THE OPERATION OF THE APOSTILLE CONVENTION
- now and into the future

A Position Paper

prepared by

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for

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ABSTRACT

This paper has been prepared to assist the 2009 Special Commission of the Hague Conference on Private International Law in its deliberations concerning the *Apostille Convention*.

The paper revisits the concept of "authenticity" as one of the two essential qualities required of trustworthy public documents, discusses the role of the notary in the authentication process, considers a number of aspects of the current operation of the *Apostille Convention* and makes several recommendations aimed at bringing about and ensuring consistency and uniformity in the interpretation and operation of the Convention into the future.

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The Australian and New Zealand College of Notaries

The College is a trans-Tasman organisation of notaries committed to providing the highest standards of notarial practice through excellence in education, professional development and support for its members.

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He has written extensively about notarial practice and is the author of the authoritative text book, "*Principles of Notarial Practice*" which has been sold in 21 countries.

It is expected that Professor Zablud's new book "*International Notarization and Legalization - A guide for American notaries and attorneys*" will be published in mid 2009.

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The Australian and New Zealand College of Notaries is honoured to have been granted Observer status at the 2009 Special Commission of the Hague Conference on Private International Law and presents its compliments to the Special Commission.

Introduction

As part of its preparation for the 2009 Special Commission, the HCCH Permanent Bureau prepared and circulated a comprehensive questionnaire concerning the operation of the *Apostille Convention* ("**the Questionnaire**").

Although only 24 of the Contracting States and five non-Contracting States responded to the Questionnaire in sufficient time to enable the Permanent Bureau to prepare its Summary and Analysis of Reponses to the Questionnaire as at 22 December 2008,[1] ("**the Summary of Responses**") there is no reason to suppose that the responses are not properly representative of the views of all the Contracting States in relation to the practical operation of the *Apostille Convention*. Indeed, responses received after 22 December 2008 support that proposition.

The Permanent Bureau has also prepared an important special preliminary document for the assistance of the Special Commission concerning the *Apostille Convention* as it relates to the authentication of academic credentials.[2]

A number of important issues have emerged from the concerns expressed and practices adopted by the Contracting States in relation to the authentication of academic credentials and from the responses to the Questionnaire generally.

They include:

- the failure in many quarters to understand that the effect of an apostille is limited and does not extend in any way at all to the reliability of content of the public document to which it relates: this despite the fact that the *Apostille Convention* has been on foot for nearly half a century and the terms of the Convention itself make the function of the apostille absolutely clear;
- an inadequate appreciation by a number of Competent Authorities as to the role of notaries in the authentication process and the assistance which notaries are able to provide to obviate problems;
- a divergence in administrative policies and practices between the very large number of Competent Authorities appointed by the 95 Contracting States; and
- clear imperatives to carefully nurture the development of the *Apostille Convention* and to monitor and direct its evolution in this first quarter of the 21st century, so as to maintain its relevance into the future and, as far as is reasonably practicable, to bring about consistency and uniformity in its interpretation and application.

The information and data about the *Apostille Convention* which has now been collated and made available by the Permanent Bureau has been of particular value in the preparation of this Paper.

The Australian and New Zealand College of Notaries takes this opportunity to extend its congratulations and thanks to the Permanent Bureau and its staff for the exceptional quality of the preparatory work for the 2009 Special Commission.

The concept of "authenticity"

Ever since the invention of writing, records have been created, maintained and accumulated for both public and private purposes. However, as has been observed:

> The parchment on which … [a statement] … has been inscribed is "only the skin of a dead beast" on which "the pen of the scrivener can note anything".[3]

For obvious reasons, over the ages, both the makers of records and those who rely upon them have been vitally concerned to ensure the trustworthiness of their documents.

If documents are to be trustworthy, they must have two qualities:

- reliability; and
- authenticity.

"Reliability" means that the information in a document is an accurate representation of the facts attested in it.

"Authenticity" means that the document is what it purports to be (i.e. that it is genuine) and has not been tampered with or corrupted.

Care must be taken not to confuse "authenticity" with "reliability", or to assume merely because a document is authentic that *ipso facto* the information in it is reliable.

For example, in Australia, much of the information appearing in death certificates issued by government Registrars of Births, Deaths and Marriages is provided by relatives of deceased persons. Errors in dates or spelling and the like occasionally occur. The fact that a new certificate may be issued in which an error has been corrected, does not mean that the first certificate was not "authentic".

Equally, a testamur of a "degree" issued by a diploma mill can be "authentic", even though it is not a public document capable of having an apostille affixed to it and even though the diploma mill is not an accredited university and its "degrees" have no genuine value and its student transcripts are pure fabrication.

How much weight may be put on the contents of particular documents depends upon a variety of factors, including their authenticity. Ultimately, it comes down to a matter of evaluation and judgement by recipients and occasionally, determination by courts.

Legalisation

The need to prove the authenticity of public documents originating outside their borders before allowing the use of those documents within their territories resulted in the adoption by most countries of the practice of "legalisation" of those documents.[4]

Legalisation is

> The formality by which the diplomatic or consular agents of the country in which the document has to be produced, certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.[5]

Contrary to popular belief among many banks, patent attorneys and lawyers as well as within the consular services and bureaucracies of a significant number of countries, to say nothing of members of the public, **legalisation does not in any way certify the truth or accuracy of information contained in a document, nor does it enhance the value of the document or of its contents**.

The chain of authentication

It is useful to recall that the "chain of authentication" method of proof of authenticity of public documents is still utilised in more than half the countries of the world, including China, Brazil, Indonesia, the countries comprising the Arab League, almost all the South East Asian countries and significant parts of Africa.

Administrative documents dealing directly with commercial or customs operations

The exclusion of "administrative documents dealing directly with commercial or customs operations" from the ambit of the *Apostille Convention,*[6] has always stood awkwardly. In part, this is because the underlying reasoning in support of the exclusion was tenuous[7] and in part, because, despite being superficially straightforward, the wording of the exclusion is actually quite difficult to interpret.

It should however be noted that in his *Explanatory Report on The Hague Apostille Convention*, Professor Yvon Loussouarn took the opportunity to point out that:

> The Commission nonetheless wanted to avoid the exclusion, once accepted, being given too general a meaning.[8]

Since the end of the Cold War, world trade and its associated documentary and regulatory requirements have burgeoned in a manner which could not possibly have been foreseen in the 1950s and 1960s.

The documents which the framers of the *Apostille Convention* sought to exclude from authentication now represent only a relatively small part of the myriad of administrative and regulatory documents involved in international trade and commerce. In any event, many of the excluded documents have evolved over the years in ways which, today, probably render their exclusion from the operation of the *Apostille Convention* nugatory.

It must be borne in mind that in the commercial arena, the over-riding imperative for the application of the *Apostille Convention* is that it must be responsive to current commercial needs.

Certificates of Origin, Free Sale Certificates, Certificates of Good Manufacturing Practice, Health Certificates, Halal Certificates, Food Ingredient Certificates, Certificates of Conformity and the like are among the array of commercial and regulatory documents required to be produced these days by exporters to importers and government and semi-government agencies around the world.

In the majority of cases, destination countries require those certificates either to be legalised by their consular officers or have apostilles affixed to them (as the case requires) before the certificates are capable of use within their borders. It is unacceptable for Contracting States to refuse to affix apostilles to those documents simply because, on a strict reading of the Convention, they fall within the exclusion.[9]

Those States which give the exclusion "too general a meaning" in the modern commercial world, run the risk of creating rods for their own backs as well as unnecessary burdens and obstacles for their own exporters.

It is therefore encouraging to note that in their responses to the Questionnaire most States have advised that, in their opinion, the categories of administrative documents referred to above fall within the scope of the *Apostille Convention*.[10]

It should not be forgotten that notaries have an important role to play in relation to the authentication of commercial documents required for international trade purposes, especially where States consider that particular documents are subject to the exclusion and should not have apostilles affixed.

Accordingly, where a Competent Authority is chary about affixing an apostille directly to a document on the ground that it is an "administrative document dealing with commercial operations", there can be no legitimate concern if the document is first notarised and then presented for an apostille to be affixed to the notarial certificate which is, of course, a public document in its own right.[11]

The role of notaries

A number of the practical operational difficulties associated with the Apostille which were identified in the responses to the Questionnaire appear to stem from a lack of appreciation on the part of Competent Authorities and their staff in some States as to the role of notaries in the authentication process and as to the assistance notaries are able to provide to obviate problems.

The notary, as the holder of an office of absolute trust may be found in one form or another in virtually every country of the world.[12]

While differing in status, function and number from country to country, the common thread uniting all notaries is the high level of trust accorded to them and their acts by their own governments as well as by the governments of other States.

Notaries are unlike any other functionaries. As the former Lord Chancellor of England, Lord Eldon said:

> By the law of nations, a notary has credit everywhere.[13]

Notarial Acts

In its definition of public documents, the *Apostille Convention* specifically includes "*notarial acts*".[14]

An "*act*" is an instrument that records a fact or something that has been said or agreed. A "*notarial act*" is the act of a notary authenticated by his or her signature and official seal.

All notarial acts necessarily fall into one of two categories, namely:

- acts in public form; or
- acts in private form

Also known as an "authentic" act and occasionally, as an act in "solemn" form, the notarial act in public form had its genesis in Roman and medieval times. It comprises a single narrative instrument, written by a notary in the first person, which sets out or perfects a legal obligation or records some fact or thing. Because it has been prepared by a notary, it is conclusive and has full probative value in those countries where notarial acts automatically have full recognition.

Most acts in public form are prepared in civil law jurisdictions for domestic purposes such as land transactions, inheritance cases and the establishment of companies.

On the other hand, a notarial act in private form is a certificate signed and sealed by a notary which is endorsed on or appended to another document not usually prepared by the notary, and which relates to or deals with one or more aspects of the document such as its genuine nature or validity, its legal status and legal consequences or more often, the execution of the document and the verification of the identity, capacity and authority of the person(s) executing it.

Although their preparation may be less formal and ritualistic than their public kin, notarial acts in private form have an important function in modern commercial life. They are prepared by both civil and common law notaries who must take proper care as to their content, and due concern as to the consequences which flow from any negligent mis-statement they may contain.

Notaries are also under an obligation to ensure that their private form notarial acts are endorsed on the underlying documents to which they relate or are affixed in a manner which prevents the possibility of fraud or forgery and that their acts are correctly signed and sealed.

It is pleasing to note that the responses to the Questionnaire make it clear that most Competent Authorities will not affix apostilles to notarial acts that are not properly signed and sealed or, where applicable, not securely attached to the underlying documents to which they relate.

The notarial act in private form is the notarial act most commonly encountered by Competent Authorities, yet it appears to be causing some Contracting States a degree of difficulty.

It would seem that from to time officials charged with the duty of affixing apostilles are looking through the private form notarial act to the underlying document to which it relates. They are overlooking the fact that the notarial act itself is the public document to which the apostille is affixed. The apostille authenticates the notary's signature and seal and nothing else. In consequence, problems are being perceived when none really exist.

For the purposes of affixing an apostille, notarial certificates in private form are an end in themselves. In the ordinary course, the type or content of the underlying document is an irrelevancy when it comes to the question of whether or not an apostille should be affixed to a notarial certificate.

Absent a genuine public policy objection in a particular case or for a particular class of document, there is no reason why any Competent Authority should baulk at affixing an apostille to a notarial act in private form which is endorsed upon or appended to another document.

Indeed, whenever a question arises as to whether a document is in fact a public document, if it can be notarised then the difficulty simply goes away.

The affixing of apostilles to documents certified by solicitors

There is a disturbing trend emerging in the United Kingdom and in the Republic of Ireland. The Competent Authorities of both countries affix apostilles to certifications of copy documents and other certificates signed by solicitors.

Solicitors are generally persons of standing and integrity in Ireland and in the United Kingdom. They are not notaries and they are not public officials. The certificates they sign are not public documents.

By affixing apostilles to solicitors' certificates, the Competent Authorities in Ireland and England are venturing onto dangerous ground. Properly analysed, what is really being said by the Competent Authorities is that the apostille is all that counts and that, for practical purposes, it matters not whether the apostille certifies the

signature and seal of a notary in accordance with Article 1 of the Convention or whether it certifies the signature of a mere solicitor.

However, honourable the intentions of the Irish Department of Foreign Affairs and the English Foreign and Commonwealth Office may be, their practice is unacceptable in principle while the Convention remains in its present form and ought not be allowed to continue.

Authentication of academic credentials

One of the seemingly intractable problems bedevilling the world is the level of corruption and malpractice which is creeping into the education sector at large and in particular into the tertiary sector.[15]

Forged and bogus academic credentials are a small, but increasingly significant, aspect of fraudulent practices in the education sector which, rightly, are cause for concern - both for those called upon to authenticate credentials and those to whom authenticated credentials are ultimately produced.

Perversely, the very success of the apostille as a means of authentication of public documents when combined with the fact that members of the public generally (and regrettably, many bureaucrats and others in positions of authority in Contracting States) do not appreciate the limited function and effect of an apostille, has resulted in the Permanent Bureau warning that the practice of Diploma Mills encouraging the use of apostilles

> … to lend an air of legality and validity to … [their bogus credentials]" … may … eventually undermine the effectiveness and therefore the successful operation of the Apostille Convention.[16]

In Preliminary Document 5, *The Application of the Apostille Convention to diplomas, including those issued by Diploma Mills*, the Permanent Bureau has canvassed the question of the authentication of academic credentials at length. The Australian and New Zealand College of Notaries fully supports the conclusions of the Permanent Bureau as set out in Preliminary Document 5.[17]

It is however appropriate to make several observations in relation to the authentication of academic credentials.

- It should not be forgotten that the overwhelming number of academic credentials presented for authentication are genuine. Authentication procedures must therefore primarily be geared towards accommodating the needs of those who require apostilles to be affixed to legitimate documents and copies of them.
- As far as is possible, the temptation to affix apostilles to testamurs of degrees or diplomas should be resisted, despite the requests of people and institutions in receiving countries. Experience has shown that original testamurs, if handed over to people in another country, are more often than not lost. When that occurs, the blame invariably lands at the foot of the Competent Authority or notary who authenticated the original document in the first place for not refusing to authenticate the testamur and for not insisting upon an authentication of a notarised copy instead.

- Notarised copies of academic credentials are almost always accepted around the world, even in those countries where the proposing end users of authenticated credentials usually begin by requesting authenticated original documents.
- Notaries are not obliged to certify copies of every document which is brought before them for authentication. If a notary believes that a document is fraudulent or is a forgery, he or she is duty bound not to certify a true copy.
- If there was ever an argument for the addition of an explanatory certificate to supplement the apostille, it exists in relation to apostilles affixed to authenticate academic credentials. By adding a supplementary certificate to the effect that the apostille does not verify the truth or accuracy of information contained in a document, in one fell swoop, the basis identified by the Permanent Bureau upon which certain diploma mills seek to obtain "an air or legality and validity" for their documents is swept away.

Translations of public documents

The responses to the Questionnaire also disclose another disturbing trend in a few Contracting States, namely the practice of treating translations as if they were public documents for the purposes of the *Apostille Convention*.

It would seem that some Competent Authorities are now issuing apostilles for translations *per se*, even if they have only been signed by translators and do not bear proper notarial certification of the translator's sworn affidavit or declaration verifying the fairness and accuracy of the translation.

A translation of a public document prepared by a person who is not a public official in the section or department of government which has prepared the original public document cannot by its nature be a public document, even if the translator has a government sanctioned accreditation.

Authenticating the signature of a professional translator by affixing an apostille to the translation is, in terms, similar to affixing an apostille to the certificate of a solicitor. It is a practice which is not authorised by the Convention and therefore one which ought not be allowed to continue.

As is so in most Contracting States, the appropriate practice when dealing with a translation is to have a notary take a sworn declaration or affidavit from the translator and to then have an apostille affixed to the notary's certificate (i.e. the Act in private form).

Affixing the apostille

The Convention does not stipulate a method of affixing apostilles to public documents.

The 2003 Special Commission noted the wide variety of means utilised by different states for affixing apostilles as follows:

> These means may include "rubber stamp", glue, (multi-coloured) ribbons, wax seals, impressed seals, self-adhesive stickers etc. … [when the apostille is attached to the public document as a separate document, referred to in the treaty as an "allonge"] … these means may include glue, grommets, staples etc.[18]

After having noted the different methodologies, the Special Commission decided to leave the matter in the hands of the individual states after commenting that all the means set out above are acceptable under the Convention.[19]

In a letter sent to the National Association of Secretaries of State on 9 July 2004, the U.S. Department of State wrote, among other things:

> … as a practical matter, many foreign courts expect to see Apostilles attached with a fair degree of formality. To the extent that pre-printed Apostille allonges are used, it is essential that you consider using special anti-fraud watermarked paper, stick-on gold seals, and/or wet signatures, and that you **employ a staple or grommet system that is fraud-resistant** (*emphasis added*). All Apostilles and allonges should be permanently affixed to the public document by the state issuing authority and not by the customer.[20]

It is submitted that the Special Commission erred in its decision. It should have made it clear that any means of affixing an apostille in a manner which enables it to be readily detached from the public document to which it relates is unacceptable practice which would entitle a receiving state to refuse acceptance.

It is strongly recommended that the 2009 Special Commission reverse the 2003 decision and send a clear and unequivocal message to Contracting States that, as far as is reasonably practicable, apostilles should be prepared in a manner which is fraud resistant and be permanently affixed by the Competent Authorities to the public documents to which they relate.

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 (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.

Particularly in circumstances where apostilles are drawn up in languages which are not readily accessible to most people, it is appropriate for the 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 their terms.

The Electronic Apostille Pilot Program(e-APP)

The most important recent innovation in relation to the apostille has been the launch in 2006 by the Permanent Bureau of the Electronic Apostille Pilot Program (the "**e-APP**") in co-operation with the National Notary Association of the United States of America ("**NNA**")

The 4th International Forum on E-Notarization, E-Apostilles and Digital Evidence, which was convened by the HCCH and the NNA, was held in New Orleans on 29 - 30 May 2008.

It is well worth noting the following conclusions and recommendations of the International Forum, namely:

- the spirit and letter of the *Apostille Convention* are not an obstacle to the use of modern technology to further improve the practical operation of the Convention;
- not only Competent Authorities benefit from implementing the e-APP but indeed any user of apostilles (whether as a requesting person or final recipient), because the overall operation of the Convention is greatly improved, security dramatically enhanced and fraud effectively combated;
- States should strive to achieve high standards in the issuance and management of digital credentials for Competent Authorities; and
- the model of an e-Register suggested under the e-APP is an invaluable tool to enhance the use and consultation of Apostille-Registers to check the origin of apostilles.[21]

As appears from the responses to the Questionnaire, there is considerable interest in the Program among the Contracting States.[22]

The e-APP has two independent components, namely
- the electronic register ("e-Register"); and
- the electronic apostille ("e-Apostille")

which may be implemented together or individually.[23]

It is difficult to determine when, or even if, the electronic apostille will ever generally become the preferred means of delivering the Apostille. It is however noted that several jurisdictions are now introducing the electronic apostille as part of their general service delivery.

Apart from any other reason, there is presently no discernible demand for e-Apostilles or indeed any form of electronic legalisation by recipients of legalised documents such as IP registrars, marriage celebrants, employment agencies and members of the public generally. On that basis, Contracting States cannot be criticised if they do not consider the implementation of an electronic Apostille system to be a high priority.

There is however no excuse for contracting States not to move towards the introduction of e-Registers. The technology is inexpensive and simple.[24] Inputting the data into an e-Register is neither difficult nor time consuming. The establishment of an e-Register fulfils a real need and plugs a serious hole in the administration of the apostille system.[25]

The implementation of an e-Register associated with a simple website established and controlled by the Competent Authority afford recipients of documents bearing apostilles to readily and speedily search the register and to confirm whether or not an apostille is genuine. In the past, as a practical matter, they have been unable to do so.

The need for an (ongoing) education campaign

It should not be assumed simply because a country has acceded to the *Apostille Convention* and has announced its accession and subsequently the entry into force of the Convention in its official government media, that all its public servants, lawyers, bank officials, public institutions and authorities, let alone the public generally, will immediately be familiar with the apostille system or even be aware that it has replaced consular legalisation of public documents emanating from other Convention countries.

It should also not be assumed that lawyers, bank officials, public servants etc. have even heard of 'legalisation' in any form or if they have, that they understand the difference between consular legalisation and apostillisation or appreciate that for the foreseeable future, the two systems will both operate depending upon the origin or destination of documents.

In practice, problems can and do arise where, for example, a person seeking notarial intervention in relation to a document has been told by a government official or a lawyer, a bank officer or, often enough, a helpful relative in the destination country which is subject to the *Apostille Convention*, that after being notarised, the document must first be legalised by the country's consular officials before it can be used in the destination country.

Most people will accept advice from a notary, albeit, a little reluctantly, that the affixing of an apostille has replaced consular legalisation. But there is always a small and usually voluble minority who know better or believe what they have been (wrongly) told by someone in the destination country and who, frequently, hysterically, insist on consular legalisation.

Under those circumstances, most consular officers will do the right thing and refuse to legalise documents which have been proffered to them for the purpose. Others resolve the problem by agreeing to put a consular stamp on a document which bears an apostille - an incorrect but completely understandable response to the intense pressure members of the public can often bring to bear.

The task of educating institutions and persons who advise the public in relation to apostilles and the need for the authentication of public documents emanating from their own country for production abroad, is substantial, ongoing and time consuming. Assistance in disseminating information to their own members, staff and the public, may be obtained from societies of notaries, law societies, professional bodies for accountants, courts and banks.

However, ultimately, the onus must be on the appropriate authorities in each Contracting State to be proactive when it comes to education both initially and on an ongoing basis.

It is noted that the Permanent Bureau is presently developing a practical handbook on the operation of the *Apostille Convention*. When published, the handbook will be of immense assistance to Competent Authorities and their staff in relation to practical operational issues.

In addition to developing the practical handbook, it is appropriate for the Permanent Bureau to co-ordinate training and technical assistance programmes through the new Hague Conference International Centre for Judicial Studies and Technical Assistance ("**the Centre**"), possibly together with experienced NGOs and experts, to help facilitate the implementation of the *Apostille Convention* in States which will accede to the Convention in the future and to assist in the maintenance of appropriate standards and policies in those States where the Convention has already entered into force.

The Centre is a major initiative by the Hague Conference and deserves the support of the Contracting States.

It is also appropriate that periodically, regional discussion workshops be held under the auspices of the Permanent Bureau or the Centre to enable a frank exchange of views to take place in a collegiate atmosphere, with a view to harmonising practices and policies in relation to the operation of the *Apostille Convention*.

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[1] The Questionnaire, the individual responses, the synopsis of the responses and the summary and analysis of responses may all be found at the 2009 Special Commission section of the HCCH website, www.hcch.net/specialcommission

[2] Preliminary Document No. 5, *The Application of the Apostille Convention to Diplomas, including those issued by Diploma Mills* may be found at the 2009 Special Commission section of the HCCH website.

[3] Jean-Phillipe Levy, *The Evolution of Written Proof* (Quoted by Heather MacNeil in *Trusting Records - Legal, Historical and Diplomatic Perspectives* (2000) p 8).

[4] It is thought that the practice of legalisation originated in France in the late 17th century. The French *Marine Ordinance* of 1681 apparently provided that no instrument emanating from a country where there was a French Consul in residence would be valid in France unless it had been legalised by that Consul.

[5] *Apostille Convention*, Article 2.

[6] *Apostille Convention*, Article 1 paragraph 3(b).

[7] In Professor Yvon Loussouarn's Explanatory Report on the *Apostille Convention*, he comments in Section B paragraph (c) item 2, that the "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 licenses are most often used in the country in which they were issued.".

[8] *Explanatory Report on the Apostille Convention*, Section B.

[9] See Summary of Responses, re Questions 19 to 23.

[10] Ibid.

[11] As it happens, a good many countries positively require foreign commercial documents such as Certificates of Good Manufacturing Practice and Health Certificates to be notarised before they may be produced for official purposes.

[12] For a detailed discussion on the origin and history of the notariat, see Peter Zablud, *Principles of Notarial Practice*, 2005 (Psophidian Press) caps 1 and 2.

[13] *Hutcheon v Mannington* (1802) 6 Ves 823, 824.

[14] Article 1 para (b).

[15] See generally: Jacques Hallack and Muriel Poisson, *Corrupt schools, corrupt universities : What can be done?* 2007 International Institute for Educational Planning.

[16] Preliminary Document 5.

[17] Preliminary Document 5, p17.

[18] 2003 Special Commission Conclusion No. 16.

[19] Ibid.

[20] Department of State letter regarding electronic records and formality of apostille (July 9, 2004). Found at http//www.state.gov/s1/2004/78075.htm

[21] International Forum Conclusions & Recommendations, Section I.

[22] Summary of Responses, page 42.

[23] Details of both components may be found on the e-APP website.

[24] The e-App website provides all necessary technical information.

[25] As appears from the Responses to the Questionnaire, Contracting States are almost never requested to check their registers of apostilles. This is partly because the public is not aware of the provision of the Convention enabling the checking of registers and partly because the process involved in checking is genuinely difficult.