

## Conclusions & Recommendations (C&R)

- 1 The Special Commission (SC) on the practical operation of the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention) met online from 5 to 8 October 2021. It was attended by over 350 delegates, representing HCCH Members, non-Member Contracting Parties, and Observers from non-Member States, intergovernmental and international non-governmental organisations, as well as members of the Permanent Bureau (PB).
- 2 This Fifth Meeting of the SC was held on the occasion of the 60<sup>th</sup> Anniversary of the Convention, following meetings in 2003, 2009, 2012, and 2016.<sup>1</sup>
- 3 The SC witnessed the deposit of the instrument of accession to the Apostille Convention by the Republic of Indonesia. Delegates welcomed the accession and congratulated Indonesia on becoming the 121<sup>st</sup> Contracting Party to the Convention.
- 4 The SC also welcomed the eight accessions since its last meeting in 2016 and the resulting increased global coverage.<sup>2</sup> The SC noted the updates from the People's Republic of China and the Islamic Republic of Iran of their plans to accede to the Convention.
- 5 The SC recalled that the entry into force of the Convention between two Contracting Parties cannot prejudice the position of States that have objected, including based on the issue of statehood, to the accession of one of them.<sup>3</sup>

### I. Promotion and Post-Convention Monitoring

- 6 Noting the use of public documents under the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Adoption Convention) and *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (Judgments Convention), and that such documents are not exempt from legalisation requirements, the SC encouraged Contracting Parties to both the Adoption and Judgments Conventions to join the Apostille Convention.
- 7 The SC noted the results of the Apostille Questionnaire 2021. It called upon Contracting Parties which have not yet done so to answer the Questionnaire by the end of 2021.

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<sup>1</sup> At the meetings in 2003 and 2009, the Apostille Convention was reviewed in conjunction with other HCCH Conventions on legal cooperation.

<sup>2</sup> Guatemala (19 January 2017), Tunisia (10 July 2017), Bolivia (6 September 2017), Guyana (30 July 2018), Philippines (12 September 2018), Palau (17 October 2019), Jamaica (2 November 2020), and Singapore (18 January 2021).

<sup>3</sup> Over 20 States have objected to the accession of Kosovo, including on the basis of statehood and with reference to *United Nations Security Council Resolution 1244 of 10 June 1999*, under Article 12 or in a formal declaration to the Depositary. In this context, see also C&R No 4 of CGAP 2016, which reads as follows:  
“New ratifications / accessions: role of the Depositary and the Permanent Bureau

4. The Council took note of the different views expressed on the subject matter. It recalled the relevance of the Vienna Convention of 1969 on the Law of Treaties, in particular its Articles 76(2) and 77 on the functions of depositaries, and the provisions and requirements of the relevant Hague Convention. When, following the deposit of an instrument of ratification, approval, or accession, the Depositary subsequently receives an objection from a Contracting State, including based on the issue of statehood, the Depositary brings the matter to the attention of all Contracting States to the Convention concerned.”

- 8 The SC welcomed the report on PB Convention assistance, noting the continued availability of the PB to assist with promotional and operational activities. The SC further encouraged information sharing between Contracting Parties, as well as engagement with non-Contracting Parties preparing to join the Convention.
- 9 The SC noted the report on the status of previous C&R and the work underway to action outstanding items.

## **II. Operation and Scope of the Convention**

- 10 Noting the importance of Apostille services for individuals and businesses, the SC called on Contracting Parties to ensure the continued availability of Apostille services in challenging circumstances, such as those experienced as a result of the COVID-19 pandemic. It emphasised the benefits of e-Apostilles and online services in addressing many difficulties arising in this context.
- 11 The SC noted that some Contracting Parties have applied the Convention to COVID-19 vaccination certificates, while others found that technological means are best suited for ensuring the authenticity of such certificates. The SC concluded that no further guidance was required in this regard.
- 12 Recalling that the purpose of the Convention is to simplify the process of authentication, the SC encouraged Contracting Parties to eliminate, to the extent possible, intermediate certification of a public document prior to the issuance of an Apostille.
- 13 The SC noted the value of diplomatic missions in the Apostille process and invited Contracting Parties to consider involving their diplomatic missions, either as Competent Authorities or intermediaries for applicants, subject to legal requirements and practical limitations.
- 14 The SC recalled that the exclusions in Article 1(3) should be construed extremely narrowly and called for flexibility amongst Contracting Parties, encouraging recipients to accept Apostilles issued for documents that would otherwise be excluded under this Article. The SC further noted:
- a. with reference to Article 1(3)(a), that the exclusion does not preclude Contracting Parties from requesting authentication of documents which are not executed but retrieved or merely issued by diplomatic or consular agents; and
  - b. with reference to Article 1(3)(b), the importance of facilitating the circulation of administrative documents dealing directly with commercial or customs operations in international trade and commerce.

## **III. Publications and Resources**

- 15 The SC approved, in principle, the draft of the second edition of the Apostille Handbook, noting amendments will be made to the text to reflect the comments made by delegations and the C&R as adopted at this meeting. It recommended that the Council on General Affairs and Policy (CGAP) approve the Apostille Handbook for publication.
- 16 Noting that the inclusion of additional languages on an Apostille Certificate is at the discretion of individual Competent Authorities, the SC encouraged the use of multilingual certificates to facilitate the use of Apostilles. It endorsed the multilingual Model Apostille Certificates prepared by the PB for publication on the HCCH website.
- 17 The SC encouraged Contracting Parties to provide the PB with regular updates on information relating to Competent Authorities. This may take the form of a hyperlink to the website of the Competent Authority containing relevant practical information, including sample Apostilles. Delegates emphasised that the accessibility to such sample Apostilles does not diminish the verification mechanism required by Article 7, in particular where an e-Register is available.

## IV. Electronic Apostille Programme (e-APP)

18 Recognising the importance of the e-APP in supporting the secure and effective operation of the Convention, the SC encouraged Contracting Parties to implement both the e-Apostille and the e-Register components of the e-APP. It noted the positive experience of information sharing between Contracting Parties during the implementation process and encouraged these exchanges as an ongoing practice.

### A. Developments on the e-APP

19 The SC welcomed the "[Updates from the 12<sup>th</sup> International Forum on the e-APP](#)".

20 The SC welcomed updates from Contracting Parties on new implementations of e-APP components or progress made toward implementation.

21 The SC invited the PB to continue to organise meetings of the e-APP Forum, preferably every second year. In doing so, the SC encouraged the PB to take into account universality and geographic representation, as well as the possibility of holding the Forum in conjunction with the SC where applicable.

### B. Experts' Group on the e-APP and New Technologies

22 The SC noted the report from the Chair of the Experts' Group and thanked Ms Vesna Bratušek of Slovenia for her stewardship.

23 The SC approved "[The e-APP: Key Principles and Good Practices](#)" and noted its value for Contracting Parties when implementing the e-APP.

24 With a view to further enhancing the exchange of information, experience, and best practices amongst interested parties, the SC invited the PB to make available an online platform using its existing software. Based on the success of this online platform, there may be later consideration of developing a more tailored solution.

25 The SC asked the PB to organise, subject to available resources, more frequent opportunities for informal dialogue relating to e-APP implementation. This will be in addition to the meetings of the International Forum on the e-APP.

26 The SC welcomed the notification system whereby the PB informs Contracting Parties of new and updated implementation of e-APP components. It invited Contracting Parties to inform the PB of such developments in a timely manner to ensure this system works effectively.

### C. Operation of the e-APP

27 Noting the increasing use of electronic public documents, the SC recognised that e-Apostilles offer the optimal solution to preserve the integrity of such documents when issuing an Apostille, and reiterated the need for Contracting Parties to implement the e-Apostille component of the e-APP.

28 The SC welcomed the initiative of a number of Contracting Parties to increase automation and transition to comprehensive digital services, with a view to facilitating the Apostille process, including by enabling online requests and the automatic verification of digital signatures.

29 Noting that the PB is not appropriately placed to establish a digital certificate authority and reiterating the importance of technology neutrality and maintaining flexibility for all Contracting Parties, the SC recognised the good practice of using digital certificates with high standards, that are well-recognised and frequently used, and invited Contracting Parties to inform the PB about the certificate technology used to issue e-Apostilles.

30 The SC recalled the fundamental principle that, irrespective of format, an Apostille validly issued by one Contracting Party in accordance with the Convention must be accepted by all other Contracting Parties for which the Convention is in force. In this spirit, it encouraged Contracting Parties to take active steps to ensure the acceptance of incoming e-Apostilles.

## V. Other Matters

31 The SC invited Contracting Parties to continue to share with each other, and the PB, challenges that have arisen in the context of privacy and data protection, together with any practices or procedures that have been implemented to resolve them, and noted that no further guidance was required on this matter.

32 The SC noted concerns with issuing Apostilles on translations, in paper form, of electronic public documents and invited Contracting Parties to continue to exchange experiences.

33 The SC recommended that CGAP, at its meeting in 2024, consider the timing of the next meeting of the SC on the Apostille Convention, subject to further developments in the practical operation of the Convention.

## VI. Restated C&R from Previous SC Meetings<sup>4</sup>

### A. Promotion

34 The SC noted the widespread use and effectiveness of the Convention and encouraged Contracting Parties to promote the Convention. Members of the HCCH which are not already party are strongly encouraged to consider joining the Convention.

*See C&R No 2 of the 2012 SC*

35 The SC recognised the educational outreach work of Competent Authorities, National Organs, and the PB, noting the value of programmes aimed at increasing the acceptance of Apostilles.

*See C&R No 17 of the 2016 SC*

### B. Scope

36 With a view to ensuring that as many documents as possible benefit from the simplified procedure of the Convention, the SC encouraged a broad interpretation of the term “public document”.

*See C&R No 72 of the 2009 SC, C&R No 12 of the 2012 SC*

37 The SC noted that the law of the State of origin determines the capacity of the person executing a public document and the procedure for its execution. Similarly, the law of the State of origin determines the public nature of a document for the purpose of issuing an Apostille. An Apostille may not be rejected on the sole basis that the underlying public document is not considered a public document in the State of destination.

*See C&R No 72 of the 2009 SC, C&R No 75 of the 2009 SC, C&R No 12 of the 2012 SC, C&R No 14 of the 2012 SC, C&R No 7 of the 2016 SC*

38 The SC noted that the law of the State of destination determines the admissibility and probative value of the underlying public document.

*See C&R No 82 of the 2009 SC, C&R No 14 of the 2012 SC*

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<sup>4</sup> The following compiles C&R adopted by previous meetings of the SC which the Fifth Meeting also considers relevant to the contemporary operation of the Convention.

39 The SC recalled the limited effect of an Apostille under Article 5(2); that is, an Apostille only certifies the origin of the public document to which it relates and not the reliability or accuracy of its content.  
*See C&R No 82 of the 2009 SC, C&R No 13 of the 2012 SC*

40 The SC recognised that nothing in the Convention precludes its application to documents relating to extradition, including extradition requests.  
*See C&R No 16 of the 2012 SC, C&R No 8 of the 2016 SC*

### **C. Competent Authorities**

41 The SC noted that it is for each Contracting Party to determine the organisation of its Competent Authority structure, including the number and identity of Competent Authorities and the extent of their competence.  
*See C&R No 78 of the 2009 SC*

42 The SC welcomed the efforts of Contracting Parties to decentralise the provision of Apostille services, increasing efficiency and facilitating widespread access for the public.  
*See C&R No 18 of the 2012 SC*

43 The SC recalled that the fundamental role of Competent Authorities is to verify the origin of all public documents prior to issuing an Apostille. The SC emphasised that it is not the responsibility of Competent Authorities to verify the content of public documents prior to issuing an Apostille. Similarly, when requested to issue an Apostille for a notarial certificate, Competent Authorities should not assess the content of the document to which the notarial certificate relates. Competent Authorities may, however, take steps outside the Apostille issuance process to address instances of fraud or other violations of domestic law.  
*See C&R No 80 of the 2009 SC, C&R No 83 of the 2009 SC*

44 While an Apostille may be used in all Contracting Parties for which the Convention is in force, the SC noted that it may be useful for Competent Authorities to enquire about the intended State of destination when a request for an Apostille is submitted to ensure the Convention applies.  
*See C&R No 81 of the 2009 SC*

45 The SC noted that Competent Authorities may decline to issue an Apostille on a certified copy of a document on the grounds of public policy.  
*See C&R No 11 of the 2003 SC*

### **D. Apostille Certificates and Issuance**

46 The SC recalled the use of the Model Apostille Certificate annexed to the Convention and recommended that Apostilles should conform as closely as possible to this Model Certificate.  
*See C&R No 13 of the 2003 SC*

47 Noting that Apostilles are designed for use abroad, the SC encouraged Contracting Parties to consider filling out the 10 numbered standard informational items in an additional language to that of the issuing Competent Authority, such as English, French, or a language of the State of destination.  
*See C&R No 90 of the 2009 SC*

48 The SC encouraged Competent Authorities to consider adding text outside the area containing the 10 numbered standard informational items on the Apostille Certificate. This additional text may be used to recall the limited effect of an Apostille under Article 5(2); provide information about Apostille verification; inform users that the Apostille has no effect in the State of origin; or clarify the

distinction and procedures in the case of certificates used as both Apostilles and for non-Convention authentications. Any additional text should not interfere with the integrity of the Apostille; for example, it should be placed outside the frame, if applicable.

*See C&R No 85 of the 2009 SC, C&R No 86 of the 2009 SC, C&R No 23 of the 2012 SC, C&R No 14 of the 2016 SC*

49 The SC emphasised the importance of completing all 10 numbered standard informational items. Where an item is not applicable, this should be clearly indicated rather than being left blank.

*See C&R No 21 of the 2012 SC*

50 The SC confirmed that an Apostille, which is clearly identifiable as such, should not be rejected because of variations in size, shape, or form; additional text placed outside the area containing the 10 numbered standard informational items; or non-compliance with formalities or practices of the State of destination.

*See C&R No 13 of the 2003 SC, C&R No 92 of the 2009 SC*

51 The SC affirmed that the validity of the signature on an Apostille is determined by the law applicable to the issuing Competent Authority.

*See C&R No 22 of the 2012 SC*

52 For documents with multiple pages or bundles of documents with a single certification, the SC recommended that Competent Authorities affix the Apostille to the signature page of the document, or if using an allonge, to the front or back of the document.

*See C&R No 17 of the 2003 SC*

53 The SC recalled Article 4 and the requirement that Apostilles, whether paper or electronic, must be attached to, or logically associated with, the underlying public document. Recognising the diverse practices amongst Contracting Parties, the SC encouraged the use of tamper-evident methods in this regard.

*See C&R No 91 of the 2009 SC, C&R No 24 of the 2012 SC*

54 The SC noted the practice in some Contracting Parties of using a single certificate both as an Apostille and for non-Convention authentications.

*See C&R No 15 of the 2016 SC*

## **E. Other Operational Matters**

55 The SC recalled the obligation of Contracting Parties, under Article 9, to take all necessary steps to prevent the performance of legalisations by their diplomatic or consular agents in cases where the Convention provides for exemption. The SC firmly rejected practices where an Apostille is required to be legalised between Contracting Parties.

*See C&R No 69 of the 2009 SC, C&R No 93 of the 2009 SC*

56 Noting that any fees charged for issuing Apostilles should be reasonable, the SC encouraged Contracting Parties to consider a single, reduced fee to issue an Apostille for a bundle of related documents.

*See C&R No 20 of the 2003 SC*

57 Recognising that Apostilles do not expire, the SC encouraged issuing Competent Authorities to retain Apostille records in their Article 7 register for as long as possible, subject to legal requirements and practical limitations.

*See C&R No 21 of the 2003 SC*

- 58 The SC emphasised that authorities of the State of destination may not subject the acceptance of an Apostille to any confirmation of procedures from the issuing Competent Authority and encouraged Contracting Parties which receive such requests to resolve these issues bilaterally.  
*See C&R No 27 of the 2012 SC, C&R No 16 of the 2016 SC*
- 59 The SC encouraged Contracting Parties that have made objections under Article 12 to periodically consider whether it may be appropriate to withdraw their objections.  
*See C&R No 67 of the 2009 SC, C&R No 7 of the 2012 SC*
- 60 The SC encouraged Contracting Parties to inform the PB of instances where non-Contracting Parties are issuing certificates purporting to be Apostilles or are giving effect to Apostilles issued in Contracting Parties.  
*See C&R No 13 of the 2016 SC*