THE APOSTILLE CONVENTION — APPROACHING A SEVENTH DECADE OF REMARKABLE VITALITY

A Position Paper

prepared by

Professor Peter Zablud, AM, RFD, Dist.FANZCN

for

The Australian and New Zealand College of Notaries

OUTLINE

This Paper has been prepared to assist the deliberations of the HCCH Special Commission Meeting of October 2021 on the practical operation of the *Apostille Convention*.

The Paper notes that since its inception six decades ago, the *Apostille Convention* has been a remarkably vital instrument; initially in the wholly "paper" environment and latterly in the emerging digital era. A number of practical issues that vex many designated Competent Authorities and several technical matters that require attention are then canvassed.

Finally, the Paper offers a quick gaze into the crystal ball and concludes that as it approaches its seventh decade, the vitality of the *Apostille Convention* is undiminished and its future appears to be secure.

Professor Peter Zablud
Level 1, 415 Bourke Street,
Melbourne, Victoria, 3000.
Australia

Tel: + 61 3 9670 4222
Fax: + 61 3 9670 6199
email: pz@zablud.com.au

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Professor Peter Zablud, AM, RFD, Dist.FANZCN

Professor Peter Zablud is an Australian lawyer and notary.

He has written extensively about notarial practice and is the author of the authoritative textbook, *Principles of Notarial Practice* which is now in its second edition.

Professor Zablud was the inaugural Chairman of the Board of Governors of The Australian and New Zealand College of Notaries. He is a Distinguished Fellow of the College.

He is also a Fellow of the Society of Notaries of Victoria. He is a Past-President and is a Council member and life member of the Society.

He was the first Australian individual member of the International Union of Notaries and formerly was a member of the Board of the World Organization of Notaries (now the Common Law Association of Notaries).

On Australia Day 2017, Professor Zablud was made a Member of the Order of Australia (**AM**) in recognition of his "significant service to the law and to legal standards and education particularly in the field of notarial studies".

He was awarded a Reserve Force Decoration (**RFD**) for service as an Officer in the Australian Army Reserve.

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Professor Peter Zablud, AM, RFD, Dist.FANZCN

The Australian and New Zealand College of Notaries is privileged to have been accorded "Observer" status at the Hague Conference on Private International Law ("**HCCH**") Special Commission meeting of October 2021 on the practical operation of the *Apostille Convention.* The College presents its compliments to the Special Commission and wishes participants well in these unusual and wretched times.

Introduction

As part of its preparation for this Special Commission meeting, the Permanent Bureau of the HCCH prepared and circulated its Questionnaire of January 2021 concerning the operation of the *Apostille Convention* ("**the 2021 Questionnaire**").

Seventy Contracting Parties and five non-Contracting Parties responded to the Questionnaire ("**the Responses**") in sufficient time to enable the Permanent Bureau to prepare its Summary of Responses to the 2021 Questionnaire, as at 2 August 2021.[1]

Unlike previous Questionnaires, the 2021 Questionnaire is only a Pulse Survey. Even so, as appears from the Responses, there are a number of issues and technical matters that continue to vex Contracting Parties and their Competent Authorities.

The purpose of this paper is to provide material and commentary in relation to several of those issues in order to assist the Special Commission in its deliberations.

The first six decades

The *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* ("**the *Apostille Convention***") was delivered of the Ninth Session of the HCCH which took place in the Hague in October 1960 and was first signed on 5 October 1961 (thereby its formal date). The Convention entered into force on 24 January 1965.[2]

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[1] The 2021 Questionnaire and the Summary of Responses may be found at the 2021 Special Commission section of the Apostille page of the HCCH website <www.hcch.net>

Individual Responses may be found at the dedicated "Questionnaires and Responses" section of the Apostille page of the HCCH website.

[2] 24 January 1965 was the sixtieth day after the deposit of the third instrument of ratification by a Contracting Party with the Netherlands' Ministry of Foreign Affairs. (The process is set out in Articles 10 and 11 of the Convention).

On 25 September 1962, the Socialist Federal Republic of Yugoslavia, which incidentally had abstained from voting for the Apostille Convention text at the Ninth Session, was the first Contracting Party to deposit an instrument of ratification. The second instrument was deposited by the United Kingdom on 21 August 1964. The third instrument was deposited by France on 25 November 1964, thus triggering the Convention's entry into force.

Since its inception, the *Apostille Convention* has been a remarkably vital instrument and has become a sparkling jewel in the HCCH Crown. It is one of the most successful and highly regarded of the HCCH Conventions.

The *Apostille Convention*:

- has been acceded to by more Contracting Parties than any other Hague Convention — and the number continues to rise;
- provided a simple, workable and acceptable solution to the burdensome administrative problem of legalisation of public documents faced by international trade and commerce — and continues to do so; and
- has assisted millions of people around the world in conducting their cross-border personal and business affairs — and continues to do so.

The Apostille in the digital era

The *Apostille Convention* was conceived and born in a wholly "paper" world; at a time when the digital era was not foreseen. Today, on the cusp of the seventh decade of the Convention's life, digitally generated public documents are commonplace. Their ready transmission online to a public increasingly connecting and interacting online with government and its services required a simple, compatible and workable way to meet authentication demands within the new environment.

As it turned out, the *Apostille Convention* was up to the task. The development and take up of the Electronic Apostille Programme (the e-APP) is proof positive of the vitality of the *Apostille Convention*.

The e-APP was brought into being in 2006 by the HCCH in joint venture with America's National Notary Association. The "Electronic Apostille Pilot Program" as it was called, has since developed into the e-APP under the aegis of the HCCH.

At present, over 200 Competent Authorities designed by 41 Contracting Parties (including Australia and New Zealand) have implemented one or both of the e-APP's components, viz: the electronic Apostille and the electronic Register.

As may be seen from the Conclusions and Recommendations of the 11th International Forum on the e-APP held in Brazil in October 2019 [3], the significance and importance of the e-APP is now recognised and understood [throughout the world] and is testimony to the "value and impact" of the *Apostille Convention* generally.

Apropos the e-APP

It is appropriate to take this opportunity to note and comment upon a matter raised in May this year by the Experts' Group on the e-APP and the New Technologies (set out in Preliminary Document No. 9 of September 2021) that is to be considered by the Special Commission Meeting.

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[3] See the e-APP page on the HCCH website.

Among other things, the Experts' Group suggested that the Permanent Bureau take on an active role in facilitating the standardisation of digital certificates in the context of the e-APP, especially by establishing its own centralised dedicated Certificate Authority.

It is submitted that the proposal be adopted at the Special Commission meeting, subject always to the provisos that proper fees for service be paid to the Permanent Bureau for its involvement and that a suitable royalty regime be established and maintained.

Problems and challenges generally

Among other things, in recent years, matters arising from:

- the different legal systems of the Contracting Parties;
- an excessive number of Competent Authorities designated by Contracting Parties;
- pressures on Competent Authorities brought about by
  - unprecedented cross-border student and labour mobility; and
  - increasingly sophisticated fraudulent documents;
- varying interpretations of key provisions of the Convention by Competent Authorities;
- inadequate initial and ongoing staff training by many Competent Authorities; and
- uncertainty in the public mind as to the limited effect of an Apostille

have all caused or contributed to problems and challenges relating the practical operation of the Convention, which have confronted and occasionally vexed Contracting Parties.

The problems, issues and challenges identified by Contracting Parties in their Responses as well as by critical friends are not and should not be seen as being somehow indicative or symptomatic of systemic failure of the *Apostille Convention* in practice.

To the contrary. It would be extraordinary if, during over half a century of operation, this international Convention, the substantive provisions of which have been applied literally on millions of occasions — possibly hundreds of millions of occasions — by the Competent Authorities of (now) 120 Contracting Parties, did not give rise to problems, issues and challenges in its practical application.

Special Commission meetings

It is trite to say that the prime purpose of Special Commission meetings is to consider the identified matters of concern and interest for the benefit of all Contracting Parties and to come to conclusions and make recommendations to assist in the resolution of those matters.

It is also trite to say, but it is well worth repeating, that candid appraisal of perceived difficulties and where appropriate, robust discussion at Special Commission meetings which result in consensus, are further proof of the strength and vitality of this Convention.

Continuing matters of concern

Overwhelmingly, the matters which continue to concern Contracting Parties and which have emerged from the Responses appear to be largely the same as those arising out of the responses to previous Questionnaires, which were comprehensively discussed and considered at previous meetings of the Special Commission and which are dealt with in detail in the *Apostille Handbook* published by the Permanent Bureau in 2013.

One reason is the thrust of the 2021 Questionnaire itself, understandably focusing as it does on issues which are central to the practical operation of the Convention and, which are essentially the same as those issues which previously have been of concern to the Contracting Parties and the Permanent Bureau.

Another and more troubling reason is the conclusion which can be drawn from the Responses is that Competent Authorities have neither paid sufficient attention to the deliberations and resolutions of past Special Commission meetings nor have they taken steps to ensure that staff are adequately trained and are familiar with the *Apostille Handbook* and other materials which are available on the Apostille page of the HCCH website.

The lack of accurate information and statistics

The importance of accurate information and statistics should never be underestimated. Reliable information, no matter how unpalatable or difficult to collect and collate as it may be, is absolutely essential to effective decision-making by Contracting Parties and their designated Competent Authorities in relation to the practical operation of the Convention within their own territories and generally.

Unhappily, it is clear from the Responses and from responses to past questionnaires that when asked to provide statistics and associated information:

- more than a few Contracting Parties only are able to offer estimates rather than empirical data; and
- in many cases, Contracting Parties obviously have no facility to continually collect and collate data from all or most of their Competent Authorities or at all.

Given the high quality of information technology now available, there is presently every opportunity for Contracting Parties to establish the means to network their Competent Authorities or to otherwise obtain and collate reliable statistics and information concerning the Convention and its operation.

An excessive number of Competent Authorities

Article 6 of the *Apostille Convention* gives individual Contracting Parties a discretion as to the number of Competent Authorities they may appoint for the Convention's purposes. The exercise of that discretion sometimes can be problematic.

For a variety of reasons such as:

- the desire to provide an accessible, decentralised service to citizens and residents;
- the number of administrative divisions in their countries;
- deeply entrenched notions of separation of powers and functions;
- precedents set by influential Contracting Parties; and
- inter-departmental and inter-agency jealousies, rivalries and politics;

significant numbers of Contracting Parties have chosen to designate multiple Competent Authorities to affix apostilles to their public documents.

For example, for practical and understandable reasons, the USA, which is the world's third most populous country and fourth largest country by land mass, as well as being one of the world's great commercial and trading countries, has designated 170 Competent Authorities including Clerks and Deputy Clerks of US Federal Courts and senior officials of its 56 individual states and territories.[4]

Usually, with the best of intentions, many Contracting Parties which are significantly smaller that the USA in all respects, have taken to designating large numbers of Competent Authorities, typically including judicial officers, notaries and bureaucrats in all their provinces, prefectures, cities and townships.

All in all, there are some several thousand Competent Authorities designated by Contracting Parties.[5] It is thought that many of them have never affixed an apostille, or, if they have, over the years they have only affixed a handful at best.

Questions inevitably arise as to the need for and the value of so many separate Authorities, the ability of staff members to carry out their tasks reliably and efficiently and their levels of understanding of the Convention and its subtleties.

Over time, various expert studies have determined that in many cases, particularly in developing countries, the demands and complexities of decentralised service delivery have resulted in serious challenges and mediocre outcomes.[6]

The Apostille Convention deserves better. It is respectfully suggested that (where applicable) current and future Contracting Parties would do well to review existing and proposed decentralised service delivery arrangements and to evaluate the genuine worth of designating significant numbers of Competent Authorities, in particular individuals who are designated as Competent Authorities *ex officio*.

Additional text "Outside the Box"

Within the limited confines of Competent Authorities, it is usually well understood that an apostille does not add any legal significance to or officially verify the content of the public document to which it relates, or in the case of a notarial certificate, the content of the notarially certified document.

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4 Ibid.

5 Ibid.

6 See eg, Dennis A Rondinelli et al, *Decentralization in Developing Countries: A Review of Recent Experience,* World Bank Staff Working Paper Number 581 (1983); and Paul Smoke, *Managing Public Sector Decentralization in Developing Countries: Moving Beyond Conventional Recipes* (Public Admin Dev.35 2015) 250; and Malik Nadeem, *Analyzing Good Governance and Decentralization in Developing Countries* (J Pol Sci Pub Aff 2016) 4:3.

On the other hand, within the territories of various Contracting Parties, in courts, tribunals, public offices and commercial institutions and enterprises as well as in the public mind generally, all too often apostilles are seen as official foreign government endorsement or verification of the contents of documents which are produced. This is particularly so when it comes to original and certified copies of degrees, diplomas and other academic documents.[7]

The misapprehension may readily and easily be dispelled by the simple expedient of adding appropriate additional text as to the limited effect of an apostille ..”outside the box”, (i.e. outside the area or frame containing the ten numbered prescribed items of the apostille) of each apostille which is affixed.

Recommendations as to the wording of additional text have been made by the Permanent Bureau and may be found in the *Apostille Handbook* (para. 256) and online at the Apostille page of the HCCH website.

Given the value of additional text and especially in light of a recommendation by the 2009 Special Commission meeting to add additional “text” out of the box (C& R No. 85 of SC 2009) and the recognition by the 2012 Special Commission meeting of the useful nature of additional text (C & R No. 23 of SC 2012), it is most disappointing to see from the responses to the 2016 Questionnaire that fewer than 40% of the Competent Authorities include additional text “outside the box” as to the limited effect of an apostille.[8] The 2021 Questionnaire did not address the issue. It is reasonable to suppose that significant numbers of Competent Authorities still do not include “additional text”.

The threshold question

“What is a public document?” is of course the threshold question for the purpose of the Convention.

Successive Special Commission meetings have eschewed a strict constructionist approach to the terms of Article 1 of the Convention and have determined that the list of public documents enumerated in Article 1 is not exhaustive and that it is a matter for individual Contracting Parties to determine whether or not a particular document is a public document and whether or not a person or authority executing a document is doing so in an official or private capacity.[9]

There is a respectable argument that it was not open to meetings of the Special Commission to so determine. However, at present that matter is not an issue. The determination has been made and is unlikely to be revisited in the near future.

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7 In that regard, see discussion about “Diploma Mills” and apostilles in *Preliminary Document No. 5 of December 2008* prepared for SC 2009 by the Permanent Bureau.

Also see remarks on the authentication of academic credentials in the ANZCN Position Paper, *Aspects of the Apostille Convention*, Information Document No. 5 of November 2012 prepared for SC 2012.

8 The figure is approximately the same as reported in the 2012 responses to the 2012 Questionnaire..

9 See C&R 72 of SC 2009 and C & R 14 of SC2012.

The determination does not mean that officials and bureaucrats, however senior, within the Competent Authorities or who are themselves designated as Competent Authorities have been given a *carte blanche* on behalf of their Contracting Parties to unilaterally determine which documents may properly be categorised as public documents. This appears to have occurred in several Contracting Parties in relation to certain medical certificates, translations and copies of public documents.

The primary source of domestic law in all civil law, common law and mixed law jurisdictions is legislative. In a number of jurisdictions the Sharia or other religious laws co-exist with legislation. Within the common law and mixed law jurisdictions a body of law exists which has been created by decisions of the courts.

Generally speaking, in most Contracting Parties, "public documents" are defined by statute, regulations or legislative instruments.

At common law, in a series of English cases beginning with the House of Lords decision in *Sturla v Freccia* [(1880) 5 A.C. 623], it is made clear that a public document (not otherwise categorised as such) must:

- concern a public matter;
- be made by a public officer acting in the discharge of a strict duty to inquire into and be satisfied of the truth of the facts recorded; and
- have been brought into existence as a document of record to be retained indefinitely and not as a document intended to be of temporary effect or designed to serve only a temporary purpose.[10]

Medical certificates

Accordingly, unless medical certificates or other similar certificates fall within the category of "administrative documents" under Article 1 of the Convention or are otherwise designed by legislation as "public" documents or in common law jurisdictions are deemed by case-law to be "public" documents they cannot have apostilles directly affixed to them, much as Competent Authorities may wish to do so from time to time.

Copies of public documents

Across the board, the documents known generically as 'civil status documents' or 'vital records' comprise one of the largest group of documents for which apostilles are required. Whether or not copies of those or other public documents may have apostilles affixed to them is a vexed question, the answer to which varies between countries. In the USA, the answer varies between the 56 U.S. states and territories.

It should go without saying that a simple photocopy of any public document, including a civil status document, should not be capable of having an apostille affixed to it. The possibilities of forgery are too great for the risk to be taken, whatever the source of the copy.

In many countries, original civil status records and other public documents are permanently kept by their official custodians. Only certified copies of the records are ever issued to members of the public. In those cases the "certified copies" are, for all practical purposes, treated as originals and apostilles may readily be affixed to them.

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[10] See generally Adrian Keen, *The Modern Law of Evidence* (8th ed 2010) Oxford University Press at 342-346.

Copies of public documents certified by notaries form a separate class of their own. Certifying copies of documents of domestic or foreign origin is probably the most common service that notaries around the world are called upon to provide for international purposes.

It is accepted in most countries, that their own notaries have the power to certify copies of public documents, including copies of civil status documents. In almost every jurisdiction, apostilles are routinely affixed to notarially certified copy documents, subject always to the proviso that an apostille relates to the notarial certification and not to the underlying document. However, given the degree of trust reposed in notaries and in their acts, notarially certified copy documents are, for the most part, accepted everywhere as the functional equivalents of the original documents.

The principal exceptions to the rule are found in the UK and the USA. The power of English and American notaries to perform what is perceived internationally to be a simple, basic notarial service is often heavily circumscribed - to the point where sometimes the service cannot be provided at all, or an ersatz certification is prepared which may not be acceptable for use in the country in which it is to be produced.

Translations

A simple translation of a public document cannot by its very nature possibly be itself a public document. To allow it to be so effectively means that, potentially, an apostille could be affixed to a document purporting to be a translation prepared by anybody within or without the jurisdiction. It is therefore surprising that any Competent Authority in any Contracting Party would, even for a moment, consider that the Convention could apply to a simple translation of a public document.

Does it make a difference if the translation is prepared by an "official" or "accredited" or "sworn" translator? Despite the view apparently held within a number of Contracting Parties that it does make a difference, it is submitted that in the majority of cases it should not.

Merely because a translator holds a state issued or state sanctioned credential or is in some way "recognised" by a government or semi-government authority, does not automatically mean that the translator's translation of a public document, or for that matter any other document, should be deemed to be a public document in its own right.[11]

Official recognition of competence or the grant of a state regulated or issued credential only means that the translator has been accorded professional status or has received particular training.

On the other hand, if a person, however qualified, is employed by the Contracting Party as a translator or possibly even engaged in that capacity on an *ad hoc* basis, the position is quite different. In those circumstances a translation of a public document from or into the official language of the Contracting Party which is made or verified by that translator is capable of being classified as a public document.

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[11] If it were so, it would follow that any person who holds a state issued credential or licence in any field in the particular state could potentially, as of right, prepare and execute a document in his or her field of expertise, which would be entitled to have an apostille affixed to it.

In every other case where a translation is required, the only appropriate methods of admitting the translation to the record as it were, are to either have the translation made or verified by a suitably qualified notary or to have the translator make an affidavit or sworn statement in the presence of a notary as to the accuracy of the translation that he or she has made or verified. In either event, an apostille may properly be affixed to the notary's certification.

By way of footnote to the issue. It should be carved in stone on the desk of every official who affixes apostilles to documents, that a translation is not a discrete document in itself. To have any meaning at all, either the original document which has been translated or a certified copy of it must be appended to the translation. The translator must make it clear in a covering affidavit, sworn statement or official certificate (as the case requires) that the translation is a true and fair translation of the translated document. It is a matter of concern how often this fundamental rule is breached.

The exclusion of "Administrative documents dealing directly with commercial or customs operations"

"Administrative documents dealing directly with commercial or customs operations" are excluded from the ambit of the Convention.[12]

Judging from the Responses, determining the parameters of that exclusion is still continuing to cause angst within many of the Competent Authorities as they attempt to balance the requirements of the Convention and the commercial needs of their own countries' exporters.

The exclusion is formulated in a very general way. As the Convention's rapporteur, Professor Yvon Loussouran noted in his Explanatory Report,

> The Commission nonetheless wanted to avoid the exclusion, once accepted, being given too general a meaning.[13]

It is important to bear in mind that by its wording, the exclusion does not relate to all documents which may be from time to time directly concerned with "commercial or customs operations". It only relates to "*administrative documents*" and then not to the full range of documents which could possibly be so described.

"*Administrative documents*" are of course among the documents deemed to be public documents for the purposes of the Convention. Whenever considering whether a particular document falls into that category, it is always helpful to turn to the definitive French language text of the Convention for guidance.[14]

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12 *Apostille Convention*, Article 1, paragraph 3(b).

13 Yvon Loussouran, *Explanatory Report on The Hague Convention of 5 October 1961 Abolishing the requirement of Legalisation for Foreign Public Documents* (HCCH Publications 1961), commentary on the third sub-paragraph of Article 1.

14 The execution clause of the Convention provides as follows: "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** (*emphasis added*)**.**

The expression "*les documents administratifs*" where appearing in paragraphs 2 and 3 of Article 1 is poorly translated as "*administrative documents*" in the English language text. The latter expression is woolly and imprecise and is not a term of art.[15]

On the other hand, "*les documents administratifs*" is a well understood legal descriptor of various classes of documents issued by French government and government institutions. It does not include private "administrative" documents relating, in this case, to trade and customs matters. Nor does it include documents issued by non-government organisations (such as Chambers of Commerce) which may be recognised by government, no matter how prestigious or important those organisations may be in the world of trade.

Even if a document is on its face, a "*document administratif*", it must also pass a specific test before it can be excluded from the operation of the Convention. It must have been brought into existence directly for the purposes of particular "commercial or customs operations" and not merely be a document which partially or on occasion may be used for international trade purposes.

As Professor Loussouran also observed in his Explanatory Report:

> … 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 by the Patent offices (authenticated copies, documents certifying additions to patents, etc.).[16]

While significant legally and commercially, "*administrative documents*" represent a relatively small proportion of the myriad of commercial, administrative and regulatory documents now associated with international trade and commerce.

The 2021 Questionnaire sought specific responses from Contracting Parties in relation to a limited sample of documents. That sample comprised both "*administrative documents*" (Export and Import Licences, Health and Safety Certificates and Certificates of Product Registration) and international trade documents typically issued by non-government sources (Certificates of Origin, Certificates of Conformity, End User Certificates and Commercial Invoices).

To the extent that documents used in international trade and commerce originate from private or non-government sources, they do not fall within the exclusion. As a general rule, they may readily be notarially authenticated. Apostilles may then be affixed to notarial certificates in the ordinary course.

To the extent that documents are indeed "*administrative documents*", technically they ought not have apostilles affixed to them. If however, as so often happens, persons or institutions in an importing country require a document to be "authenticated" before acceptance, then the authentication may be provided by a notary. In turn, an apostille may then be affixed to the notary's authentication which is a public document in its own right.

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[15] There are now some 22 different translations of the Convention which may be found at or accessed via the HCCH website. Without seeking to be rude or churlish, it is fair to ask whether those translations were based on the French version of the Convention and to question the extent that in relation to the exclusion the translations truly and fairly translate the meaning and purport of "*les documents administratifs*".

[16] Yvon Loussouran, above n 13.

A good example is a Certificate of Pharmaceutical Product for a Solely Export Medicine which is issued by Australia's Therapeutic Goods Administration. That Certificate is unquestionably an "administrative document" dealing directly with commercial or customs operations. As such, it is excluded from the ambit of the Convention. However, institutions in almost every Central and South American country to which certificates of this nature are sent, normally require the Certificates to be authenticated before they may be used at the destination. Invariably, notarial authentications to which apostilles are affixed are accepted without question.

Language of the apostille

The Convention specifically provides in Article 4 that the apostille may be drawn up in the official language of the authority (i.e. the country) which issues it. The Article goes on to say that the standard terms appearing in the apostille may be in a second language as well. The Convention is silent as to the language of any inserted text.

Particularly in circumstances where apostilles are drawn up in languages which are not readily accessible to most people, it is appropriate for an apostille to also have its standard terms and its inserted text written in a second language.

The two official languages of the Convention are French and English. Either language may appropriately be used as the second language for apostilles. The important thing to remember is that apostilles are designed to be used outside the countries in which they are affixed and that recipients must be able to comprehend them.

A number of bilingual and trilingual model apostilles have been developed by the Permanent Bureau and may readily be accessed on the HCCH website.

Gazing into the crystal ball

As indicated by currently available data and by the number of accessions to the *Apostille Convention* since the turn of this century, the importance and value of the Convention in the conduct of international trade and commerce and the cross-border personal and business affairs of millions of people around the world continues unabated. It is reasonable to suppose that the use and efficacy of both paper and electronic apostilles will continue during the Convention's seventh decade of life.

It is also a fair speculation that the seventh decade probably will see the resolution of most, if not all, of the operational and reporting problems identified by the Permanent Bureau and in this Paper; largely due to

- the increased availability, ubiquity and adoption of information and communication technology, viz:-
    - devices and networking computer software and systems that together allow governments and their instrumentalities (including Competent Authorities) and people to interact in the digital environment; and
    - products that create, store, transmit and receive information digitally, including educational materials (such as the Convention's handbook) instructional software and distance learning programmes; and
- improved induction training and continuing education for Competent Authority front and back office staff and for individual judicial officers and notaries who act as Competent Authorities *ex officio*.

During the seventh decade, fresh difficulties and challenges relating to the interpretation and practical application of the Convention doubtless will surface, mainly brought about by the increasing worldwide digitisation of public and private documents. With goodwill among older and newer Contracting Parties, and by harnessing advances in computing, artificial intelligence and robotics, it is likely that, in the ordinary course, those difficulties and challenges will be resolved over time.

So far this century, the *Apostille Convention* has entered into force in 56 large and small Contracting Parties; almost doubling the number of Contracting Parties as at 31 December 2000. It is not excessively optimistic to predict that by 2040 there will be a further 40 or 50 Contracting Parties drawn from the world's 73 sovereign states that are not yet party to the Convention. Those states include Canada, China, Iran, Lebanon, Malaysia and Vietnam (with a combined population of about 1.82 billion people and a combined GDP of about US$20 trillion) all of which have evinced serious interest in acceding to the Convention.

In conclusion

It should be noted that the doctrine of *rebus sic stantibus* (the right of a party to cease or limit performance of a treaty by virtue of changed circumstances) said to tacitly attach to all treaties, presently has no application to the *Apostille Convention*.

Indeed, the Convention's value to its contracting parties remains undiminished. It properly may be said that it approaches its seventh decade, the *Apostille Convention* is alive and well and can look to the future positively and with optimism.