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CONVENTION DE LA HAYE DU 5 OCTOBRE 1961 SUPPRIMANT L'EXIGENCE DE LA LÉGALISATION DES ACTES PUBLICS ÉTRANGERS

Explications succinctes en vue de la préparation de la Commission spéciale

établi par le Bureau Permanent

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HAGUE CONVENTION OF 5 OCTOBER 1961 ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC DOCUMENTS

Succinct explanations in preparation of the Special Commission

drawn up by the Permanent Bureau

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INTRODUCTION

The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents ranks among the greatest successes of the Hague Conference on Private International Law, having obtained to date 79 ratifications and accessions on the five continents[1]. This is owing to the fact that the Convention provides a basic simplification of the series of formalities which complicated the utilization of public documents outside of the country from which they emanated. 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 documents originates. It should be pointed out that the effects of the apostille are limited to attestation of 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.

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, such as Japan and Sweden, which in their own systems of law do not have the practice of requiring legalisation, since their citizens must, in the absence of the Convention, submit to foreign requirements each time when they wish to utilise their own countries' documents abroad, before the authorities or the courts of a foreign State.

Nevertheless, roughly 40 years have elapsed since that Convention was adopted, and certain technical developments, and likewise changes in practice, justify the need to examine its operation in practice[2]. That is the assignment that the forthcoming Special Commission on the practical operation of the *Hague Convention of 5 October 1961 Abolishing the Requirements of Legalisation for Foreign Public Documents*, to be held in The Hague from 28 October to 4 November 2003, will strive to fulfil. This paper has been drafted in order to prepare for that Special Commission effectively.

First, the practical importance of this Convention justifies a reminder of certain points of essential importance for its implementation. In particular, it seems appropriate to apply a measure of exposition to the determination of its scope (I), in order next to review the procedure for issuance of apostilles itself and to provide certain explanations of a strictly "practical" nature (II). It will be necessary then to consider the impact of the use of new technologies (III). This report repeats some of the comments[3] by Mr. Yvon Loussouarn in his Explanatory Report[4], to which have been added other developments in order to reflect in the best possible manner the evolution of the practice in this area.

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1 For a complete list of ratifications and accessions of the Convention, see the Hague Conference's website, at www.hcch.net.

2 The Convention's operation had already been reviewed summarily at the Special Commission of January 1988 (see *Proceedings of the Sixteenth Session*, Vol. I, p. 186 and p. 194-202), and at the Seventeenth Session (see *Proceedings of the Seventeenth Session*, Vol. I, p. 218, 290 and 331-332).

3 The comments drawn from the Explanatory Report have been "grayed" in the body of the document in order to replace the use of quotation marks.

4 Explanatory report by Mr. Yvon Loussouarn, *in Actes et documents de la Neuvième session*, Tome II, Legalisation, p. 181; hereinafter the "Explanatory Report".

Throughout these developments, the Permanent Bureau has entered a few questions, which are repeated in the annex and constitute a *Questionnaire* that the States party to the Convention are invited to answer in order to assist the Permanent Bureau in preparing the forthcoming Special Commission. This is why we would be grateful for your sending them to us **at the latest by 10 October 2003**, by electronic mail at the following addresses: cb@hcch.nl and lt@hcch.nl .

I. Scope of the Convention

Article 1 determines the scope of the Convention as to the documents to which it applies. Accordingly, under Article 1(1), the documents subject to the Convention need to comply with two concurrent conditions. They must be, first, *public documents* (A) as defined by the Convention, and second, *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* (B).

A. Public documents

1. Terminology

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 drafters, moreover, specified that in the English text of the Convention the word *actes* should be translated by *documents*.

2. Public documents to which the Convention applies

Since they wished to determine the scope of the Convention as precisely as possible, the drafters of the Convention were not content simply with using a generic term; in Article 1 they 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 Article 1(2).

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

The drafters of the Convention felt that the expression *juridiction* (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.

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

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 drafters of the Convention 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.

It needs to be stressed that the apostille applies to the official certificate and not directly to the private document having received an official certificate. This is why the practice of certain competent authorities, tending to require translation of the private document when it is drafted in a foreign language, is not justified: the certification concerns only the official certificate; the competent authority accordingly needs only to ascertain the authenticity of the signature of the notary or official having drafted that certificate, the capacity in which he or she signed the certificate, and if applicable, the identity of the seal affixed by the latter.

3. Public documents to which the Convention does not apply

Article 1(3) also helps to determine the scope of the Convention by excluding two categories of public documents[5], namely:

a) 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[6].

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[5] *The Brussels Convention of 25 May 1987 abolishing the legalisation of documents in Member States of the European Community* has a broader scope than The Hague Convention as it covers all public documents. Nevertheless due to a lack of ratifications, this Convention has not entered into force.

[6] It should be noted that taking into account this exclusion from the scope of the Hague Convention, the Council of Europe has drafted a *European Convention dated of 5 June 1968 abolishing the legalisation of documents executed by diplomatic or consular agents*. This Convention entered into force the 14 August 1970. 20 States have ratified or acceded to it. It would be helpful if States Party to this Convention would report on their experience with this treaty.

b) 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.

The drafters 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.).

4. The special case of diplomas

It appears that application of the Convention is commonly asserted by persons wishing to have their diplomas certified, in particular when seeking employment abroad: the Permanent Bureau has received various enquiries in this respect, including some relating to so-called "on-line" diplomas issued over the Internet. Can diplomas be treated as public documents and accordingly enjoy the exemption from legalisation[7]?

In order to determine whether diplomas are within the scope of the Convention, a distinction should be made between diplomas issued by an institution that is public or treated as such in the State of issuance, and diplomas issued by a private institution: under Article 1 of the Convention, only the former may be treated as public documents (Art. 1(a) and (b)) and receive an apostille. For the others, the apostille may be issued only to certify the signature and capacity of the notary (Art. 1(c)) or to certify the signature and capacity of the signatory of a copy, for instance (Art. 1(d)).

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[7] Application of the Convention to on-line diplomas also raises the issue of the territorial location of the institution having issued those documents: see *infra* p. 11.

It should also be pointed out that an apostille affixed directly or on an allonge attached to a diploma in no way confers any legal recognition of the diploma abroad. The apostille does not mean that the diploma is to be recognized *ipso jure* by any State Party to the Convention. The apostille merely 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 the document bears*" (Art. 5(2)). It also exempts from the formality of legalisation (Art. 2).

QUESTION 1. In practice, what are the kinds of public documents (e.g., commercial documents, birth certificates) for which the competent authority(ies) in your State is (are) most commonly called upon to issue apostilles?

QUESTION 2. Do you have statistics at your disposal with respect to the number of apostilles issued by your competent authorities (by type of document, if possible)?

B. Executed in one Contracting State and which have to be produced in another Contracting State

It should be pointed out that the phrase "Contracting State" used in the Convention refers to any State in which the Convention has become effective (i.e., any State Party to the Convention). Under Article 1(1), the Convention applies to public documents which, first, have been executed in the territory of one Contracting State, and second, have to be produced on the territory of another Contracting State. The Convention is therefore based on a principle of reciprocity.

The Permanent Bureau has received a request to determine whether the Convention was applicable to documents issued by institutions of the European Community and produced on the territory of a Contracting State. A reply in the negative may have to be adopted since the European Community is not a party to the Convention. This solution applies *mutatis mutandis* to any international organisations of which authorities or organs are competent to issue documents falling under the scope of the Convention.

QUESTION 3. Pursuant to the application by the European Community for membership of the Hague Conference, it will have to be determined to what extent the Hague Conventions, and in particular the "Apostille" Convention, should or could be extended to regional economic-integration organizations. Do you consider that it would be necessary or appropriate to adopt a protocol favouring the adoption of a clause similar to that of Article 18 of *The Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary*?

Unlike the vast majority of Hague Conventions adopted subsequently, the "Apostille" Convention contains no provision enabling a State with several territorial units to make a declaration resulting in the application of this Convention to all its territorial units or only to one or several of them.

QUESTION 4. Would you be in favour of the adoption of a protocol designed to enable a State with several units to extend the application of the Convention to one or several of its territorial units?

II. Issuance of the apostille

A. By a competent authority of the State of execution

1. Authority of the State of execution

The particular feature of the system created is that the apostille is issued not by an authority of the State of the document's production (i.e., of the State in the territory of which the foreign public document is to be produced), but by an authority of the State of execution (i.e., of the State from which the public document emanates). This solution seemed the more appropriate and is intended to prevent fraud: the authority of the State from which the document emanates is in practice in the better position to determine whether the signatory of the document is connected with that State and whether the document submitted is a public document for the purposes of the Convention. This solution accordingly avoids the need for the authority in the State of production to perform time-consuming enquiries. The advantage of such a system is demonstrated, for instance, in the case of on-line diplomas mentioned above: the authority of the State of execution is in a better position to determine whether it is a public document for the purposes of the Convention and whether the institution which issued the diploma is indeed located on its territory (even though the territorial location of an "on-line institution" is not always easy to determine).

It should be pointed out that this does not remove all powers of appreciation from the State of production: the Explanatory Report specifies that if the certificate has been affixed in error upon a document which is outside the scope of the Convention […], the certificate could not […] 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[8].

Costs for issuance of the apostille: the Explanatory Report[9] specifies that this issue was not included in the Convention as it appeared to be a matter of internal organization for each State. The delegates agreed, however, to accept that this cost ought to be "reasonable": if it were to be higher than that of the former legalisation, the Convention would lose much of its point.

QUESTION 5. Can you specify the price charged by the competent authorities in your country for issuance of the apostille?

2. Authority designated by the State of execution

It is up to each Contracting State to determine itself the authorities to which it intends to entrust issuance of the apostille (Art. 6). The designation and any change in the designation of such authorities should be notified to the

[8] Explanatory Report, *op. cit.*, p. 182 (16).

[9] Explanatory Report, *op. cit.*, p. 183 (17).

depositary of the Convention (i.e., the Ministry of Foreign Affairs of the Netherlands). Only an authority designated by the Contracting State as being competent is permitted to issue the apostille. **No other authority may claim that competence**. It is essential, therefore, to ascertain that the apostille has indeed been issued by a competent authority. In the case of the on-line diplomas mentioned above, it needs to be pointed out that affixing of the apostille for the purposes of the Convention may not in any way be performed by the academic institution or any other private agency, since it is not an authority designated as being competent to issue the apostille by the State on the territory of which it is located, in accordance with Article 6 of the Convention.

Since designation of the competent authority is a matter solely for the State on the territory of which a document is executed, each State may designate a different authority in that capacity. Since any State Party to the Convention is required to abide by the designation, by the State of execution, of the competent authority, it follows that the State of production may not refuse an apostille on the grounds only that an authority equivalent to that having issued it would not be authorized to issue the apostille on its territory. A contrary solution would be inconsistent with the objective of simplicity sought by the drafters of the Convention and would result in making issuance of an apostille subject to different requirements according to the State where the document is to be produced.

B. In the form of the model annexed

1. Model annexed to the Convention

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. The apostille must include a number of uniform and numbered items. The Explanatory Report further points out that a review of that model shows that the apostille appears in the form of a square with sides at least 9 centimeters long. The objective of this formalism is to simplify and facilitate the international circulation of public documents. The Permanent Bureau is of the view, however, that a pragmatic rather than a formalistic approach should be adopted in order not to detract from the Convention's effectiveness, provided that the apostille can be clearly identified as such. This is why it was desired in particular that the apostille should contain an express reference to the Convention, thereby containing in itself proof of its lineage.

QUESTION 6. In practice, have you encountered difficulties connected with the formal requirements provided for under the Convention?

2. Consequence of the absence of signature

The apostille must bear in particular the "signature, seal or stamp" of the authority having issued it. The aim here is to allow a prompt ascertainment of the competence and identity of the authority having issued the apostille. What solution is to be applied if, for instance, there is no signature?

A strict reading of Article 5(2) leads to an admission that the apostille is not "properly filled in". The Convention does not, however, provide as to the "validity" or otherwise of the apostille. In addition, Article 5(3) clearly states that the drafters did not intend to subject the certificate itself to a requirement of additional proof such as legalisation or even verification by another authority[10].

Accordingly, if the apostille is incomplete and raises a doubt, a verification should be carried out with the competent authority of the State where the document originates and if necessary, a check of the entry of the apostille in the register or card index kept by the issuing authority, in accordance with Article 7 of the Convention. If, after inspection of the register or card index, a doubt remains as to the authenticity of the apostille, the State in which the document is produced may refuse to recognize the authenticity of the signature, the capacity in which the signatory of the public document acted, or the identity of the seal or stamp which the public document bears (Art. 5(3)). If, on the other hand, inspection of the register or card index removed any doubt as to authenticity of the apostille, it seems that the State of production ought to recognize the effects normally attaching to a "properly filled in" apostille (Art. 5(3)).

The formalism required by the Convention is intended to simplify and facilitate the circulation of public documents. An excessively strict construction of its terms might have the opposite effect. It follows that the apostille system is based on a principle of trust in the competent authority in the State of execution. As long as that trust is not disputed, the effects provided for under the Convention ought to apply.

3. Additional formality

It appears that certain States Party require, for the issuance of apostilles by their authorities, the performance of an additional formality such as the affixing of a ribbon or wax seal. This finding calls for several comments.

First, even though the text of the Convention does not prohibit making issuance of the apostille subject to the performance of additional formalities, it should be recalled that the Convention's objective is to be less cumbersome than the procedure attaching to legalisation. In addition, performance of this kind of additional formalities may run up against the growing use of new technologies.

Next, may a Contracting State refuse recognition of the effects usually recognized for an apostille produced on its territory, on the grounds that the apostille, even though properly filled in by the State of execution in accordance with the Convention, does not exactly comply with the form used by the State of production for its own apostilles? The text of the Convention contains no provisions expressly permitting or censuring such behaviour. The Explanatory

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[10] Explanatory Report, *op. cit.*, p. 181 (15).

Report specified, however, that the addition of the certificate is the maximum formality which may be required. It cannot be duplicated by an additional formality[11]. Even though it is not certain that the author of the report was thinking specifically of the case where issuance of the apostille itself required an additional formality, it appears from the very structure of the Convention that any State Party to the Convention agrees to exempt from legalisation any public document produced in its territory and bearing the apostille properly filled in, in accordance with the Convention. Accordingly, even if the apostille issued by another Contracting State, contains no ribbon or wax seal (or any other additional formality applied by the State of production for apostilles delivered by its own authorities), the effect described under Articles 3 (exemption from legalisation) and 5(2) (certification of authenticity of the signature, the capacity of the signatory and the identity of the seal or stamp) cannot be denied for that reason only.

4. Language used

The following observations may be deduced from the model apostille annexed to the Convention and Article 4(2), regarding the languages used to draft the apostille:

Title: in French only

Standard terms:
either in French
or in English
or in the official language of the issuing authority
or in English and in French
or in the official language and in French (*)
or in the official language and in English (*)
or in the official language and in another language (*) (**)

Entries added by the authority:
either in French (***)
or in English (***)
or in the official language of the issuing authority (***).

(*) Although Article 4(2) refers to a second language only, it seems reasonable to accept that a third language can be added if the Contracting State so wishes.
(**) The use of another language is optional and does not replace use of the first language[12].
(***) Translation of the entries added by the authority, in another language, does not seem to be contrary to the Convention. However, the apostille is to be considered as complying with the Convention provided that the entries have been added by the authority in French, in English or in the authority's official language.

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11 Explanatory Report, op. cit., p. 180 (14).

12 Nevertheless, the use of standard forms of apostille makes it easier to comply with the provisions of the Convention.

From a strictly practical point of view, when it has been decided to enter the items of the apostille in two different languages, it may be useful to enter the items in the official language in bold type, and to place the translation into the language selected in lighter type beneath them. For instance, in a country where the official language is Spanish and having chosen to provide a translation of the items into English:

1. **Pais** : .....
Country:.....

Uniformity in terms of language is in any event preserved to some extent by the requirement of a mention in the French language of the title "APOSTILLE (Convention de La Haye du ...)".

C. On the document or on an allonge

Article 4(1) requires the apostille to be placed on the document or on an "allonge" (extension). The Convention provides no details and therefore allows the States Party full discretion to find the means that seems to them most appropriate and most convenient to affix the apostille. The apostille may therefore be placed directly on the public document to be certified or on an allonge, which as the name implies is a piece of paper attached to the document. The affixing itself raises a few issues of a strictly practical nature, in particular when the document certified by the apostille has several pages. It seems that certain States "dog-ear" and fan the document's pages so that the apostille can thereby be physically attached to all the pages of the document. Other States use adhesive paper.

QUESTION 7. Practical information relating to the methods used to affix the apostille would be very useful. In particular, how do you proceed when the public document to receive the apostille has several pages?

D. Register or card index

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.

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".

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.

The text of Article 7 calls for a twofold observation :

- 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.

- 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.

QUESTION 8. Is consultation of the register or card index for verification requested frequently?

III. Apostille and new technologies

The issue of adaptability of the "Apostille" Convention's provisions had already arisen in 1993; it deserves, however, to be considered anew having regard to the considerable developments in new technologies over the past decade.

A. Discussions in 1993

In the early 1990s, the Permanent Bureau received a few enquiries from certain States Party to the Convention calling for clarification as to the proper interpretation of certain provisions of the Convention in respect of the use of new technologies. The Permanent Bureau drafted a brief memorandum to report on these issues[13] and a questionnaire was sent to the States Party to the Convention in 1993 and a summary of the replies was drafted[14].

1. Form of signature

Faced with the growing inflow of applications for apostilles, it was legitimate to ask whether the signature and/or affixing of a stamp or seal can be performed mechanically, by means of a stamp or even, having regard to technical evolution, electronically. The Permanent Bureau stated in 1992 that "the proliferation of certificates issued under the Convention pleads for practicality in interpretation of the "signature" requirement" and that "the operation of this very useful Convention should not be impeded by undue formalism in its interpretation". It pointed out, however, that access to the official stamp or seal or a multicopying or electronic signing machine should be subject to supervision[15].

2. Computerized register

In 1992, the Permanent Bureau found that the expansion of electronic registers was not contemplated at the time when the Convention was drafted in 1960, but the terms of "register or card index" used ought to be sufficiently broad to cover this functional replacement of the paper register. "However, special provisions may have to be taken in order to prevent erasure of or tampering with information contained in the data bank; perhaps a back-up "authentic" version should be kept on a separate disk"[16].

It appears from the replies obtained to the 1993 Questionnaire that "the use of electronic (computerized) databanks for keeping the "register or card index" called for under Article 7 of the Convention is accepted by a narrow majority of the States which have replied." The Permanent Bureau concluded, however, that the "circumstances allow a statement that "pressures on the archival systems of the States Party to the Convention, as a result of the continuing issuance of certificates (apostilles) without the option to destroy the

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13 Note on certain questions concerning the operation of *The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation of Foreign Public Documents*, Prel. Doc. No 13 of May 1992, in *Proceedings of the Seventeenth Session*, Vol. I, Part 1, p. 218, hereinafter "Note of May 1992".

14 Summary and synthesis of replies to the Questionnaire on The Hague Convention of 5 October 1961 on Legalisation, Prel. Doc. No 23 of May 1993, in *Proceedings of the Seventeenth Session*, Vol. I, Part 1, p. 290 *et seq.*, hereinafter "Summary of replies of May 1993".

15 Note of May 1992, *prec.*.

16 Note of May 1992, *prec*.

records, will militate in favour of initiating electronic record-keeping systems, at least for certificates issued in the future"[17].

B. Renewed discussion

The ten replies or so to the 1993 Questionnaire obtained can no longer be considered as reflecting significantly the current systems for the affixing of apostilles: the past decade has seen considerable evolution in favour of the use of new technologies. The use of electronic transmissions is no longer considered as a future development but is an integral part of current thinking. In fact, certain competent authorities already have significant experience in the use of electronic transmissions for the issuance of apostilles. Even though the text of the Convention and the Explanatory Report do not answer these questions, the absence of a provision to the contrary and the fairly broad terminology used in the Convention seem sufficient to encompass these evolutions and to allow the issuance of electronic apostilles provided that a paper copy can be produced at any time.

This issue will require particular attention, however, at the next Special Commission on the practical operation of this Convention. For this purpose, it would be useful for the States Party to answer the following questions concerning the use of electronic files for the recording of apostilles, and the acceptance or otherwise of electronic signatures on apostilles.

Last, the issue of the electronic form of the signature on the apostille raises in practice another more difficult issue, which is whether the Convention allows the issuance of apostilles for documents existing or recorded electronically.

QUESTION 9. Do you use signatures by mechanical means, stamp and/or electronics, to fill in apostilles? If so, have security measures been taken to avoid any fraud? If so, which?

QUESTION 10. Do you use an electronic medium to keep the "register or card index" provided for under Article 7 of the Convention? If so, do you also keep a paper copy of the entries and if not, do you contemplate doing so? What are your reasons?

QUESTION 11. Do you issue apostilles for electronic documents? If so, can you provide us with details of the manner of that issuance and if not, do you think this possibility can be contemplated?

[17] Summary of replies of May 1993, *prec*.

ANNEX

QUESTIONNAIRE