convention, the effect of an Apostille does not expire.<sup>168</sup> However, this does not prevent authorities in the State of destination from rejecting the underlying public document due to its age on the basis of domestic law or policy.<sup>169</sup>

*(h) Underlying public document has been legalised*

- 307 An Apostille may not be rejected because the underlying public document has also been legalised. A person may need to produce a public document in multiple States and therefore have the document both legalised (for production in a non-Contracting Party) and apostilled (for production in a Contracting Party). There is nothing in the Convention that precludes the effect of an Apostille due to other authentications, provided that any such authentication does not relate to the Apostille itself.

*(i) Apostilles not legalised or otherwise further certified*

- 308 An Apostille may not be required to have further legalisation or certification. Under the Convention, the only formality required to certify the authenticity of the origin of the underlying document is an Apostille,<sup>170</sup> and the signature, seal, and stamp on the Apostille are, themselves, exempt from all certification.<sup>171</sup> Accordingly, any additional certification placed on an Apostille cannot produce additional legal effect under the Convention, and Competent Authorities should refrain from legalising or otherwise further certifying the issuance of an Apostille.
- 309 The Special Commission has firmly rejected practices among Contracting Parties that require Apostilles to be legalised.<sup>172</sup> It has also recalled that Article 9 does not permit legalisation by diplomatic or consular agents when the Convention applies and that Contracting Parties are obliged to take the necessary steps to ensure compliance with the provisions of this Article.<sup>173</sup>
- 310 In particular, the acceptance of an Apostille in the State of destination should not be conditional on the confirmation of procedures from the issuing Competent Authority.<sup>174</sup> The Special Commission has encouraged Contracting Parties which receive such requests to resolve these issues bilaterally.<sup>175</sup>

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<sup>168</sup> See C&R No 57 of SC 2021.

<sup>169</sup> See C&R No 38 of SC 2021.

<sup>170</sup> Art. 3(1).

<sup>171</sup> Art. 5(3).

<sup>172</sup> See C&R No 55 of SC 2021.

<sup>173</sup> *Id.*

<sup>174</sup> See C&R No 58 of SC 2021.

<sup>175</sup> *Id.*

- 311 If a recipient of an Apostille has concerns about its authenticity or integrity, they can verify its particulars against the register kept by the issuing Competent Authority including, where available, an e-Register.

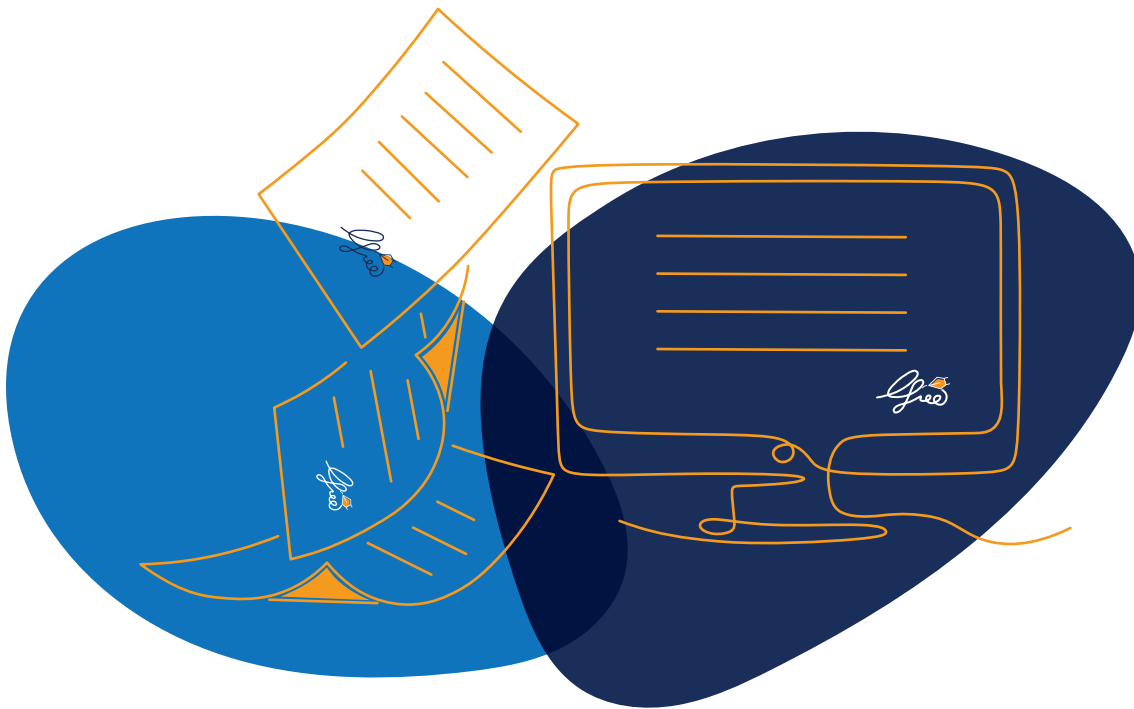
(j) *Apostilles issued before entry into force in the State of destination*

- 312 An Apostille may not be rejected because it was issued before the Convention entered into force in the State of destination. The only requirement is that the Convention was in force in the State of origin when the Apostille was issued.<sup>176</sup>

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<sup>176</sup> See, *supra*, paras 90 *et seq.*

## Part Six



## The e-APP



## The e-APP

- 1 Overview of the e-APP
- 2 Implementing the e-APP

## 1. Overview of the e-APP

### A. Background

- 313 The environment in which the Convention operates has changed dramatically since 1961, primarily due to advances in information and communication technology. To remain relevant for Contracting Parties and users, the Convention must keep pace with e-Government initiatives and related developments. Specifically, there are increasing numbers of public documents being executed in electronic format. At the same time, public registers are increasingly available online, giving members of the public access to a range of information for conducting individual or business activities.
- 314 The e-APP was launched in 2006 to promote and facilitate the use of technology under the Convention. Developments in technology have streamlined work processes for Competent Authorities, enabled the generation of more user-friendly Apostilles, and enhanced security in the cross-border transfer of documents. Feedback on the programme has been, and continues to be, overwhelmingly positive and the Special Commission has recognised its importance in supporting the operation of the Convention.<sup>177</sup>
- 315 The e-APP has two components, e-Apostilles and e-Registers, and they can be implemented separately or together. While Contracting Parties are encouraged to implement both components of the e-APP, there are currently more Contracting Parties that maintain an e-Register than those that issue e-Apostilles.

### B. e-Apostilles

- 316 An e-Apostille is an Article 3(1) Certificate issued in electronic form with a digital signature. e-Apostilles may be issued on electronic public documents or on paper public documents that have been scanned or otherwise digitised.
- 317 As public documents are increasingly executed electronically, the e-Apostille provides a mechanism to authenticate them in their original form. In practice, e-Apostilles offer the optimal solution for apostillising electronic public documents, thereby maintaining the advantages of these documents in terms of security, efficiency, and ease of transmission.<sup>178</sup>
- 318 There are a number of benefits of e-Apostilles:
- Resourcing: reducing the workload of Competent Authorities by removing the need to physically attach, sign, and seal Apostilles.

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<sup>177</sup> See C&R No 18 of SC 2021.

<sup>178</sup> See C&R No 27 of SC 2021; P&P No 2(a).

- Efficiencies: reducing the turnaround time and costs in the issuance and use of Apostilles with cheaper and more efficient methods than required for attaching paper Apostilles to paper public documents.
- Accessibility: facilitating efficient access to Apostille services by allowing requests to be made online.
- Integration: facilitating the use of an integrated government system to streamline the verification of an underlying document and the issuance of an e-Apostille.
- Immutability: increasing security by using technology to ensure that a document has not been tampered with from the time of issuance, through the apostillisation process, until it is received by the State of destination.
- Circulation: simplifying the transfer of public documents by relying upon electronic communication and transfer rather than physical cross-border mail.
- Preservation: minimising the risk of document loss with electronic storage and transmission.

### C. e-Registers

- 319 An e-Register is an Article 7(1) register that is maintained in electronic form and is publicly accessible online. It can be used to record the issuance of both paper Apostilles and e-Apostilles.
- 320 Many Contracting Parties maintain their Article 7(1) register in electronic form, however the publicly accessible element is what determines whether it will be classified as an e-Register under the e-APP. This allows any interested person to verify their Apostille online. While the URL of an e-Register is public, only the recipient of an Apostille has the information required to access and use the e-Register to verify an Apostille. In some cases, QR codes are used rather than a public URL.
- 321 There are a number of benefits of e-Registers:
- Verification: encouraging quick and easy verification of Apostilles without the intervention of an official.
  - Acceptance: reducing rejections in cases of minor formal defects.
  - Resourcing: process does not require staff to manually respond to queries regarding issued Apostilles.
  - Retention: longevity of records with entries remaining active and easily accessible for as long as possible.
- 322 The 2021 Questionnaire issued by the Permanent Bureau to Contracting Parties on the practical operation of the Convention revealed that e-Registers are accessed at a far higher rate than non-electronic Article 7 registers. Thirty-five per cent of responding Contracting Parties reported that the register was either never checked

or had been checked less than ten times per year.<sup>179</sup> This is in stark contrast to Contracting Parties which record statistics on their e-Register usage, reporting that the e-Register was accessed either hundreds, thousands, or millions of times a year.

## 2. Implementing the e-APP

### A. Role of Contracting Parties and the Permanent Bureau

- 323 Participation in the e-APP does not require a formal agreement nor does it require a binding commitment to the programme. There is also no requirement to have the Permanent Bureau approve or otherwise endorse the implementation of the e-APP before it becomes operational.
- 324 While the Permanent Bureau oversees the e-APP, the development and implementation of the components remains the responsibility of Contracting Parties. The Permanent Bureau is available to answer questions relating to the Convention and offer good practices based on the experiences of other Competent Authorities, as discussed at meetings of the Special Commission and e-APP Forum. However, the Permanent Bureau does not provide information technology infrastructure or technical support.
- 325 The e-APP was neither intended nor designed to favour any specific technology and Contracting Parties retain discretion as to if and how they implement the e-Apostille and e-Register components. It is recommended that information technology experts are involved at an early stage to assess the overall implications of implementing the e-APP.
- 326 There is an increasing ease of implementation of the e-APP, as more Contracting Parties have the requisite experience. These Contracting Parties are thus available for consultation and to offer assistance to new e-APP participants, particularly with respect to addressing privacy, security, and technological concerns. This information sharing also assists with the development of good practices and enhanced awareness among authorities.<sup>180</sup> The Permanent Bureau will also assist interested Contracting Parties in contacting experienced Competent Authorities.
- 327 The Permanent Bureau has developed a notification system to inform Contracting Parties of new and updated implementation of e-APP components. To ensure this system works effectively, Competent Authorities that have begun issuing e-Apostilles or operating an e-Register should inform the Permanent Bureau.<sup>181</sup> The status of implementation of the e-APP among Contracting Parties is available on the Apostille Section of the HCCH website.

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<sup>179</sup> See "Summary of Responses to the Apostille Questionnaire 2021", Prel. Doc. No 2 REV of February 2022 for the attention of the Special Commission on the Practical Operation of the Apostille Convention (5-8 October 2021) (available on the HCCH website at [www.hcch.net](http://www.hcch.net), under the "Apostille Section" then "2021 Special Commission").

<sup>180</sup> See C&R No 18 of SC 2021.

<sup>181</sup> See C&R No 26 of SC 2021.

- 328 Contracting Parties which have already implemented one or both components of the e-APP are encouraged to continue monitoring developments and regularly update or upgrade their infrastructure.<sup>182</sup>
- 329 In 2021, an Experts' Group was convened to explore the further application of new technologies to the e-APP. This is the first time the e-APP has been brought into the scheduled work programme of the HCCH and is a testament to the support for the continued development of the Convention and the e-APP.

## B. Implementation of the e-Apostille component

- 330 The formalities required under the Convention remain the same for e-Apostilles as they are for paper Apostilles. This includes certifying the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.<sup>183</sup> The e-Apostille must be issued by a Competent Authority of the State from which the document emanates,<sup>184</sup> must follow the model annexed to the Convention,<sup>185</sup> and must be attached to the underlying public document, though the method of attachment will evidently be different than on a paper Apostille.<sup>186</sup>
- 331 Implementation of the e-Apostille requires:
- a) computer equipment and software to fill in an Apostille Certificate electronically, in a file format that supports a digital signature (or equivalent); and
  - b) a mechanism to transmit the e-Apostille file by electronic means, such as e-mail or website download.

### (a) Issuing an e-Apostille

- 332 In order to apply a digital signature to the Apostille, a Competent Authority must have a digital certificate issued from a trusted commercial Certificate Authority or a Government Certification Authority.<sup>187</sup>
- 333 The acceptance of e-Apostilles is greatly enhanced if the issuance and management of digital certificates are subject to high standards. This includes digital certificates that are frequently used and are from a Certificate Authority that is well recognised.<sup>188</sup>

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<sup>182</sup> See P&P No 5.

<sup>183</sup> Art. 3(1).

<sup>184</sup> *Id.*

<sup>185</sup> Art. 4(1).

<sup>186</sup> Art. 4(1). See also C&R No 53 of SC 2021.

<sup>187</sup> In practice, there are broadly two categories used for issuing a digital signature. The majority of Contracting Parties use a government-built digital certificate. The second category is a commercially available certificate, including those from IdenTrust, DigiCert, or Global Sign.

<sup>188</sup> See C&R No 29 of SC 2021.

- 334 Subject to the specific software being used and whether it is has been developed by a governmental authority or purchased from commercial entity, it is generally sufficient for a Competent Authority to use one single digital certificate. It can then be shared by various officials of a Competent Authority.
- 335 As Apostilles do not have an expiration date, e-Apostilles continue to be valid even after the digital certificate of the person signing the e-Apostille expires, provided that the digital certificate was valid when the e-Apostille was issued. It is important that Competent Authorities take this into account when selecting and using digital certificates to issue e-Apostilles, adopting practices that allow the validity of digital signatures to be preserved over time.<sup>189</sup>
- 336 There are a number of good practices that Competent Authorities should consider to facilitate the issuance of e-Apostilles. These include:
- optimising the application process with online submission;<sup>190</sup>
  - preserving the initial digital signature on the underlying public document when issuing an e-Apostille;<sup>191</sup>
  - combining the e-Apostille and the underlying document in a single file;<sup>192</sup>
  - using file formats compatible with commonly used software, web browsers and devices;<sup>193</sup>
  - adding information to e-Apostilles instructing users to preserve the electronic format of the file;<sup>194</sup> and
  - issuing e-Apostilles within one working day of application.<sup>195</sup>

*(b) Transmitting an e-Apostille*

- 337 In practice, two systems have developed for the issuance of e-Apostilles: the dynamic system, where the electronic file containing the e-Apostille and the electronic public document is transmitted electronically from the State of origin to the State of destination; and the static system, where the electronic file containing the e-Apostille and the electronic public document is stored in a repository of the Competent Authority (usually its e-Register) and can be accessed but is not transmitted. The e-APP Forum has recognised that both work well in practice.<sup>196</sup>
- 338 Whether the applicant receives the e-Apostille file or an access link, the most important consideration for Competent Authorities is preserving the integrity of both

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<sup>189</sup> See P&P No 2(e).

<sup>190</sup> See P&P No 1(b).

<sup>191</sup> See P&P No 2(c).

<sup>192</sup> See P&P No 2(b).

<sup>193</sup> See P&P No 1(d).

<sup>194</sup> See P&P No 4(a).

<sup>195</sup> See P&P No 1(c).

<sup>196</sup> See C&R No 8 of the Tenth e-APP Forum (The Hague).

the e-Apostille and the underlying public document to which it relates.<sup>197</sup> This may involve taking steps to ensure that the e-Apostille remains in electronic format when presented to the recipient, with the digital signature intact, as well as to secure end-to-end access, restricting it to authorised users.<sup>198</sup>

## C. Implementation of the e-Register component

### (a) Register element of an e-Register

- 339 Contracting Parties are recommended to maintain a single e-Register for all Apostilles, irrespective of format (*i.e.*, paper or electronic) or the issuing Competent Authority.<sup>199</sup> This is particularly important for Contracting Parties with several Competent Authorities, or one Competent Authority with several offices.<sup>200</sup>
- 340 Additionally, the Permanent Bureau suggests that e-Registers are made available in English and / or French in addition to the language(s) used by the Competent Authority.<sup>201</sup>
- 341 Like registers maintained in paper form, e-Registers must comply with the requirements set out in Article 7 of the Convention. Accordingly, an e-Register must record, at least, the number and date of the Apostille, the name of the person signing the public document, and the capacity in which the person has acted. The e-Register must also allow the recipient of the Apostille to verify each of these particulars.<sup>202</sup>
- 342 Competent Authorities are encouraged to operate e-Registers that provide, at least, a basic description and / or image of the Apostille and of the underlying public document.<sup>203</sup> Any information included or displayed on the e-Register is subject to applicable laws and regulations, including on privacy and data protection.

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<sup>197</sup> See C&R No 27 of SC 2021; P&P No 2.

<sup>198</sup> See P&P No 2(d) and (f).

<sup>199</sup> See P&P No 3(a).

<sup>200</sup> See C&R No 30 of the Tenth e-APP Forum (The Hague).

<sup>201</sup> This is consistent with the principle of making e-Apostilles and related services accessible, and that e-Registers should facilitate frequent and reliable verification. See P&P Nos 1 and 3.

<sup>202</sup> See C&R No 27 of the Tenth e-APP Forum (The Hague).

<sup>203</sup> See P&P No 3(c); C&R No 28 of the Tenth (The Hague) Forum (The Hague).

*(b) User interface*

- 343 An e-Register should require the entry of unique information associated with an Apostille. In practice, this tends to be a number and the date of issuance. Apostilles should be numbered non-sequentially to avoid fishing expeditions. If Apostilles are numbered sequentially, another code should be included and required to be entered in the e-Register.<sup>204</sup> This is to avoid the possibility of a user accessing information relating to an Apostille not issued to them.
- 344 Contracting Parties have implemented a range of security measures on e-Registers, including, for example, the use of randomly generated characters or images to confirm the user is a person and not a computer. While this practice has previously been encouraged, relevant technology is evolving, and other means can produce the same results.<sup>205</sup>
- 345 Many Contracting Parties also include QR codes on Apostilles they issue to allow a user to access the e-Register directly. This has been recognised as a good practice by the e-APP Forum.<sup>206</sup>

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<sup>204</sup> See C&R No 29 of the Tenth e-APP Forum (The Hague).

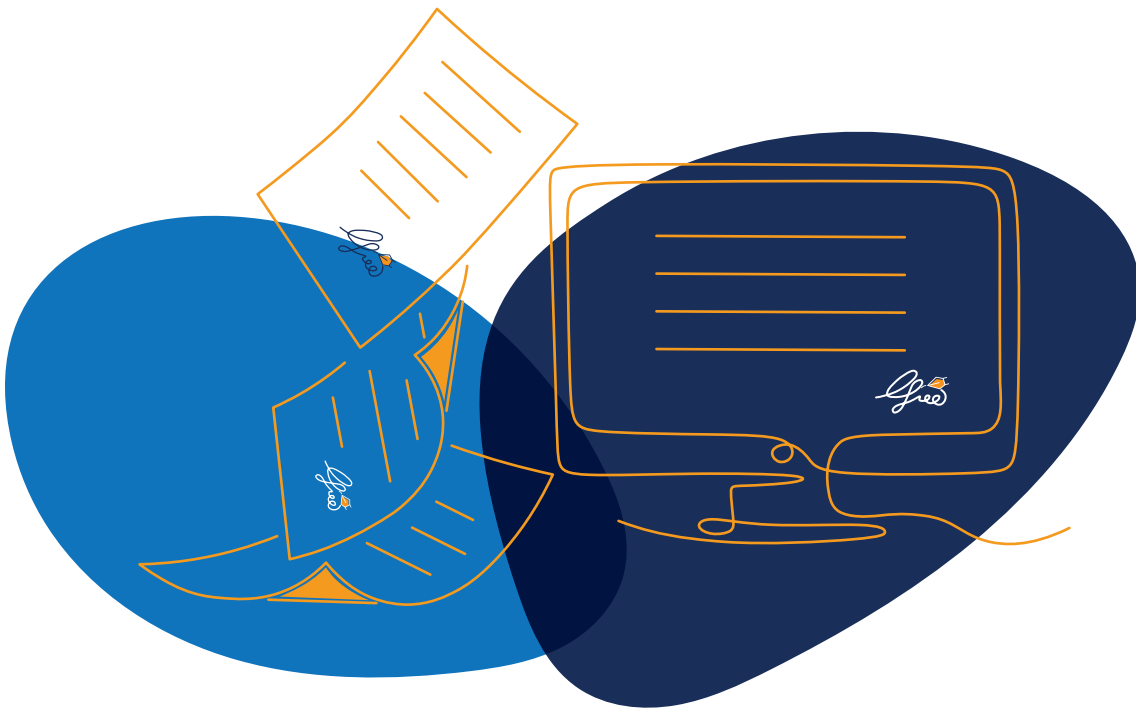
<sup>205</sup> See C&R No 31 of the Tenth e-APP Forum (The Hague).

<sup>206</sup> See C&R No 31 of the Tenth e-APP Forum (The Hague).





# Annex I



## Text of the Apostille Convention



## Convention Abolishing the Requirement of Legalisation for Foreign Public Documents

*(Concluded 5 October 1961)*

The States signatory to the present Convention,

Desiring to abolish the requirement of diplomatic or consular legalisation for foreign public documents,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

### Article 1

The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

- (a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server (*"huissier de justice"*);
- (b) administrative documents;
- (c) notarial acts;
- (d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, the present Convention shall not apply:

- (a) to documents executed by diplomatic or consular agents;
- (b) to administrative documents dealing directly with commercial or customs operations.

### Article 2

Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.

### Article 3

The only formality that may be required in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, is the addition of the certificate described in

Article 4, issued by the competent authority of the State from which the document emanates.

However, the formality mentioned in the preceding paragraph cannot be required when either the laws, regulations, or practice in force in the State where the document is produced or an agreement between two or more Contracting States have abolished or simplified it, or exempt the document itself from legalisation.

#### Article 4

The certificate referred to in the first paragraph of Article 3 shall be placed on the document itself or on an "*allonge*"; it shall be in the form of the model annexed to the present Convention.

It may, however, be drawn up in the official language of the authority which issues it. The standard terms appearing therein may be in a second language also. The title "Apostille (Convention de La Haye du 5 octobre 1961)" shall be in the French language.

#### Article 5

The certificate shall be issued at the request of the person who has signed the document or of any bearer.

When properly filled in, it will certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which the document bears.

The signature, seal and stamp on the certificate are exempt from all certification.

#### Article 6

Each Contracting State shall designate by reference to their official function, the authorities who are competent to issue the certificate referred to in the first paragraph of Article 3.

It shall give notice of such designation to the Ministry of Foreign Affairs of the Netherlands at the time it deposits its instrument of ratification or of accession or its declaration of extension. It shall also give notice of any change in the designated authorities.

#### Article 7

Each of the authorities designated in accordance with Article 6 shall keep a register or card index in which it shall record the certificates issued, specifying:

- (a) the number and date of the certificate,
- (b) the name of the person signing the public document and the capacity in which he has acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp.

At the request of any interested person, the authority which has issued the certificate shall verify whether the particulars in the certificate correspond with those in the register or card index.

### Article 8

When a treaty, convention or agreement between two or more Contracting States contains provisions which subject the certification of a signature, seal or stamp to certain formalities, the present Convention will only override such provisions if those formalities are more rigorous than the formality referred to in Articles 3 and 4.

### Article 9

Each Contracting State shall take the necessary steps to prevent the performance of legalisations by its diplomatic or consular agents in cases where the present Convention provides for exemption.

### Article 10

The present Convention shall be open for signature by the States represented at the Ninth Session of the Hague Conference on Private International Law and Iceland, Ireland, Liechtenstein and Turkey.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

### Article 11

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 10.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

### Article 12

Any State not referred to in Article 10 may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 11. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph d) of Article 15. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force as between the acceding State and the States which have raised no objection to its accession on the sixtieth day after the expiry of the period of six months mentioned in the preceding paragraph.

### Article 13

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

When the declaration of extension is made by a State which has signed and ratified, the Convention shall enter into force for the territories concerned in accordance with Article 11. When the declaration of extension is made by a State which has acceded, the Convention shall enter into force for the territories concerned in accordance with Article 12.

#### Article 14

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 11, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, the Convention shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation will only have effect as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

#### Article 15

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 10, and to the States which have acceded in accordance with Article 12, of the following:

- (a) the notifications referred to in the second paragraph of Article 6;
- (b) the signatures and ratifications referred to in Article 10;
- (c) the date on which the present Convention enters into force in accordance with the first paragraph of Article 11;
- (d) the accessions and objections referred to in Article 12 and the date on which such accessions take effect;
- (e) the extensions referred to in Article 13 and the date on which they take effect;
- (f) the denunciations referred to in the third paragraph of Article 14.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague the 5th October 1961, in French and in English, the French text prevailing in case of divergence between the two texts, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Ninth Session of the Hague Conference on Private International Law and also to Iceland, Ireland, Liechtenstein and Turkey.

## Annex to the Convention

*Model of certificate*

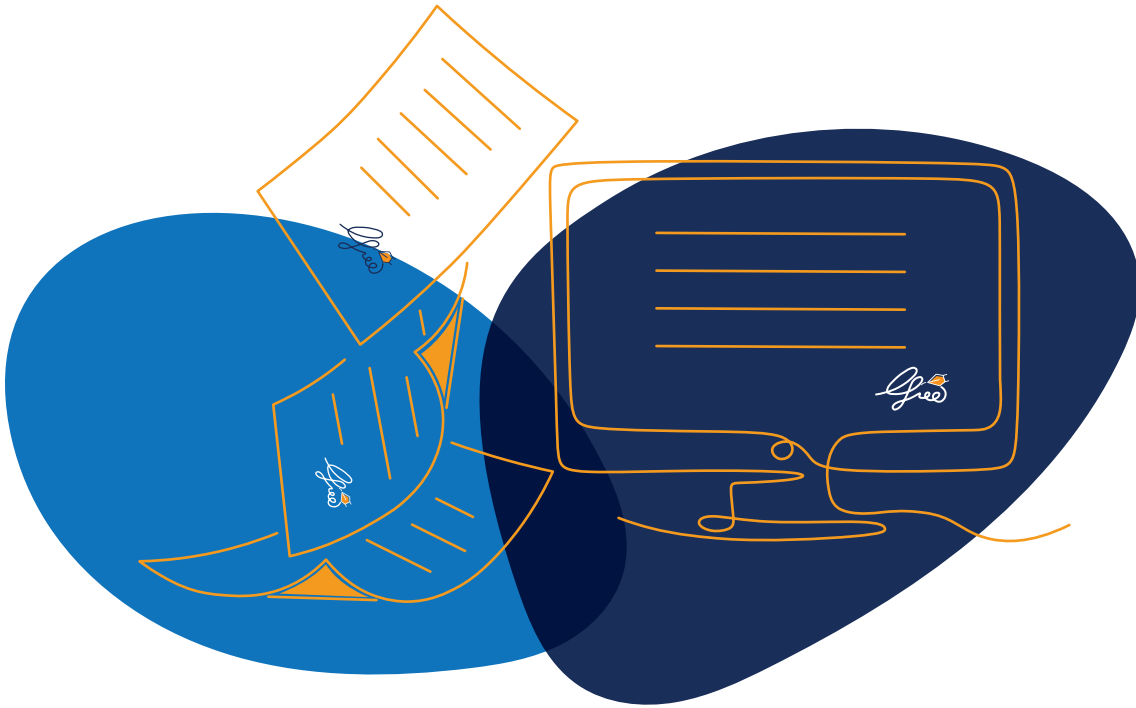
The certificate will be in the form of a square with sides at least 9 centimetres long

<b>APOSTILLE</b> <b>(Convention de La Haye du 5 octobre 1961)</b>	
1. Country: ..... This public document	
2. has been signed by .....	
3. acting in the capacity of .....	
4. bears the seal/stamp of ..... .....	
<b>Certified</b>	
5. at .....	6. the .....
7. by ..... .....	
8. N° .....	
9. Seal/stamp: .....	10. Signature: .....





## Annex II



## Explanatory Report



## Introduction

The *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* brought about a basic simplification of the series of formalities which complicated the utilisation of public documents outside of the countries from which they emanated.

The traditional rule *acta probant sese ipsa* does not seem to hold good on the international level; although this rule seems to be easy to accept within a country, where the institutions which are the sources of public documents are deemed to be known and all of such institutions employ the official language, or some of the official languages of the State — with the result that a formal document is considered to be authentic until the contrary has been established, while the establishment of the contrary for certain categories of documents is even subject to formal guarantees — the maxim quoted cannot be applied on the international level for the reason that the courts or the party to whom foreign documents are presented would be subject to an unduly heavy burden if they were charged with the task of judging on sight the authenticity of such foreign documents.

For this reason, there was developed the well-known chain of authentications, constituting in its entirety the legalisation of the document, which is a slow and costly procedure.

The Convention reduces all of the formalities of legalisation to the simple delivery of a certificate in a prescribed form, entitled "Apostille", by the authorities of the State where the document originates. This certificate, placed on the document or on a slip of paper attached thereto called an "*allonge*", is dated, numbered and registered. The verification of its registration can be carried out without difficulty by means of a simple request for information addressed to the authority which delivered the certificate. By reason of the simplicity with which the authenticity of the certificate may be checked, as well as its uniform appearance, the maxim *acta probant sese ipsa* can once again take effect.

The Convention does not serve only to lighten the task of the judges before whom foreign documents are produced; it is also of the greatest importance for everyone who wishes to rely abroad on the facts set out in a document emanating from the authorities of his own country. Thus, the Convention has proved to be very useful for those countries which in their own systems of law do not have the practice of requiring legalisation, since their citizens must submit to foreign requirements each time when they wish to utilise their own countries' documents abroad, before the authorities or the courts of justice of a foreign State.

## Explanatory Report by Yvon Loussouarn<sup>\*</sup>

(translation of the original French text)

### A. INTRODUCTION

1. The practice of a legalisation chain is an inconvenience from which international relations suffer. The resulting complexity creates difficulties which have given rise to frequent complaints. For this reason, the Hague Conference on Private International Law welcomed a request from the Council of Europe to think about this problem and to draw up a draft convention. The exchanges of views which took place at the Eighth Session of the Conference<sup>1</sup> succeeded in convincing participants, if this were necessary, of the beneficial nature of such a convention the preparation of which was then put on the agenda for the Ninth Session of the Conference.<sup>2</sup> In the interval between the two Sessions, the work was prepared by a Special Commission which met at The Hague between 27 April and 5 May 1959 and drew up a preliminary draft Convention abolishing the requirement of legalisation for foreign official documents.<sup>3</sup> The First Commission of the Ninth Session of the Conference was then given the task of producing a definitive draft from this preliminary draft. It was chaired by Mr A. Panchaud, a judge in the Swiss Federal Court, with Mr R. Glusac, First Secretary in the Yugoslav Ministry for Foreign Affairs, as Vice-Chairman and Mr G. Droz from the Permanent Bureau of the Conference, as Drafting Secretary. The Commission completed the task successfully and submitted to the Plenary Session a draft *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* which was duly approved.
2. In order to understand the system of the Draft, it is necessary to set out the problem which faced the Commission.
3. Although the institution of legalisation no longer seems to meet the needs of current practice due to its slowness and complexity, it does nonetheless fulfil a legal function as regards proof. In fact, the legalisation procedure supplies an aspect of verification which cannot be dispensed with without depriving the person producing the document of valuable assistance in establishing the origin of the document. Thus, the problem was to abolish the formalities of legalisation while retaining its effect.
4. A possible solution would have been to adopt a treaty rule providing that a document exempt from legalisation would have, as regards the authenticity of its origin, the same force it would have had if it had been legalised. Such a rule would have meant that its probative weight in this matter would have been the same as that of a national public document bearing in mind, of course, that national laws generally admit proof to the contrary in the case of such national documents be it in the form of procedure in proof that a document has been forged or otherwise. However, it is precisely on this point that the solution mentioned above would have made the position too difficult for someone presented with a foreign document and wanting to set aside its effects because he is convinced of its lack of authenticity or its inaccuracy. In order

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<sup>\*</sup> Dean of the Faculty of Law at the University of Rennes, Rapporteur to the First Commission.

<sup>1</sup> See *Actes de la Huitième session* (1956), pp. 235 *et seq.*

<sup>2</sup> See *Actes de la Huitième session* (1956), pp. 356 *et seq.*

<sup>3</sup> See *Suppression de l'exigence de la légalisation des documents officiels étrangers*, preliminary draft Convention drawn up by the Special Commission and report by Yvon Loussouarn. Preliminary document No 2 of December 1959.

to find the material basis for proof to the contrary he would have been forced to undertake searches and enquiries abroad.

5. For this reason, the Conference did not want to abolish the traditional legalisation without replacing it by another procedure which, on the one hand, would ensure for the bearer of the document the desired effect as regards proof and, on the other, would not complicate the procedure of checking the authenticity of its origin. The new formality had, moreover, to be simplicity itself. This threefold concern is resolved in the Convention by the complete abolition of diplomatic or consular legalisation and the introduction of a single check, the addition of a certificate (*Apostille*) by an authority in the country where the document was prepared. Simplicity is ensured by the fact that this single certificate, to be affixed in the country where the document was prepared, is to be the only requirement necessary. The interest of the bearer will be protected by a treaty rule exempting the certificate from all proof as to the authenticity of the signature and the seal it bears. In actual fact, since the certificates have to be publicly numbered and registered, forgeries will have become so difficult that the certified document will be as reliable as to its origin as documents currently legalised. Moreover, this public numbering and registering constitutes the very essence of the protection afforded by the certificate to the person presented with the document since proof to the contrary could be obtained simply by consulting a register.
6. Since the rationalisation thus achieved represents an important step towards speeding up international circulation of the public documents referred to in the Convention, we should bear this preliminary observation in mind when examining the various provisions of the Convention.

## B. ANALYSIS OF THE CONVENTION

### I. ARTICLE 1

7. After stating the object of the Convention in a short preamble, its drafters felt it necessary to define in Article 1 its scope as regards the documents to which it would apply.
8. This text calls for three comments:
  - a) First of all, it should be stressed that the drafters of the Convention wavered between the terms *actes publics* (public documents) and *documents officiels* (official documents). The preference which was finally shown for the former expression can be explained by the aim in view. All the Delegates were in agreement that legalisation should be abolished for all documents other than documents signed by persons in their private capacity (*sous seing privé*). The expression *documents officiels* would only partly have conveyed this idea. It would have been too narrow since notarial acts cannot be considered to be official documents. The words *actes publics* were preferred as they have the advantage of removing all doubt and conveying the security inherent in a well-known, not to say classic, category in French legal terminology. Besides, the risk of confusion arising out of the use of the word *actes* seemed, after all, illusory. True the word *actes* is ambivalent to the extent that it covers both the *negotium* and the *instrumentum*. However, there is no doubt that as we are dealing with a Convention on legalisation only the second meaning can apply. The fact that the qualifier public is attached to the word *actes* only serves to strengthen this conviction.

In order to avoid any translation difficulties, the Commission, moreover, specified that in the English text of the Convention, the word *actes* should be translated by documents.

- b) Since it wished to determine the scope of the Convention as precisely as possible, the Commission was not content simply with using a generic term; in Article 1 it listed the documents which are to be considered as public documents within the meaning of this Convention. The documents have been split into four categories as set out under points (a) to (d) of the second subparagraph of Article 1. Only points (a) and (d) call for comment.

Point a) concerns *documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice")*. The Commission felt that the expression "*jurisdiction*" (courts or tribunals) should be understood in its wider meaning and should apply not only to judicial courts and tribunals but also to administrative and constitutional tribunals, and even to ecclesiastical courts.

Point d) of the second subparagraph of Article 1 refers to *official certificates which are placed on documents signed by persons acting in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures*. It is important to stress that the text does not refer to the actual documents signed by persons acting in their private capacity but solely the official certificates which may accompany them. As the distinction may seem obscure to the uninitiated, the Commission felt it wise to give a few examples by way of explanation (official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures), although this is by no means intended as an exhaustive list.

- c) the third subparagraph of Article 1 also helps to determine the scope of the Convention by excluding two categories of public documents, namely —
1. *Documents executed by diplomatic or consular agents*. A special problem is in fact raised by documents executed by a consul in his country of office where he also acts as a notary of his own country. Thus, a document executed in Italy by a French consul is a foreign document, as far as the Italian authorities are concerned, just as a document executed in France by a French notary would be. It seemed inappropriate to apply the rules of the Convention to such documents, as it would have necessitated sending the document executed by the consul to his country of origin in order that it should receive its certificate and then returning it to the country where it was produced. For this reason, it would have been inappropriate to subject documents executed by diplomatic or consular agents to the rules of the Convention.
  2. *Administrative documents dealing directly with commercial or customs operations*. This exclusion is justified by the fact that such documents are currently given favoured treatment in the majority of countries. However, it was only accepted after lengthy debate. The question was whether to make an exception to this exclusion and to bring within the scope of the Convention certificates of origin and import/export licences. It was finally decided not to do so for two reasons. First, it would have been pointless to apply the Convention to them as they are

more often than not exempt from legalisation. Second, in cases where a formality is required, it is not a question of legalisation but of an authentication of the content implying that there has been a physical check made by the competent authority. Last, it was pointed out that import and export licences are most often used in the country in which they were issued.

9. The Commission nonetheless wanted to avoid the exclusion, once accepted, being given too general a meaning. The qualifier "administrative" shows that commercial documents such as contracts and powers of attorney are subject to the rules of the Convention. Moreover, the adverb "directly" tends to restrict the exclusion solely to documents whose very content shows that they are intended for commercial or customs operations, thus excluding those which may occasionally be used for commercial operations such as certificates issued by the Patent Offices (authenticated copies, documents certifying additions to patents, etc.).

## II. ARTICLE 2

10. Under Article 2 of the draft —

*Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.*

11. This text calls for several comments —

- a) In the opening sentence it sets out the principle that the country in whose territory the document has to be produced must exempt that document from legalisation. Thus, for example, when France has signed and ratified the Convention, she will no longer make the production in her territory of a public document emanating from another signatory State conditional on any legalisation by a French authority.
- b) Article 2 goes further towards defining legalisation within the meaning of the Convention. A more detailed definition became necessary following difficulties due to the fact that the definition of legalisation is very imprecise and that the word can be used with different meanings.

12. Legalisation within the meaning of the Convention, as the definition in Article 2 shows, is purely the diplomatic or consular formality carried out by the country in which the document is produced which will have the obvious practical effect of rendering unnecessary any later formality such as legalisation by the Ministry for Foreign Affairs. The wording adopted and in particular the combination of the two sentences composing Article 2 leaves no ambiguity as to the fact that legalisation means only the diplomatic or consular formality.

13. The opening sentence of Article 2 provides that —

*Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory.*

14. Thus, the very object of the Convention is defined with no possible fear of misinterpretation: the waiving of the requirement of legalisation by the country in



which the document is produced. On the other hand, there is nothing to stop the country in whose territory the document was drawn up from taking the view that that document could only be produced abroad under certain conditions. On this point, the Commission did not want to intervene directly in the domestic law of the Contracting States. However, it is still true to say that the purpose of the Convention is to simplify the present situation which is certainly complex and to put a stop to the practice of legalisation chains. It is therefore desirable that in the country where the document is drawn up, a single formality should suffice. It is difficult to see what would be gained by the country where the document was drawn up setting up a complicated procedure, the ultimate effect of which would be to penalise the production abroad of its own public documents.

15. The clarification made by Article 2 might seem to go without saying since the object of the Convention is to abolish the legalisation of foreign public documents. Now, a document is not a foreign document in the eyes of the country from which it emanates but nonetheless all doubt had to be removed since defining the objective of the Convention has very important consequences.
16. It explains, in the first place, why the Convention was entitled *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* and that it is not a matter of simplifying legalisation. In fact, legalisation within the meaning of Article 2 is quite simply abolished. The requirement of a certificate affixed by an authority in the country where the document is drawn up can hardly be seen as a legalisation or as a simplification of the formalities previously required. It constitutes an autonomous formality whose distinguishing feature, as far as legalisation within the meaning of the Convention is concerned, is that the certificate emanates not from an authority in the country where the document is produced but from an authority in the country in which the document has been drawn up.
17. The explanations given as to the objective of the Convention also help to refute the objection that the Convention would be of no benefit to countries, such as Japan, which do not require the legalisation of foreign public documents produced in their territory.
18. It is certainly true to say that foreign public documents can at this time be produced in Japan without legalisation on the part of the Japanese diplomatic or consular authorities and on this point the Convention would hardly alter the situation. On the other hand, there are many foreign countries where Japanese public documents cannot be produced without legalisation since those countries do not allow it. The Convention would alter this state of affairs, the result being that countries which do not require legalisation would have everything to gain by signing the Convention and thereby creating, through the introduction of the certificate procedure, the safeguards for the authenticity of the document required by the foreign States where these documents are likely to be produced. Far from being without benefit for those countries not requiring legalisation, the Convention would be entirely to their advantage as it would facilitate the production of their public documents in the other signatory countries.
19. The second sentence of Article 2 of the Convention defines another aspect of legalisation which is to be required no longer. According to the text —

*For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.*

20. This definition stresses the scope of the Convention which only abolishes legalisation in its strictest sense. The desire to define the concept of legalisation as precisely as possible is evident in the intentional use of the negative *For the purposes of the present Convention, legalisation means only the formality...* also in the statement that it is solely the formality by which the diplomatic or consular agents *of the country in which the document has to be produced...* and finally in the limitative enumeration of the effects of the legalisation referred to in the agreed text.
21. This last detail was essential since legalisation does not have identical effects in the various signatory States.
22. Its minimum effect in the law of all the countries is to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. It is this minimum common effect which has been used in the definition contained in Article 2 of the Convention as describing the formality about to be abolished.
23. However, there are certain States (Denmark, Germany, Great Britain, Ireland, Norway, Sweden and Switzerland) where legalisation has or can have more far-reaching effects and thus allows diplomatic or consular agents to certify the competence of the public officer or authority signing the document. In some cases, legalisation even means that the validity of the official document from the point of view of the *lex loci actus* is certified.
24. The Commission decided not to concern itself with the wider effects of legalisation. Obviously, where the text provides that *for the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify... the capacity in which the person signing the document has acted...* the expression capacity cannot be understood in the sense of competence, from which it is quite distinct moreover in legal terminology.
25. Several reasons led the Commission to adopt this less ambitious attitude.
26. In the first place, a comparative study of the various types of legalisation made in the report by Mr G. Droz<sup>4</sup> showed that the additional effects connected with certain forms of legalisation have never been attributed to legalisation in its strictest sense. They can only become operative where the legalising authority states in the text of the legalisation that an additional search has been made. This is the case, for example, for legalisation with attestation as used in Norway or the comprehensive legalisation used under German law.
27. Moreover, in some countries, such as Portugal, certification of competence and validity, while allowed, is carried out independently of legalisation. For these countries any link established by the Convention between these two formalities would have seemed strange.
28. Accordingly, the Commission felt that it was impossible to abolish the requirement of differing formalities not uniformly used by the Member States of the Hague Conference on Private International Law. It should be pointed out here that an express abolition of this sort would have meant that the Conference was obliged, that

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<sup>4</sup> *La légalisation des actes officiels étrangers*, Report by G.A.L. Droz, Secretary at the Permanent Bureau, Preliminary Document No I of March 1959.

is if it did not want to do wrong to the persons concerned, i.e. the bearers of such documents, to attribute to foreign documents represented by the certificates (*Apostilles*) or even to foreign official documents effects as significant and varied as those attributed to the old form of legalisation in the countries quoted.

29. Finally, it should be said that legalisation within the meaning of the Convention covers the formality by which the diplomatic or consular agents certify, *where appropriate, the identity of the seal or stamp which the document bears*. Mention of the seal was made at the request of certain Delegates, in particular the Delegate from the Federal Republic of Germany. In Germany, in fact, the legalisation of the seal accompanies that of the signature in order to satisfy the requirements of some foreign countries. A public document which is unsigned but bears a seal is also covered by Article 2.
30. It seemed unnecessary, on the other hand, to mention specifically the stamped signature (*la griffe*) although this is used in some Member States of the Hague Conference, especially in Spain. It was felt that the Convention applied to it implicitly, at least in the case of Spain since in Spanish law the accompanying stamp is an integral part of the signature.

### III. ARTICLE 3

31. Article 3 of the Convention lays down in its first paragraph —

*The only formality that may be required in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, is the addition of the certificate described in Article 4, issued by the competent authority of the State from which the document emanates.*

32. The drafting of this text gave rise to long discussions, for it is in this connection that the fundamental question arose on which the whole system of the Convention depended. Having abolished the requirement of legalisation by the diplomatic or consular agents of the country where the document has to be produced, could one have total confidence in the authenticity of a foreign document or, on the contrary, was it necessary to require a formality simpler than legalisation and different from it?
33. Three systems could be envisaged for the resolution of this problem —
  - a) Under a first system based on a total liberalism, one could conceive of placing reliance on the genuineness of the signature in the document until the contrary was proved or, where appropriate, until a procedure in proof of a forgery was initiated under the applicable law. Public documents emanating from a Contracting State would, in this respect, have the same value in the territory of the other Contracting States as that previously attributed to documents which had been legalised in the strict sense of the term.
  - b) Under a second system, while abolishing legalisation, there was no intention of abandoning all safeguards as to the genuineness of the signature. The preservation of some control was deemed necessary. The safeguards would be obtained by affixing a certificate issued by the competent authority of the State whence the document emanates.
  - c) Finally, a third system would consist in the application of the two above-mentioned systems on a selective basis. For some documents acceptance of total liberalism would be possible. This would for instance be the case for judicial documents. On the other hand, for notarial acts and administrative

documents, the affixing of a certificate by an authority of the country where the document was drawn up would be required.

34. The dangers inherent in a general and absolute liberalism led very quickly to the condemnation of the first system. There was longer hesitation between the second and third systems, both of them finding supporters. Before the Special Commission, the third system had won acceptance. Before the First Commission of the Ninth Session of the Conference, it was the second system which, for a number of reasons, finally carried the day.
35. In the first place, the application on a selective basis of an absolute liberalism and of a controlled liberalism would render delimitation problems inevitable between the respective areas of the two systems. Actually, it seemed difficult in many cases to determine the exact demarcation line between judicial and administrative documents. Every attempt at systematic classification ran into the difficulty arising from the need to classify the documents by reference to the authority from whence they emanated. However, the character of certain authorities varied according to the country. An authority which was administrative in one State was judiciary in another.
36. Moreover, the judiciary nature attributed to documents of the process-servers (*huissiers*) led to their being allocated a preferential position in relation to notarial acts, the legitimacy of which was questionable. The elimination of all discrimination by the introduction of a uniform system had the advantage of eliminating all delimitation problems.
37. However, the easy way out is not an end in itself and the objection raised against the adoption of the second system was that it marked a backward step in the case of judicial documents which may enjoy total confidence, and for which it frequently happens that no legalisation is required at present. The objection did not seem decisive, for the confidence given to judicial documents applies only to those emanating from traditional courts and tribunals. But one witnesses in a number of countries a veritable proliferation of special courts and tribunals. For documents emanating from these new courts and tribunals, little known abroad, and of which the *judicial* nature in the traditional meaning of the term is not always beyond question, it may be desirable to have the identity of the signature verified. Moreover, a verification of this nature is of a kind to facilitate the work of a judge who decides on the enforcement of a foreign judgment.
38. The criticisms, made by the supporters of a liberal system for judicial documents, against the generalised adoption of the certificate have not succeeded in restricting the field of application of that certificate. However, they have helped to alter Article 3 of the Convention in a more liberal direction which is evident from a number of points.
  - a) This is to be seen in the first place in the wording of the first paragraph of Article 3 itself: *The only formality that may be required... is the addition of the certificate described in Article 4...* This wording tends to stress two points —
    1. The addition of the certificate is the maximum formality which may be required. It cannot be duplicated by an additional formality.
    2. The requirement of the certificate is optional. The State in whose territory the document is to be produced is thus free not to require it for documents of one category or another.
  - b) This liberal character is expressed in a particularly explicit manner in the second paragraph of Article 3 of the Convention, under the terms of which —

*However, the formality mentioned in the preceding paragraph cannot be required when either the laws, regulations, or practice in force in the State where the document is produced or an agreement between two or more Contracting States have abolished or simplified it, or exempt the document itself from legalisation.*

39. This text provides that a certificate is not required in two cases —
1. Where, under the laws, regulations or practices in force in the territory of the State where the document is produced the document is, before the entry into force of the Convention, exempt from legalisation within the meaning of Article 2. It has been desired in this case to avoid the Convention taking a retrograde step by submitting to the formality of the certificate a document which previously was subject to no formality since it was exempt from legalisation.
  2. Where, after the entry into force of the Convention, an agreement between two or more Contracting States or the laws, regulations or practices in force in the State in the territory of which the document is produced will abolish or simplify the requirement of the certificate. In this regard the word "agreement" must be given the widest possible meaning and cover all agreements not cast in the form of formal treaties. Likewise, this wording allows that as a result of Community or supra-national regulations special arrangements in matters of legalisation are made.

#### IV. ARTICLES 4 AND 5

40. Articles 4 and 5 of the Convention deal with the certificate. In this field, the most important innovation is without doubt the provision laying down a uniform formality in all countries bound by the Convention. To this end, Article 4 creates a common certificate to be used by the authorities designated by the various Signatory States and of which a model is annexed to the Convention. Study of this model shows that the certificate takes the form of a square with sides at least 9 cm long and that it must include a number of standard and numbered items. There was a particular wish to ensure that the certificate should make an express reference to the Convention thus giving proof within itself of its relationship. Conformity of the certificate with the model annexed to the Convention shows that it may be drawn up in French. However, it may be drawn up in the official language of the authority which issues it and the standard terms appearing therein may be given also in a second language (second paragraph of Article 4). Uniformity in language is found in any case to be partially protected by the requirement of including, in French, the title "Apostille (*Convention de La Haye du...*)". The certificate is issued at the request of the signer or of any bearer of the document (first paragraph of Article 5).
41. The principal difficulty raised in the legal context by the abolition of the legalisation chain and its replacement by the certificate system has to do with probative weight. In this connection three problems must be carefully distinguished.
- a) The first difficulty concerns the probative weight of the signature, the seal or the stamp appearing on the certificate. It would have been ridiculous to subject the certificate itself to a requirement of additional proof such as legalisation or even verification by another authority. It was clear that one had to apply the *maxim acta publica probant sese ipsa*. Although such a provision might have appeared superfluous, the drafters of the Convention felt it desirable to set it out expressly in the third paragraph of Article 5: *The signature, seal and stamp on the certificate are exempt from all certification.*

- b) The conclusion under (a) having been established, the second difficulty is that relating to the probatory force of the certificate as regards the authenticity of the signature appearing on the public document, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which appears on the document.

Those drafting the Convention had three possibilities available –

1. They could in the first place consider determining directly the question of probative weight by laying down that in this respect the certificate would be deemed authentic, subject to procedure in proof of forgery of the document, or simply until the contrary was proved. They abandoned this, for hopes of doing so were prevented by the fact that, in certain Member Countries of the Hague Conference, procedure in proof of forgery of a document (*inscription de faux*) is unknown.
2. They could also consider enacting a rule of conflict of laws by inserting, for example, in the Convention a provision under which *the probative weight* of the certificate would be governed by the law of the country where the document was drawn up. But the drafting of a single conflicts rule was a difficult matter because of the differences existing in this field between the systems of private international law of the various Member countries of the Conference (for example, France refers to the law of the country where the document was drafted and Austria to the country where the document is produced).
3. There was the possibility also of their *not specifying the probative weight* of the certificate. This latter solution was adopted and the second paragraph of Article 5 of the Convention goes no further than to declare that, *When properly filled in (the certificate) will certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which the document bears*, without specifying whether this attestation is effective until initiation of procedures in proof of forgery, or at least until the contrary is proved.

In the presence of this deliberate omission, in order to determine the probatory force of the certificate in respect of the attestations which it contains, one must refer to the law indicated by the conflict of laws rule of the forum.

- c) A final difficulty was raised by the Delegate from Great Britain concerning the probative value of the certificate as regards the characterisation of the document. If the certificate has been affixed in error upon a document which is outside the scope of the Convention, can such certification have an effect upon the characterisation of the document? A negative answer was accepted because it is unavoidable. The certificate could not in fact have the quality of transforming the nature of the document and making it a public document if it is in reality a document signed in a private capacity. The State where the document is produced thus retains the right of showing that it is not in fact a public document within the meaning of the law of the country from whence it comes. As this goes without saying, the drafters of the Convention deemed it unnecessary to mention it expressly.



## V. ARTICLE 6

42. Article 6 of the Convention governs the question of deciding which authority in each of the Signatory States shall be responsible for issuing the certificate. It provides —

*Each Contracting State shall designate by reference to their official function, the authorities who are competent to issue the certificate referred to in the first paragraph of Article 3.*

*It shall give notice of such designation to the Ministry of Foreign Affairs of the Netherlands at the time it deposits its instrument of ratification or of accession or its declaration of extension. It shall also give notice of any change in the designated authorities.*

43. This text shows the preoccupation of the drafters of the Convention not to interfere with the prerogatives of the States. It is for each Contracting State to decide for itself on the authorities which it intends to entrust with the task of issuing the certificate. The Convention trusts the States on this point. The drafters of the Convention wish simply to avoid the indirect revival of a new practice of legalisation chains which would consist of requiring legalisations before the certifying authority could affix its stamp.
44. The only obligation incumbent upon the States is to give notice at the time of depositing their instrument of ratification or accession, which are the authorities they have designated. It is sufficient moreover for them to give notice of the *authority by reference to its official function*. The drafters of the Convention wished to indicate in this way that it was pointless to give the name of the person designated. If for example France designated the "*Président du Tribunal de grande instance*", it would not have to give the name of each holder of the office.
45. Many related questions were discussed, but have found no place in the Convention, for they seem to be questions of internal organisation which must be regulated by each State.
- a) This applies in the first place to the question of the cost of the formality introduced by the Convention. Although the Convention has said nothing on this point, the Delegates agreed that the cost should be reasonable. If in fact it were to accede the cost of the existing legalisation, the Convention would lose a great deal of its usefulness.
  - b) It was also asked whether the authority designated for issue of the certificate would be competent for all documents drawn up in the country or merely for those drawn up within its local jurisdiction. The drafters of the Convention considered that it was for each State to resolve this problem.
  - c) Finally, it was observed that there would be some risk of private individuals having difficulty in locating the authority responsible for issue of the certificate. How could they be informed on this point? While taking note of the practical importance of this question, the drafters of the Convention considered that it fell within the scope of national administrative organisation.

## VI. ARTICLE 7

46. For the system to be sufficiently protective, it remained to establish some supervision making it possible to detect false information or false signatures which might be placed upon the certificate and, in particular, to facilitate proof of non-authenticity of the certificate.
47. Theoretically, three systems of control were conceivable. First of all, one could imagine a central office being established at international level, with the role of centralising the various signatures of officials authorised to issue the certificates. The Delegates did not support this system, as they were afraid of setting up too cumbersome a mechanism for which it would be difficult to keep the collection of signatures up to date. The idea of setting up a central office at national level was put aside for the same reason. Both organisations seemed of a size which was disproportionate to the risks run. The precedent of the bilateral Conventions concluded between Germany on the one hand and Switzerland, Denmark and Austria on the other shows that during thirty years there has in practice been no single case for verification and control of foreign documents.

48. For this reason, the Convention endorses a third system which seemed easier in its implementation. Under the terms of Article 7 of the Convention —

*Each of the authorities designated in accordance with Article 6 shall keep a register or card index in which it shall record the certificates issued, specifying —*

- a) *the number and date of the certificate,*
- b) *the name of the person signing the public document and the capacity in which he has acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp.*

*At the request of any interested person, the authority which has issued the certificate shall verify whether the particulars in the certificate correspond with those in the register or card index.*

49. It is thus the authority which is responsible for the issue of the certificate, which the Convention entrusts with the exercise of the necessary supervision. That the certificate is numbered and that the number is recorded in the register, makes identification easy. It was difficult to find a system more effective in its simplicity.
50. The text of Article 7 calls for a twofold observation:
- a) For the organisation of supervision, each State has a choice between using a register or a card index, this latter more modern form providing a comparable security.
  - b) Where the public document is both signed and provided with a seal or stamp, an indication of the signature and of the authority which has issued the seal or stamp both appear on the certificate. But to avoid overloading the register or card index, it is felt sufficient to mention on the latter the name of the person signing and the capacity in which he has acted. This is sufficient for the supervision to be effectively exercised. Where however an unsigned document is concerned, the register or card index must give the name of the authority which has affixed the seal or stamp, for this indication constitutes the only reference enabling the document to be identified. It seemed pointless to require in the Convention that he who applies for verification should prove the legitimate nature of the interest claimed by him. It seemed that the risk of



inappropriate curiosity was not to be feared since in order to know the entries on the certificate and demand their verification it was necessary to have had access to the document.

## VII. ARTICLE 8

51. Article 8 of the Convention provides —

*When a treaty, Convention or agreement between two or more Contracting States contains provisions which subject the certification of a signature, seal or stamp to certain formalities, the present Convention will only override such provisions if those formalities are more rigorous than the formality referred to in Articles 3 and 4.*

52. This text conveys the preoccupation of the drafters of the Convention to show with particular clarity that the Convention should derogate from the less favourable provisions of existing treaties, conventions or agreements, but on the other hand it must not prejudice provisions which are more favourable.
53. Having made this point, it seemed unnecessary to refer expressly to one specific convention or another, although the question had cropped up in relation to the Hague Conventions of 1905 and 1954 on Civil Procedure. The problem of their relationship with the present Convention was finally considered as resolved by the general formula of Article 8. The present Convention derogates from them in fact since it seems that the formalities which it provides are less rigorous than those imposed by the Hague Conventions of 1905 and 1954 on Civil Procedure.

## VIII. ARTICLE 9

54. Article 9 presents a considerable interest as regards the practical application and the effectiveness of the Convention. It was feared in fact that certain private organizations, and in particular the banks, might continue either by routine or from excessive prudence to require in business activities that foreign documents produced to them should carry a diplomatic or consular legalisation. In order to counter such a risk, Article 9 invites the Contracting States to take *the necessary steps to prevent the performance of legalisations by its diplomatic or consular agents in cases where the present Convention provides for exemption.*

## IX. FINAL CLAUSES

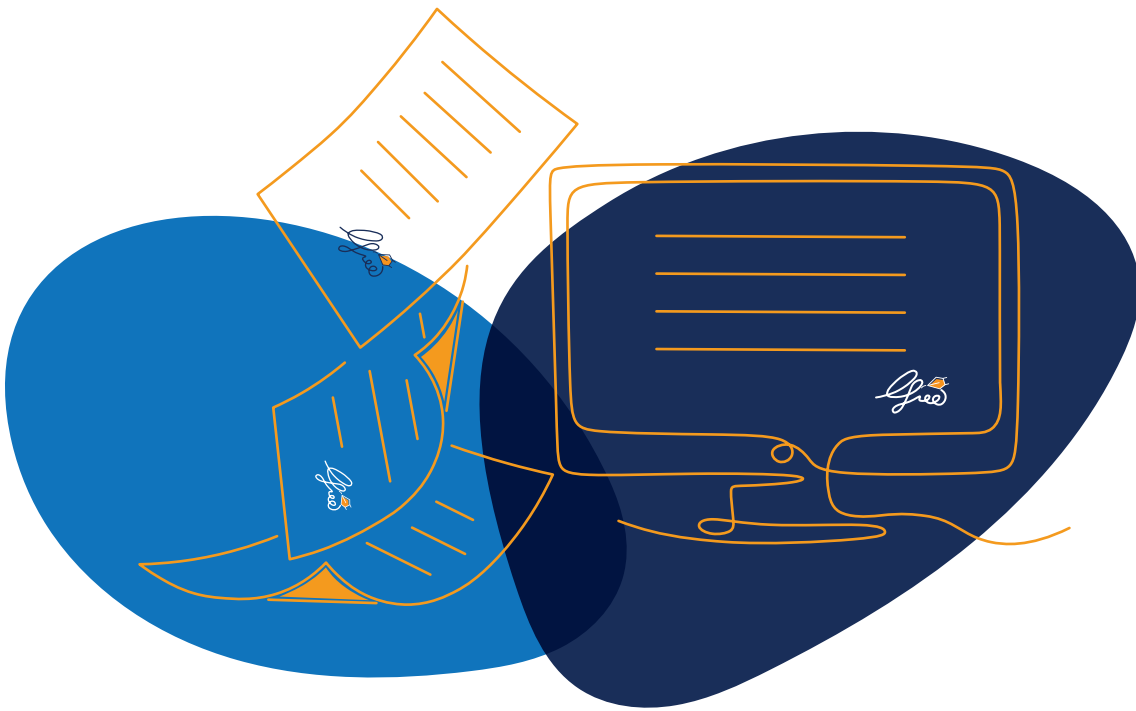
55. Under Article 10 the Convention is open for signature by the States represented at the Ninth Session of the Hague Conference on Private International Law and by Iceland, Ireland, Liechtenstein and Turkey.
56. The addition of these four Countries to the States represented at the Ninth Session of the Hague Conference on Private International Law is explained by reasons which vary depending on whether one considers the case of Ireland and Turkey or that of Iceland and Liechtenstein.
57. Ireland and Turkey are both Members of the Hague Conference on Private International Law but were unable to send representatives to the Ninth Session. It seemed legitimate to open the Convention to their signature in spite of this absence of representation.

58. For Iceland and Liechtenstein, the problem is different as the two Countries are not Members of the Hague Conference on Private International Law. Nevertheless, the advantage presented to them, and also to certain Member Countries of the Conference, by the opening of the Convention to their signature, determined the favourable reception granted to the request made for Iceland by the Council of Europe, and for Liechtenstein by Austria and Switzerland.
59. Article 11 fixes the entry into force of the Convention at the sixtieth day after the deposit of the third instrument of ratification.
60. Article 12 provides that *Any State not referred to in Article 10 may accede to the... Convention...* However, such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph (d) of Article 15 (paragraph 2 of Article 12). Article 12 locates the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* half-way between open and closed Conventions.
61. Article 13 permits a Contracting State to extend the application of the Convention to all the territories for the international relations of which it is responsible, whatever may be the nature of its links with those territories.
62. Article 14 authorises the denunciation procedure which is traditional to The Hague.
63. Finally, Article 15 lists the notifications for which the Government of the Netherlands, as Depositary of the Convention, shall be responsible.

Rennes, 15 April 1961  
Yvon Loussouarn



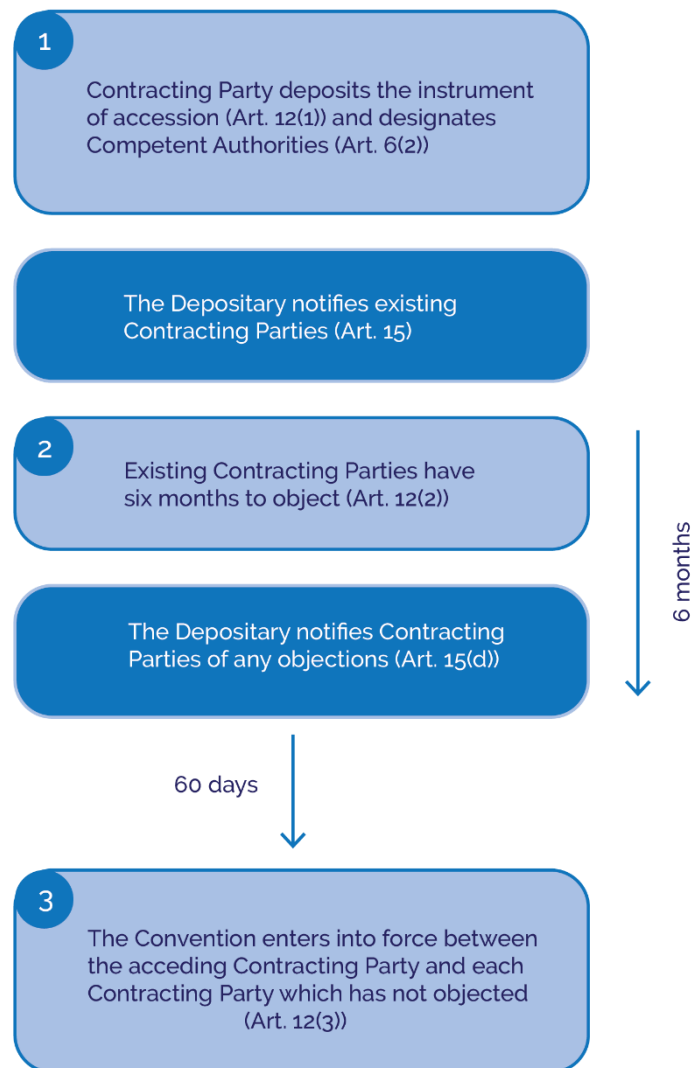
## Annex III



## Joining the Convention



### Procedure for joining the Convention



### Step One: Instrument of Accession and Notification

All new Contracting Parties must join the Convention by accession. To join by accession, the acceding Contracting Party must deposit its instrument of accession with the Depositary.

To do so, the Embassy of the acceding Party accredited to the Netherlands should contact the Treaties Division of the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which acts as the Depositary for the Apostille Convention. Please contact the Permanent Bureau for full contact details.

The instrument of accession must be in English or French, or accompanied by a translation into one of these languages. It should be signed by an individual who has authority to enter into treaty relations on behalf of the Contracting Party. Most commonly, this is the Head of State, Head of Government, or Minister of Foreign Affairs. Please contact the Permanent Bureau for a model instrument of accession.

At the time of deposit, the acceding Contracting Party must also notify the Depositary of the designation of Competent Authorities under Article 6(2).

The instrument of accession should be deposited, where possible, in person. This is commonly done as part of a ceremony organised by the Depositary. The Depositary will provide a receipt for the instrument of accession and notify all other Contracting Parties of the accession.

## **Step Two: Six-month Objection Period**

The Depositary notification of the accession will include the date of accession and the date the objection period ends.

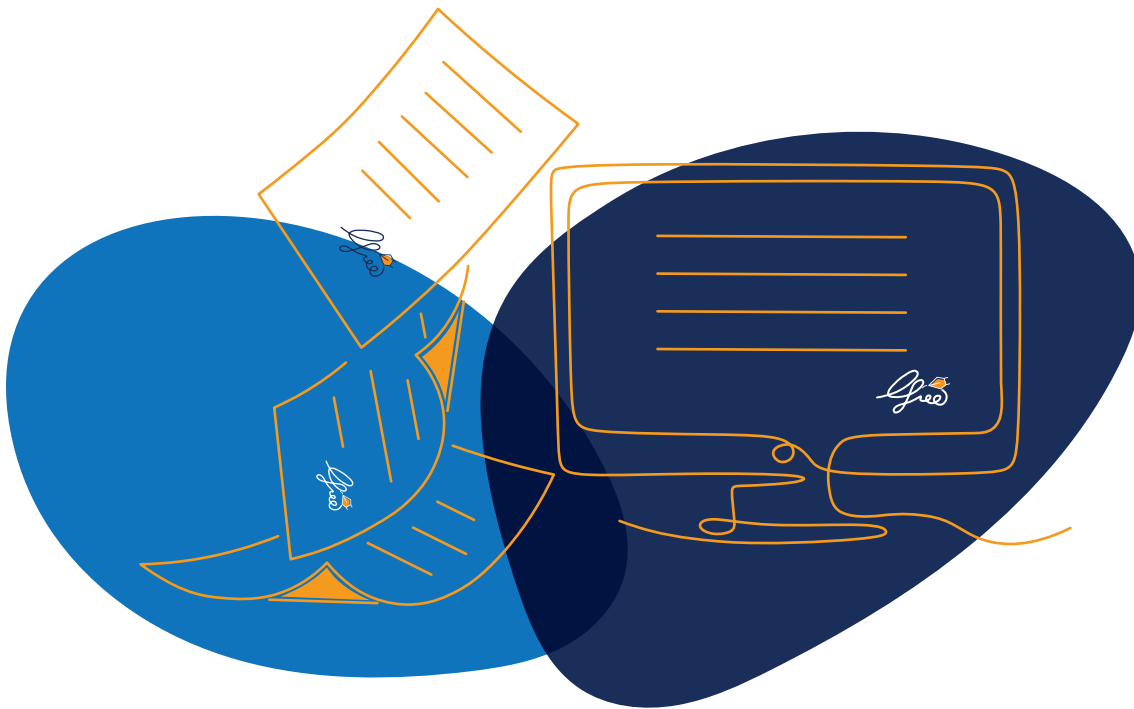
If an existing Contracting Party wishes to object to the accession, this must be communicated to the Depositary within the six-month period. An objection raised outside this six-month period has no effect. A Contracting Party does not need to provide reasons for its objection and may subsequently withdraw its objection at any time.

The Depositary will notify all Contracting Parties of any objections it receives. Details will also be included on the Depositary website and the status table on the Apostille Section of the HCCH website.

## **Step Three: Entry into Force**

The Apostille Convention will enter into force between the acceding Contracting Party and all Contracting Parties that did not raise an objection on the 60<sup>th</sup> day after the expiry of the six-month objection period. The Depositary notification of the accession will include the date of the entry into force.

## Annex IV



Additional Text





The following are examples of additional text for Apostille Certificates, as recommended by the Permanent Bureau. For more information on the nature and purpose of such additional text, see paras. 234 *et seq.*

### **A notice about the limited effect of an Apostille**

This Apostille certifies only the authenticity of the signature, the capacity of the person who has signed the public document, and the identity of the seal or stamp which the public document bears. This Apostille does not certify the content of the underlying document.

### **The web address (URL) of the e-Register where the Apostille may be verified**

To verify this Apostille, visit [insert URL] or scan the QR Code.

### **A notice that the Apostille has no effect in the State of origin**

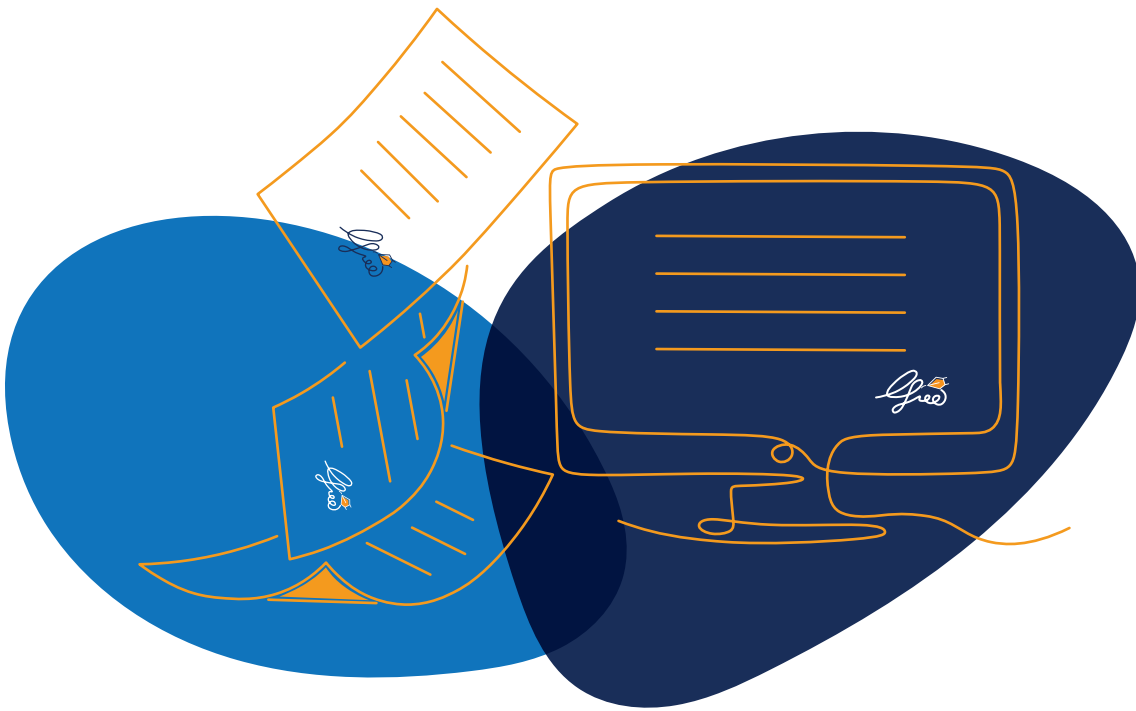
This Apostille is not valid for use anywhere within [State of origin].

### **For certificates used both as an Apostille and in the legalisation process, a notice directing the applicant to the Embassy or Consulate of the State of destination accredited to the State of origin**

This certificate does not constitute an Apostille under the 1961 Apostille Convention when it is presented in a country which is not a Contracting Party to the Convention. In such cases, the certificate should be presented to the Embassy or Consulate representing that country.



## Annex V



## The e-APP: Key Principles and Good Practices



*Recalling the framework of the Apostille Convention and the value of the e-APP as a tool to enhance the secure and effective operation of the Convention, and reiterating the fundamental principle that an Apostille validly issued in one Contracting Party must be accepted by all other Contracting Parties, the Experts' Group on the e-APP and new technologies has endorsed the following compilation of key principles and good practices. This document is non-binding and Contracting Parties retain full discretion in the implementation of e APP components in accordance with applicable laws and regulations, including on privacy and data protection.*

## **1. e-Apostilles, and related services, should be accessible for all users.**

### **Good practices include:**

- a) providing guidance on e-Apostille services to applicants.
- b) streamlining online submissions for e-Apostille applications.
- c) issuing e-Apostilles within one working day of application.
- d) using file formats compatible with commonly used software and web browsers.
- e) ensuring conformity with the Model Apostille as much as possible.

## **2. Competent Authorities should preserve the integrity of the e-Apostille and the underlying public document to which it relates.**

### **Good practices include:**

- a) issuing an e-Apostille when the underlying public document is executed in electronic form.
- b) combining the e-Apostille and the underlying public document in a single file.
- c) preserving the initial digital signature on the underlying public document when issuing an e Apostille.
- d) preserving the digital signature and electronic format of the e-Apostille when presenting to the receiving authority.
- e) using a process allowing the validity of electronic signatures and digital certificates to be preserved over time.
- f) securing end-to-end access to ensure only authorised persons can issue and access e Apostille services.

### **3. e-Registers should facilitate frequent and reliable verification of Apostilles.**

**Good practices include:**

- a) having a single e-Register for all Apostilles, irrespective of format or issuing Competent Authority, per Contracting Party.
- b) providing guidance on how to access and use an e-Register, including adding this information to Apostilles.
- c) displaying a visual check of the Apostille as issued.
- d) retaining details regarding Apostille certificates in the e-Register indefinitely.

### **4. Contracting Parties should have systems in place to facilitate the acceptance of e-Apostilles.**

**Good practices include:**

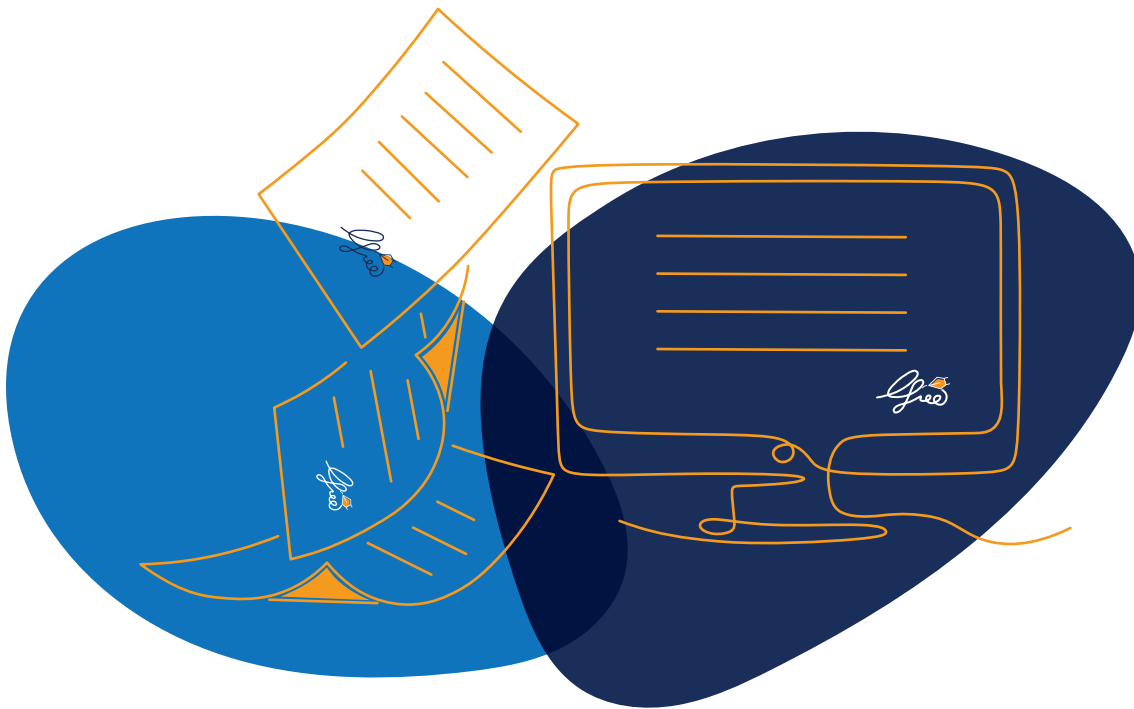
- a) adding information to e-Apostilles instructing users to preserve the electronic format of the file.
- b) ensuring legal frameworks and procedures are compatible with the acceptance of e-Apostilles and receipt of electronic public documents.
- c) resolving difficulties in relation to the acceptance of e-Apostilles and receipt of electronic public documents directly with authorities of the issuing Contracting Party, including informing the Permanent Bureau of systemic difficulties.

### **5. Competent Authorities should regularly update and upgrade their Apostille practices, including e-APP infrastructure.**

**Good practices include:**

- a) informing the Permanent Bureau of any developments in relation to the issuance of e-Apostilles and the operation of e-Registers.
- b) considering whether technical and security developments, including relevant regional and international standards, can improve existing technology.

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