INTRODUCTION

The first enquiry was particularly rewarding in terms of numbers and relevance of responses. We warmly thank you for the time you have taken to respond substantially.

The analysis of the 26 responses received provides a sound basis to address and deepen the discussions that will be taking place during the Geneva meeting of October 21st to 23rd. The variety of subjects and challenges raised by mediators shows the diversity of practices and usefulness of defining a common set of key principles to be followed by all actors involved in cross-border family conflicts when there is recourse to mediation: the participants, mediators and administrative and legal authorities.

Let us briefly recall the reasons for drafting an international document of reference for international family mediation processes:

The Charter establishes shared rules and examples of practices in order to:

1) Professionalize the practice by setting up international standards that enhance the reliability of international mediation processes and mediators’ professionalism; in turn that will guarantee respect for fundamental rights of people resorting to mediation world-wide;

2) Formalize the practice to facilitate access to family mediation through administrative and legal authorities and to safeguard protection of children placed in the heart of parental conflicts when they involve two or more countries.

We would also like to recall the proposed distinction between key principles and promising practices in the Charter:

1) Key principles

The adoption of a series of key principles determines a number of rules to be followed during international family mediation processes. Hence, adherence to the Charter invites all actors involved to scrupulously respect all these principles.

2) Promising practices

As a complement, examples of promising practices will serve as guidance to mediation practitioners across the world. The selected set of practices have proven to be useful and to be relevant tools as well for international family mediation practice; they fulfil the key principles they relate to. Furthermore they will serve as ideas and can be adapted according to different contexts of practice. This part of the Charter could be developed over time.
SUMMARY

The following summary reflects your feedback on the key principles and promising practices separately. These two topics will also be at the heart of the Geneva Meeting, organised in distinct and complementary blocks of discussions.

A. Key principles

A.1. Initial proposal:

Responses to the 1st enquiry show that there is a general consensus on the proposed key principles to be taken into account in a Charter for International Family Mediation Processes.

Among the key principles discussed, some concern the role and attitude of the mediator, others the rights of parties coming to mediation, and others the mediation process itself. The responses revealed that it is mainly the principles closely linked to the process that raise issues of application in different contexts and regions. Indeed, the feedback on practical challenges encountered before and during mediation aiming at respecting confidentiality and independence of the process, as well as participants’ voluntary participation and decision making was particularly abundant and substantiated.

This can be explained by the fact that, in international family mediation processes, there are principles that necessarily engage external actors, because the situations being dealt with involve two or more administrations and legal systems. Depending on the practical operation of the legal mechanisms and the instituted child protection system, administrative and legal authorities are more or less likely to interfere in the mediation process.

The Geneva meeting will discuss challenges encountered during mediation processes in groups consisting of practitioners from different parts of the world. Using the examples provided by the mediators, discussions will highlight the practical obstacles, and consequently help draft the description of principles in a way that they can be implemented in all countries represented. The Geneva Meeting will also be an opportunity to share practices that can help reduce the risk of non-compliance with these fundamental principles.

A.2. Proposal of additional key principles:

Our question on additional key principles to be taken into account in the Charter received two proposals. They will be discussed during the participatory workshops to determine whether they should actually be added to the set as additional key principles or rather be integrated under existing ones:

1) International family mediation – Transparency of processes

The key principle of transparency relates to the integrity of the process and would strengthen the right of people to be fully aware of the conduct of an international family mediation process and its progress, especially if the mediation is linked to a legal procedure.
2) International family mediation processes - Flexibility of settings

This proposal concerns the settings for cross-border family mediations in terms of location, time and conduct; it echoes specific challenges regarding cross-border family disputes (geographical distance, several cultures in play, unequal financial resources, strong emotional tensions and opportunity to see children again). Mediators and authorities must adapt to each particular situation to allow mediation to take place.

Furthermore, analysing responses received encourages us to organise the setting of key principles as "families", depending if they relate primarily to the process, to the parties or to the mediators. Based on your feedback, we also propose to group a number of principles under themes/broader notions, which would increase the legibility and understanding of the set of guiding principles in the Charter.

A.3. Revised proposal of principles:

Key principles linked to the role and attitude of mediators

- Multipartiality
- Qualifications of mediators
- Cultural awareness and sensitivity of mediators

Key principles linked to the parties

- Voluntary participation
- Decision-making by parties concerned
- Access for each party to independent legal advice
- Party-driven and party-empowered process

Key principles linked to international family mediation processes

- Independence of the process
- Confidentiality of the process
- Relevance of mediation
  - Consideration for participants’ personal safety of participants
  - Capacity to engage in mediation
  - Consideration of judicial and administrative proceedings
- International Family Mediation is centred on the interests of the child
  - Consideration of the needs and well-being of the child
  - Recognition of the rights of the child
  - The voice of the child in mediation
- Flexibility of settings for international family mediation processes
- Transparency of international family mediation processes
A.4. Wording of key principles:

Regarding the wording of the principles in the Charter (i.e. their name and description), our revised proposal adopted some names of principles frequently suggested by mediators who responded to the enquiry. However, we have taken note of all your ideas, and will take them into consideration when possible for the description of principles in the draft Charter.

B. Promising practices

B.1. Promising practices to fulfil key principles:

The survey sought to identify the obstacles and challenges you face in your mediation practice. The accuracy of your answers and your thoughts enabled us to establish a list of promising practices that can be used or adapted in different cultural contexts and mediation practices; you will find this list as an annex to the summary. To give you the opportunity to discuss and debate your ideas for promising practices during the Geneva Meeting, we defined five topics for discussion that cover all your suggestions (see document entitled “Preparatory Work”, Block 2 which gives you a closer idea of practices that can be discussed under each topic):

- Screening whether mediation is appropriate and advising parties regarding expectations of the process
- Flexibility of the mediation process
- Relations with Administrations / Authorities
- International family mediation processes are centred on the interests of the child
- Empowering the parties, and building their trust and confidence in the mediation process

The examples of practices developed and endorsed within the five groups of discussions will constitute the initial fold of Promising Practices to be considered in the Charter.

B.2. Additional reflections regarding your feedback shared through the enquiry:

Your comments on the qualifications of international family mediators highlight a number of interesting ideas for the development of training and competencies for mediators specialising in cross-border and cross-cultural family disputes. The wealth of suggestions confirms the interest and usefulness to discuss in a separate block discussions qualification, competence and training of mediators during the Geneva Meeting (also see document entitled "Preparatory Work", Block 3). To this scope, we are in the process of preparing a summary list of your ideas and proposals related to these three topics, and they can be developed and debated during the workshops. The list will integrated in the folder that you will receive from us upon arrival.

CONCLUSION

Last but not least, your responses to the enquiry also highlighted niches and missing links to exploit in your respective settings of practice to promote mediation and facilitate access to people. We have
identified a range of suggestions that could be the subject of common recommendations to the Central Authorities designated under the 1980 and 1996 Conventions, and the Brussels II bis Regulation attending the Conference on Cross-border Child Protection which runs in parallel to our meeting in Geneva. We will present this set of recommendations during a plenary session gathering all mediation practitioners and add the written document in your folders. If the recommendations are endorsed by the Enlarged Group during the Geneva Meeting, we can present them to the Central Authorities during a plenary session on Friday morning.

We hope that this undertaking will draw the attention of administrative and legal authorities involved in cross-border family litigation to the need to strengthen cooperation and coordination with the structures specialising in international family mediation and mediation practitioners at national level. To complete these recommendations, we are able to provide them with concrete examples of implementation measures.

ANNEX DOCUMENT
Ideas of promising practices stemming from feedback to Enquiry

The answers to the enquiry provided many examples and ideas for the development of a set of promising practices for inclusion in the Charter. We have organised them under the most relevant key principle. We suggest that, during the participatory workshops of the Geneva Meeting, those that seem most relevant to each of you be discussed and developed by the participants (see “Preparatory Work”, Block 2). Suggestions regarding descriptions of key principles are also provided under each respective principle for your information.

Multipartiality
Build practices that help ensure multipartiality of mediators in international family mediation processes. Following are examples of ideas shared through your feedback:

- Set up and distribute a feedback questionnaire to understand parental perception and gather in particular whether they felt fairly treated.
- Encourage and support the development of supervision, inter-vision and mutual learning in order to strengthen and keep an even-handed and fair attitude towards both parties in mediation.
- Draft a guide of conduct for mediators facing conflicts of interest during mediation (e.g., on the base of existing “Internal conflict of interest policies”).
- Clearly distinguish the phase of pre-mediation from the actual mediation: Mediators in charge of the intake, logistics and administrative formalities should not be the ones conducting mediation.
- In case of a co-mediation, create a document clarifying terms and conditions for collaboration among the two mediators to ensure the ways and means of co-mediation are understood and respected.
- A mediator who has an acknowledged position on a personal or cultural trait of a party should inform this to the parties and suggest using co-mediation.
A mediator should pay attention to:

- Reflect on personal values and identify personal levels of tolerance regarding what can come up during mediation.
- Mediators should remain aware of their personal cultural background in terms of values, beliefs, convictions, (sexual orientation- this is so specific unlike the other descriptions, seems odd – is this needed? I would suggest taking it out) in order to maintain a multi-partial and fair attitude during mediation.
- Mediators must learn to identify doubts parties may have regarding the impartiality of the process. During mediation, and when necessary, they should invite parties to express doubts or fears regarding the fairness of the mediation process and reaffirm their multi-partiality, in terms of ethnic considerations and nationalities for example.
- In case of a cross-border mediation, the mediator should make sure that the distant parent has no doubts regarding the impartiality of the mediation process.
- Mediators should avoid legal advice or therapy when they mediate.
- Mediators should avoid a settlement not only when it is illegal, unmoral or against the public order but also when it is obviously unfair to a party or child.

Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):

- Fairness
- Equivalence / equity between persons
- Neutrality of the mediators
- Impartiality of the process/Multipartiality of the mediators
- Fair attitude
- Fair support to parties/equal support to parties
- Omnipartiality
- Fair and even-handedness attitude of mediator

Qualifications of mediators

Build practices that help ensure qualification for mediators in international family mediation processes. Following are examples of ideas shared through your feedback:

- Strive for, and promote, the professionalization of cross-border family mediations, in particular by creating specialised structures and associations in one’s country. To do this, seek for guidance among existing structures.
- Establish a clear if short international protocol in relation to required competencies for mediators working in cross border international relocation and child abduction processes.
- Encourage training and professionalization, in particular regarding cross-cultural awareness and communication.
- Be familiar with the legal framework of cross-border family mediations and have access to specialist legal advice.
- Practical experience as a requirement for international family mediators.
- Develop and promote ongoing training, as well as supervision, inter-vision (among peers) and apprenticeship through co-mediation.
- Develop and promote mutual learning and sharing based on practice to strengthen competencies and knowledge of mediators on family conflicts with an international component.
- Make available DVDs in French and English (and eventually other languages) of simulated international mediations raising key questions or points for discussion in cross-border situations. These could form part of a distance learning programme.
- Training in ‘domestic’ family mediation should include an element of awareness training in international family mediation so that all family mediators are trained to identify possible risks of illegal relocation of a child to another country.

Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):

- Qualifications and competencies of mediators
- Qualifications, competencies and continuous training of mediators
- Qualification through advanced training and continuous training
- Qualifications of mediators according to national standards and (advanced) training in a cross border family mediation process.

Cultural awareness and sensitivity of mediators

Build practices that help ensure cultural awareness and sensitivity for mediators specialising in international family mediation. Following are examples of ideas shared through your feedback:

- Facilitate bi-gender co-mediation with two mediators from the legal and psycho-social fields, speaking the languages of the parties.
- Encourage training modules and practice review regarding cross-cultural awareness and communication, with the scope to sharpen and refine the mediators’ perception.
- Elaborate an international general calendar giving an overview of religious practices and communitarian rituals that can serve as tool during mediation.
- Include in training following topics around cultural specificities and community rituals/practices that may be difficult to have up-to-date knowledge about:
  - Language challenges and barriers
  - Varied cultural norms
  - Family dynamics and systems, fundamental issues of trust and loyalty, e.g. when regarding maternity.
    - Place of the absent (family or community members)
  - Representations of authority (fear, respect, lack of regard for authority)
  - Lack of familiarity with practices of mediation
- Create and elaborate a list of professionals and reliable human resources who may, at the local level, help when confronted to linguistic and cultural challenges during mediation, e.g. translators and cultural interprets.
- Create a training module regarding cultural diversity in mediation that enables mediators to tackle the potential of shared confessional and spiritual values, and draws attention to the calendars of various faiths and confessional groups.
- Organise analysis of practice and supervision focusing on the cultural elements of mediation, in order to refine the mediators’ perception and understanding on cross-cultural challenges in mediation.

A mediator should pay attention to:

- Take account of other persons who could be important for the mediation and their roles, even if they would not be in a position to make decisions. This includes persons related to the parties who could be included in the process, and also other resources that can help advance the process (translators, cultural interprets etc.).
- As a mediator, reflect on personal values, be aware of one’s own limits regarding cultures and tolerance.

Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):

- Openness to and respect for all cultures
- Culturally sensitive practice
- Intercultural awareness and respect of cultural differences

Voluntary participation

Build practices that help ensure the voluntary participation in international family mediation processes. Following are examples of ideas shared through your feedback:

- Elaborate a template for an agreement to mediate which will be undersigned by all parties at the beginning of the mediation. Mention and explain in this document the importance of full engagement and voluntary participation by each party, without any external pressures.
- Gather existing guidelines for screening processes and make them available to practitioners to adapt to their own needs.
- A judge on bench should not be a mediator, neither in a case that he adjudicates nor in a case that another judge adjudicates.
- A memorandum of understanding, also called mediation agreement, undersigned by the parties at the end of the mediation, will help to formalize the agreed arrangements reached during mediation.

Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):

- Voluntary engagement
- Personal voluntary engagement
- Free adhesion / Full adhesion
- Engaged engagement for the well-being of the child
- Voluntary participation, engagement et self determination
- Mediation is a free choice for each participant
- Necessary consent to mediation for all participants

**Decision-making by the parties**

Build practices that help ensure that decision-making by the parties is respected in international family mediation processes. Following are examples of ideas shared through your feedback:

- Promote recourse to specialist legal advice by the parties, in order to allow them to make informed decision-making.
- The principal of loyalty of the mediator to the parties is essential, especially when the court asks for information or suggestions.
- The mediator should verify adherence to the reached agreements.
- Establish a « partnership » with Central Authorities or ad hoc agreements with lawyers of both parties to guarantee respect of the agreements elaborated by the participants.
- The mediator and the parties must have access to specialist legal advice to ensure that the agreements met in mediation are compatible with the laws of all countries involved in the conflict.
- To avoid any suspicion about his/her neutrality, a mediator should avoid suggesting a settlement, as long as not all parties have asked him to assist them in this endeavour.

**Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):**

- Autonomous decision making by the parties
- Self-determination of all parties to mediation
- Mediation and mediators are under a duty to ensure that decision-making remains with the participants excepting where it is clear such outcome is likely to fall outside the law.

**Access for each party to independent legal advice**

Build practices that facilitate access for all parties to independent legal advice. Following are examples of ideas shared through your feedback:

- Encourage parties to consult their lawyers during the mediation process and before the mediation agreement is signed. They should be aware of the progress of the mediation process and agree to be reachable at any given moment (and if the mediator calls them during a session).
- Strengthen cooperation with central authorities to establish lists of professionals giving specialist legal advice (structures, lawyers etc.) in each country.
- Approach central authorities and discuss access to independent legal advice for persons wanting to engage in mediation, including potential financial support.
- Create research tools to inform families and professionals accompanying families on homologation procedures for mediation agreements: establish a directory by country.
- Inform families and professionals accompanying families on basic notions regarding national family law (directory by country).
- Sensitise specialised lawyers on international family mediation, its assets and limits, to increase understanding and use, as well as to associate them to the formalisation process (e.g. with the LEPCA Network, which can expand and become global).
- Training and information on essential legal notions related to international private law (the existence of international conventions – Hague 1980 and 1996 -, bilateral conventions and possible overlaps with criminal law).
- Mediators should sensitise the parties on both risks of interference by the lawyers and legal requirements related to the mediation.

Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):
- Access to and information on the process

Party-driven and party-empowered process (Individual capacities and voices of parties involved are at the heart of the process)

Build practices to support and empower parties during international family mediation processes. Following are examples of ideas shared through your feedback:
- Mediators should strengthen and empower the parties to recognize each other.
- The mediator should encourage the parties to tell the story of their experience and to put words on what is implicit and they consider obvious.

Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):
- This fundamental principle could be highlighted in the preamble of the Charter
- The right to a mediation process
- The right of people to be informed about recourse to mediation

Independence of the process

Build practices that help ensure independence of international family mediation processes. Following are examples of ideas shared through your feedback:
- Include in specialised training keys to understanding and managing external pressures or intervention by administrative and legal authorities.
- A mediator should seek for regular supervision in order to discuss efficient means to reaffirm the principle of independence for mediations and manage difficulties related to the intervention of external actors (like administrative and legal authorities, lawyers etc.).
- Establish a reference framework underpinning the principle of independence and define limits to guarantee its respect.

Confidentiality of international family mediation processes

Build practices that help ensure the principle of confidentiality of international family mediation processes. Following are examples of ideas shared through your feedback:

- Mediators must be aware of the limits of confidentiality foreseen in the applicable law.
- At the beginning of mediation, undersign an understanding and consent to mediate, mentioning cases where the principle of confidentiality may be suspended.
- When needed, or when mediation seems to have entered a stalemate, facilitate separate sessions (caucus) with each party, while ensuring confidentiality over what is being discussed.
- Some judges try to compel the mediator to give evidence; therefore where the applicable law on this matter is unclear it should be stated in the agreement to mediate.

Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):

- Confidentiality of the mediation process subject to the exception of the duty to report child Abuse
- Confidentiality of the information that a party reveals to the mediator in separate caucus

Consideration of personal safety of participants (Relevance of mediation)

Build practices that help ensure personal safety and security during international family mediation processes. Following are examples of ideas shared through your feedback:

- Organise a preliminary interview (individual meeting) to assess the personal safety of participants regarding pressures and tensions they experience.
- Define methods and practices for the « screening of personal safety of participants ».
- Train mediators to detect domestic violence and pathologies.
- Identify examples of situations where people coming to mediation might be at risk.
- Create an international protocol defining minimal standards for the protection of children, young persons and vulnerable adults.
- In cases of slight domestic violence, assess if mediation is really appropriate with the help of an external expert therapist; if applicable secure the mediation process, for example, by adding a therapist as a co-mediator.
- Develop resources for referral to services or authorities and/or expert consultation for personal safety and security issues.
Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):

- Risks screening
- Welfare, safety and security of parties concern is paramount
- Safety of the process/Safety of participants

International family mediation is centred on the interests of the child

Build practices that help ensure international family mediation processes are centred on the interests of the child. Following are examples of ideas shared through your feedback:

- Create or make available sensitisation videos on the needs of the child, on the impact of parental alienation, as well as the impact of a child abduction on the child.
- During mediation, open a discussion with the parties on the needs and the well-being of their children. Try to explain the rights of the child in a non-legal way.
- During mediation, intervention/involvement of a child expert, who will speak with the children and report back to the parents they have voiced.
- Promote training on child focussed and child inclusive mediation, e.g., how to introduce the voice of the child in mediation, how and when to include the child in mediation.
- Testimonies and description of child participation in mediation (positive examples and proven methods).
- Mediators should know the rights of the children and think of the best way to present them to the parents coming to mediation.
- Gather and make available various ways to include the child in mediation, e.g. screening by a child specialist, rules of conduct, and things to tell the children.
- Promote and allow child representation and his or her indirect participation to mediation.
- The mediator can encourage the parties to recognise the fundamental rights of children and adjust their personal interests to these rights and related needs (all the more as cross-border family mediations are conducted in a legal framework).

A mediator should pay attention to:

- The participation of children in mediation creates for parents a new level of understanding of their children’s experiences related to the separation, and what their needs are.
- When external experts are involved in the mediation, ensure clarification of the roles of each professional to the parties and the children participating in mediation.
- The consent of both parents and the children are mandatory for the inclusion of children in mediation.

Suggestions regarding description of the key principle shared through your feedback to the Enquiry (it will be taken into account to the possible extent):
- Consideration of the needs, well-being, and, whenever possible, voice of the child
- Children’s rights
- Consideration of the rights of the child
- International family mediation processes are underpinned by the rights of the child

Other promising practices

Prevention and Pre-mediation phase:

- Strengthen multidisciplinary collaboration among various actors involved in cross-border conflicts and the parents, to ensure the relevance of mediation in all its dimensions (security, legal and welfare protection).
- Strengthen cooperation between hotlines and cross-border family mediation services in each country (the way reunite, Missing Children among others do it).
- Develop communication tools and training (multifunctional tools) at distance.
- Support mediation professionals and formalisation process through an international organisation.
- Develop tools to prevent child abductions and to sensitise people on particular challenges of cross-border family disputes.

Post-mediation support for parties, including support after the proceedings:

- Propose mediation to accompany enforcement of court decisions.
- Propose mediation to accompany the return of the child.
- Follow up mediation: inform parents about the possibility to come back to mediation in order to readjust or modify mediation agreement according to the evolution of the family situation.