Working out a Working Group:
A View from a Former Working Group Member

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I. Introduction

The United Nations Working Group on Enforced or Involuntary Disappearances was first established in 1980 as a 'thematic mandate' of the Human Rights Commission. For more than thirty years this organ, composed of five independent experts[1] appointed by the Commission and now the Council,[2] was one of the few international procedures for thousands of families of disappeared persons seeking the truth about the fate or whereabouts of their relatives and confronted with persecution by the States responsible for those disappearances. The Working Group was at the forefront in identifying the phenomenon of 'disappearances' in the early 1980s and in defining its legal regime; those considerations were to contribute to the adoption first of the Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances of 18 December 1992 and then the Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006. Since its establishment, the Working Group has transmitted 54,557 individual cases to 105 States. The Working Group still has more than 43,563 outstanding cases in 88 States.[3]

The entry into force of the Convention for the protection of all persons against enforced disappearances in 2010 saw the establishment of a new Committee on Enforced Disappearances.[4] The Working Group and the Committee are fully complementary: whereas the Committee's competence is restricted to States Parties, the Working Group can deal with situations anywhere in the world; equally, whereas the Committee deals only with individual cases beginning after the Convention came into force for the States concerned, the Working Group continues to examine cases that occurred before the Convention came into force. Also, the Committee issues its legal findings on whether States comply with the Convention's

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[1] One per 'region', as the term is understood in the UN system, namely Africa, Latin America and the Caribbean, Asia, Eastern Europe, Western Europe and 'Others'.

[2] As per the procedure for designation set out in UNHRC Res 16/21 (25 March 2011) UN Doc A/HRC/RES/16/21.

[3] See UNHRC 'Report of the Working Group on Enforced or Involuntary Disappearances' (10 August 2015) UN Doc A/HRC/30/38, para 5.

[4] See O de Frouville, 'The Committee on Enforced Disappearances' in P Alston and F Megret (eds), *The United Nations and Human Rights: A Critical Appraisal* (2nd edn, OUP forthcoming).

provisions in individual cases, whereas the Working Group's role ends when the fate of whereabouts of the disappeared person is ascertained.[5]

But beyond these differences, Special Procedures and treaty bodies are of a different essence, even when the Special Procedure is a collective body, ie a 'working group'. Special Procedures have been, from the beginning, a practical and flexible device based on cooperation geared at the promotion, progressive development and effective implementation of human rights standards. Stating what the law is and bringing to light violations are, of course, part of the work of Special Procedures. But Special Procedures also aim at helping to create the conditions for law to be respected by States. Special Procedures are agents of change and 'catalysts for rights'.[6] It is the goal of this contribution to give some insights on the work of a working group, the Working Group on Enforced or Involuntary Disappearances (WGEID). The analysis below comes from my personal experience as a former member (2008–2014) and Chair-Rapporteur (April 2012–October 2013) of this Group. It proceeds in two parts. First, it addresses the central part of the WGEID's mandate, which is to deal with individual cases of disappearances. Then, it reviews less visible aspects of the work of this Group — namely its internal rules and procedures. This latter part, in other words, reviews the WGEID's 'private life'.

II. A Working Group at work: dealing with individual cases of disappearances

It is important to consider the origins of the WGEID's 'humanitarian mandate', before examining how the WGEID progressively developed appropriate methods of work for its implementation, and reflecting upon the difficulties and prospects.

A. The origins of the humanitarian mandate

In its very first reports the Working Group set out the main parameters concerning the implementation of its mandate and those parameters still apply today. The Working Group did not merely receive allegations about enforced disappearances in the form of the thousands of letters sent to it for the most part by victims' families.[7] It got in touch with governmental

[5] See O de Frouville, 'La complémentarité entre le Groupe de travail et le Comité des disparitions forcées' (7th International Symposium – La Convention internationale pour la protection de toutes les personnes contre les disparitions forcées. Les enjeux d'une mise en œuvre universelle et effective, Université Paris, 15 May 2012) <http://droits-fondamentaux.u-paris2.fr/article/2013/complementarite-entre-groupe-travail-comite-disparitions-forcees-actes-du-colloque> accessed 12 February 2016.

[6] T Piccone, 'The Unique Contribution of the UN's Independent Experts on Human Rights' (Brookings Institution 2010).

[7] UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (31 December 1981) UN Doc E/CN.4/1492, paras 31–32: 'the Working Group examined information on the disappearance of some 2,100

delegations in Geneva, transmitted to them the allegations it had received, and asked the delegations to meet with it to give their explanations.[8] It soon contemplated travelling to 'certain countries concerned', thereby foreshadowing the current practice of field 'visits'.[9] The Working Group provided a 'channel of communication' between families and governments.[10] It became a kind of intermediary, a 'mediator', but also a sounding drum, because all of its activities concerning cases of enforced disappearance were from the outset summarised and detailed in its public report made annually to the Commission. The Working Group examined the cases received in great detail,[11] country by country, highlighted the constants, the patterns and drew up lists of secret detention centres.[12] It appended the interventions by family associations at its sessions and responses from governments, and this was especially true of the Argentinian Government which made particularly vehement, detailed denials of any involvement in 'alleged' disappearances.

From its very first report, also, the Working Group grounded its practice in the paragraph of the Resolution establishing it, which required it to act efficiently and to adopt an emergency action procedure, delegating authority to its Chairman to transmit new cases immediately by 'cable' 'seeking information from the Government concerned and its assistance in tracing the person or persons involved'.[13]

The Working Group was aware from the outset of the importance of such a procedure:

> Thus, while the Working Group has been in existence, it may well have been realized by those, throughout the world, who contemplated the detention of a person and his disappearance, that the Group was continuously acting as the eyes

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people and transmitted to governments reports on the disappearance of some 1,950 individuals. … The present report contains information on reported enforced or involuntary disappearances in a number of countries (…): Argentina, Bolivia, Brazil, Chile, Cyprus, El Salvador, Ethiopia, Guatemala, Guinea (People's Revolutionary Republic of), Honduras, Indonesia, Iran, Lesotho, Mexico, Nicaragua, Philippines, Sri Lanka, Uganda, Uruguay and Zaire. (…) South Africa and Namibia.' The Working Group pointed out – and continues to point out today – 'disappearances may have occurred in countries other than those listed above but that, for a number of reasons, such reports, if they exist, have not reached the Group. Further, the number of cases reported to the United Nations could well be fewer, perhaps very much fewer, than the true number of cases of disappearance in a given country.'

[8] UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (26 January 1981) UN Doc E/CN.4/1435, para 35.

[9] ibid para 8. The Working Group's first visit was to Mexico in January 1982: UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (21 January 1983) UN Doc E/CN.4/1983/14, para 19.

[10] UNCHR (n 8) para 33: 'In order to help clarify the information on enforced or involuntary disappearances which it had received, the Group, in accordance with Commission resolution 20 (XXXVI) and Economic and Social Council decision 1980/120, decided to transmit the information, without expressing any opinion on its reliability or validity to the Government of the country concerned with a request that the Government transmit to the Group such information or views as it might wish.'

[11] ibid paras 49ff. Analytical summary of 500 reports submitted directly by individuals.

[12] UNCHR (n 8) para 58.

[13] ibid para 10.

> of the international community, and acting with that sense of urgency which alone can save lives.[14]

In its second report, the Working Group underscored how useful this new procedure was:

> It is in respect of requests for information on recent disappearances that the Group can claim some results in collaboration with others interested in these cases. The emergency procedure … has again been used where reliable reports of disappearances have been received. Governments have responded with news about the detention, or sometimes the release, of the person concerned. There is some indication that this procedure has saved lives; it is to be hoped that it may also have had a deterrent effect in preventing a disappearance from happening at all.[15]

In beginning to fulfil this function of examining communications, the Working Group soon found itself faced with a dilemma: should it play a quasi-judicial role, like the Human Rights Committee which, during the same period, began to adopt its first 'views' on cases of enforced disappearances in Uruguay? Or should it have primarily a more operational purpose, namely, locating disappeared persons? The WGEID ultimately opted for the latter approach, stating that:

> The Working Group has taken note of the fact that there is a considerable volume of opinion according to which Governments should assume responsibility for disappearances and discharge its responsibility. Equally, numerous touching and eloquent requests for help in discovering what has happened to the disappeared have been received. In the present state of the Group's knowledge, it is this latter humanitarian approach which has assumed prominence. Accordingly, this report does not contain pronouncements or attributions of responsibility. It will be seen that the number of conclusions and recommendations is very limited.[16]

Subsequently and until the present day, the Working Group has continued to characterise its mandate, with regard to individual communications, as a 'humanitarian' mandate. This choice

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[14] ibid.

[15] UNCHR (n 7) para 7. Even now, the WGEID insists on the major importance of the urgent procedure in terms of saving lives. See eg the joint press release by the WGEID and the CED on the occasion of the International Day of the Victims of Enforced Disappearances, 30 August 2015: 'The experience and use of the tool of urgent actions by the Committee and the Working Group show that in the case of enforced disappearance time is of the essence. The hours and day that follow a disappearance are crucial to find the disappeared person alive. The actions taken in the immediate aftermath of a disappearance cannot be left to hazards but have to be systematized in protocols that permit the immediate activation of all means at disposal for the search of the disappeared.' http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16356&LangID=E

[16] UNCHR (n 8) para 9. See also UNCHR (n 7) para 5.

is based on the observation that the primary concern of victims is to receive information about their relatives. The question of responsibility of the State or of the perpetrators of enforced disappearances comes second. This does not mean that the right to the truth prevails over the right to justice or the right to reparation. The Working Group takes a pragmatic and not a legal approach on this point: it seeks above all to end the suffering caused by uncertainty about the fate or whereabouts of the disappeared person. Even so, it does not refrain from reminding States of their international legal obligations. In fact, since 1993, the WGEID has been tasked with monitoring the implementation of the UN General Assembly 1992 Declaration for the protection of all persons against enforced disappearances.[17] This task forms the second part of its overall mandate, and is carried out mainly through field visits and through the so-called procedure of 'general allegations' discussed below. But here, we will focus particularly on the first part of the mandate, which is the review of individual cases, the so-called 'humanitarian mandate'.

B. The implementation of the humanitarian mandate: 'methods of work'

The Working Group's mandate has barely changed over time. More often than not, in renewing the WGEID mandate, the Human Rights Commission and then the Human Rights Council simply recalled their earlier resolutions without fundamentally altering the mission entrusted to the Working Group in the initial resolution 20(XXXVI). Of course, the Commission enshrined the new role the Working Group was to play with respect to the Declaration adopted in 1992. From time to time, the Commission and Council have also entrusted the Working Group with one-off mandates, for example for conducting a specific study.[18] The changes are therefore the doing of the Working Group itself, which has progressively developed its working methods of its own initiative and then steadily refined and amended them. This has been a continuous process, reflecting the Working Group's independence. The foundations of the methods of work were laid down in the Working Group's earliest reports (see above). The major principles were set out in 1985.[19] However, the earliest consolidated version of the methods of work, taking up all of the techniques

[17] See UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (5 March 1993) UN Doc E/CN.4/1993/25.

[18] See eg UNHRC 'Enforced or Involuntary Disappearances' (18 June 2010) UN Doc A/HRC/RES/14/10, in which the Council requested the WGEID to prepare a report on best practices on enforced disappearances in domestic criminal legislation. See also the study UNHRC 'Addendum – Best practices on Enforced Disappearances in Domestic Criminal Legislation' (28 December 2010) UN Doc A/HRC/16/48/Add.3.

[19] UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (23 January 1985) UN Doc E/CN.4/1985/15, paras 73ff.

developed until then, first appeared in 1988.[20] Here I shall ask about the Working Group's parameters of competence, before turning to the procedure for processing individual cases.

i. The question of competence

The Working Group has faced several difficult questions about determining its competence. Some of them have been solved recently, after years of discussions, like the jurisdiction on cases that occurred during international armed conflicts (IAC) and the *ratione temporis* jurisdiction. Others are still debated, like the competence over disappearances perpetrated by non-state actors.

a. Enforced disappearances in international armed conflicts

In 1982 Iran asked the Working Group to examine the cases of 9,405 disappeared persons in western Iran in the context of its conflict with Iraq. The representative of the Islamic Republic of Iran pointed out 'that the Working Group's activities in relation to missing persons in Cyprus provided a partial precedent for the Iranian Government's request'.[21] But the Working Group answered that 'there appear to exist substantial differences between the two situations' and decided to request 'the Commission's opinion'.[22] However, one year on, the Working Group was forced to observe that the Commission had not responded to its request for directions. In the meantime, the Working Group had received similar fresh requests in connection with the South Atlantic War (the Falklands War) and the conflict in Southern Lebanon. Being plainly anxious not to unduly increase its workload, the Working Group took the view that 'it was not within its competence under its present mandate to inquire into disappearances arising in such circumstances unless it was expressly directed to do so by the Commission. It noted the requests made for its assistance in three such situations and the material presented to it will remain in the files'.[23] Those 'circumstances' meant enforced disappearances taking place during an IAC, as opposed to times of peace or non-international armed conflict (NIAC). Such a decision was not so easy to justify, as Iran argued rightly that, from its inception, the WGEID had been following the issue of the 'missing persons' in Cyprus – which could be characterised as resulting from an IAC. Later on, the WGEID tried to give a more legal rationale to this limitation, by referring the mandate of the ICRC with

[20] UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances: Visit to Guatemala (5–9 October 1987)' (21 December 1987) UN Doc E/CN.4/1988/19, paras 16ff.
[21] UNCHR (n 9) para 120.
[22] UNCHR (n 9) paras 118–20.
[23] UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (9 December 1983) UN Doc E/CN.4/1984/21, paras 20–21.

regard to 'missing persons':

> The Working Group does not deal with situations of international armed conflict, in view of the competence of the International Committee of the Red Cross (ICRC) in such situations, as established by the Geneva Conventions of 12 August 1949 and the Protocols additional thereto.[24]

Despite this, the WGEID continued to follow the situation in Cyprus until 1997.[25] And in 1993 it reiterated its position with regard to the thousands of cases[26] it received in relation to the conflict in former Yugoslavia:

> From the very early years of its existence, the Working Group has consistently taken the view that cases occurring in the context of an international armed conflict should not be taken up by the Group. That position was occasioned by the Iran-Iraq war. The Group argued at the time that taking all cases of disappearance occurring in international armed conflicts, including the disappearance of combatants, would be a task far surpassing the resources of the Group. It also argued that, in any event, there already existed an international agency, namely the International Committee of the Red Cross, entrusted with the duty of tracing disappeared persons in such circumstances.[27]

As for the specific case of former Yugoslavia, the WGEID remarked that if it was unsure about the correct characterisation of the conflict,[28] it was inconceivable that nothing would be done in relation to missing persons. But the WGEID's mandate, methods of work and resources were manifestly inadequate:

> It is obvious that if the Group were asked to involve itself in the situation in the former Yugoslavia, its resources would be totally inadequate to meet an influx of such magnitude. (…)
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> Apart from the question of resources, the methods of work of the Working Group (…) – are not really geared to handling situations of the size and nature of the one in the Former Yugoslavia. The Group's approach has consistently been to consider cases on an individual basis; this would, of course, become an illusion if

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[24] UNCHR (n 20) para 18.
[25] The last chapter on Cyprus can be found in the 1997 annual report: UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (12 January 1998) UN Doc E/CN.4/1998/43, para 148.
[26] UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (22 December 1993) UN Doc E/CN.4/1994/26, para 37: 'Over 11,000 cases of disappearances in the former Yugoslavia were reported to the Working Group in 1992, most of which occurred during the hostilities between Croatian forces and the Yugoslav national army in 1991.'
[27] UNCHR (n 17) para 38.
[28] ibid para 39.

attempted in a situation where the disappearance are on a very large scale, an experience the Group already suffered in the case of Iraq regarding disappearance that occurred after the end of the war in Iran.

Incongruity exists between the exigencies of the situation in the former Yugoslavia and the Group's existing methods of work. (…) If the Working Group were to assume the responsibility itself, its involvement in the matter would amount, at best, to a bookkeeping exercise, which would hardly do justice to the proportions of the problem.[29]

What to do then? The WGEID picked up a recommendation made by the Special Rapporteur on the former Yugoslavia, Mr Tadeusz Mazowiecki, to create a 'special commission of inquiry' which could develop its own working methods. The Commission subsequently adopted resolution 1993/7 in which it requested the Special Rapporteur, in consultation with the WGEID, to develop proposals for a mechanism to address the issue. Following a visit in the region by a member of the WGEID,[30] the Commission, in its resolution 1994/72, decided to create a 'special process' as a joint mandate of the Special Rapporteur and of one member of the WGEID, Mr Manfred Nowak.[31]

The issue was brought back and discussed at the 95th session in November 2011. It occurred to me that our predecessors, in 1993, first had taken the right decision in deciding not to deal with those thousands of cases under their usual methods of work; they were right in believing that they would inevitably disappoint expectations, as the WGEID did not in fact have the capacity to manage such an amount of cases, having already a significant backlog to deal with. But secondly, I also thought that they could still have done something other than dealing with individual cases. Of course, eventually, the creation of a 'special process' seemed to be the good solution at that time.[32] But had the special process not been created, it would not have been an excuse for the WGEID to remain totally inactive. The WGEID could have acted through different means: it could have proposed its expertise to the States concerned, tried to act as mediators between the parties or help to devise mediation tools, help

[29] ibid paras 40–43.
[30] See UNCHR 'Report on the visit to former Yugoslavia (4–13 August 1993)' (15 December 1993) UN Doc E/CN.4/1994/26/Add.1.
[31] UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (30 December 1994) UN Doc E/CN.4/1995/36, para 43. For an account by the mandate-holder, see M Nowak, 'Monitoring Disappearances: The Difficult Path from Clarifying Past Cases to Effectively Preventing Future Ones' (1996) 4 European Human Rights Law Review 348.
[32] It ultimately eventually proved difficult to manage and Manfred Nowak resigned on 26 March 1997, '"to protest "a lack of political will" to obtain information on thousands of missing persons in the region', Press Release HR/CN/780 (Geneva, 26 March 1997).

to build protocols for the search of disappeared, undertake field visits, and of course, assess the situation against the standards of the Declaration, including through our procedure of 'general allegations'. There were, in other words, many things that the WGEID could do with regard to these situations without taking individual cases and putting itself in a situation where it would not be in a position to deal with thousands of backlog cases under its usual methods of work. That is in fact the reasoning that was more or less followed when the WGEID decided to resume its consideration of the situation in former Yugoslavia in 2010: there was a clear opinion from the members of the Group that having decided not to take up the case did not mean that we should not monitor the situation at all.[33]

So, one route would have been to decide to abolish the limitation with regard to IAC, except for individual cases. But the majority of the WGEID rather decided that there was not point in differentiating between the two types of conflicts for the purpose not only of our monitoring mandate but also of our 'humanitarian' mandate.[34] There was no disagreement on the substantial argument to support such a move. We all agreed that generally the distinction between IAC and NIAC had lost much of its significance, in particular as far as serious crimes such as enforced disappearances were concerned. Even though the corpus of norms applicable to both types of conflicts were still different, customary law applicable to NIAC had made the distinction quite negligible, at least as far as a number of issues were concerned. And one could easily argue that if we could protect people in situations of NIAC, it was absurd not to grant the same protection to people disappeared in situations of IAC: *qui peut le plus peut le moins*! Furthermore, in a lot of recent conflicts, the two types of conflicts have overlapped – including in former Yugoslavia, which could be seen as an 'internationalised' NIAC, or in other situations like Pakistan, where a non-consented external intervention would internationalise an otherwise internal conflict. Finally, the main legal argument which had been put forward by our predecessors – that is the complementarity of roles with the competence of the ICRC under Protocol I[35] – was not convincing either, since the ICRC had extended its competence to all the 'missing' and their families in all sorts of contexts, peacetime, NIAC or IAC.

Still, the rationale of our predecessors with regard to more practical considerations remain valid; that is, the inadequacy of the WGEID's methods of work and capacity to deal

[33] See UNHRC 'Report of the Working Group on Enforced or Involuntary Disappearances: Addendum – Mission to Bosnia and Herzegovina' (28 December 2010) UN Doc A/HRC/16/48/Add.1, paras 19–20.
[34] UNHRC 'Report of the Working Group on Enforced or Involuntary Disappearances: Addendum – Mission to Timor-Leste' (26 December 2011) UN A/HRC/19/58/Rev.1, para 4.
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with thousands of cases of 'missing' persons resulting from an armed conflict, be it an IAC or a NIAC. Efforts should be made in the future to try to devise new types of procedures or to improve the existing procedure so as to overcome this issue.

b. Temporal jurisdiction

The Working Group was asked on several occasions to deal with individual cases dating from before 1945. It formally dismissed such cases on the basis that its competence did not extend back beyond the establishment of the United Nations in 1945. In point of fact, however, this position was dictated above all by pragmatic considerations, given the Working Group's scant resources and the ever-growing number of cases referred to it each year. However this position was hardly in tune with the Working Group's doctrine that enforced disappearance was a continuous crime. In 2010 the WGEID adopted its General Comment on enforced disappearance as a continuous crime in which it called upon 'tribunals and other institutions (…) to give effect to enforced disappearance as a continuing crime or human right violation for as long as all elements of the crime or the violation are not complete'.[36] It seemed quite logical that the WGEID should apply this recommendation to itself and consider information relating to enforced disappearances that commenced before 1945. Accordingly, in 2009, the Working Group decided to backtrack in part on its previous limitation of competence by agreeing to adopt a general allegation about violations of the 1992 Declaration relating to events before 1945 (namely, enforced disappearances in Spain from 1936 onwards).[37] This solution seemed a good compromise; it allowed the WGEID to deal with enforced disappearances that commenced before 1945, without taking up new individual cases which would have increased its backlog. However, in 2013, further to its visit to Spain in response to requests from families of disappeared Spaniards, the Working Group finally decided to abolish completely the *ratione temporis* limit that it had set to its competence and so accept cases of enforced disappearance before 1945. While one can sympathise with the descendants of the victims of past conflicts, it seems reasonable to think that a limit has to be set to the *ratione temporis* jurisdiction of any entity. This limit is always somewhat arbitrary. Why the creation of the UN (1945) and not the creation of the WGEID (1980)? Why 1945 and not 1919?

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[36] UNHRC 'Report of the Working Group on Enforced or Involuntary Disappearances' (26 January 2011) UN Doc A/HRC/16/48, para 5.

[37] See UNHRC 'Report of the Working Group on Enforced or Involuntary Disappearances' (21 December 2009) UN Doc A/HRC/13/31, paras 481ff.

c. Enforced disappearances and non-state actors

In 1986, the Working Group noted that several governments had informed it that 'certain groups operating in their countries were to be held responsible for cases of disappearances'. Moreover, the Working Group had also received offers of cooperation from non-governmental entities. In response, the Working Group stated its position that 'as a matter of principle, (…) such groups cannot be approached by it, with a view to investigating or clarifying cases of disappearances, which, in accordance with the rules of international law, remain the exclusive responsibility of Governments, irrespective of the alleged authorship in specific cases'.[38]

This was not to say that enforced disappearances could not be perpetrated by non-state actors. Rather what the WGEID meant, as I understand it, was: first that the State was as a matter of principle the sole entity capable of responsibility in international law; and, second, that it was not practically feasible to 'approach' non-state actors in order to request clarifications on the fate or the whereabouts of the disappeared.

In 1992 however, the Declaration went further in the description it provided in its Preamble of the concept of 'enforced':

> in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty *by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government*….

In other words, enforced disappearance was described as being only a *state* crime. Accordingly, entrenching its initial position, the Working Group excluded from its competence enforced disappearances committed by private persons. This position is reflected in its methods of work:

> The Working Group operates for purposes of its work on the basis that, in accordance with the definition contained in the preamble of the Declaration, enforced disappearances are only considered such when the act in question is perpetrated by State actors or by private individuals or organized groups (for example, paramilitary groups) acting on behalf of, with the support, direct or indirect, consent or acquiescence of, the State. Based on the above, the Working Group does not intervene in cases that are attributed to persons or groups not acting on behalf of, or with the support, direct or indirect, consent or acquiescence

[38] UN Doc E/CN.4/1986/18, para 34.

of, the Government, such as terrorist or insurgent movements fighting the Government on its own territory.[39]

The situation in former Yugoslavia also provided an opportunity to the WGEID to reassert this view. A number of the 11,000 cases received by the WGEID were enforced disappearances perpetrated by non-state actors, in particular the armed groups fighting on behalf of the Bosnian Serbs or Bosnian Croats. The WGEID considered that these cases did not fall within its mandate, which was one justification for having a 'special process'.[40]

Behind the question of competence, there is, of course, a more fundamental problem, which is one of the actual definition of enforced disappearance. Does the definition of enforced disappearance include State agency as a constituent component? This question is being increasingly debated. Extension of the definition to private actors now finds support in the 2006 Convention (article 3) but also in the Rome Statute establishing the International Criminal Court (article 7(2)(i)). Similarly, the Human Rights Committee, in a recent decision on Bosnia-Herzegovina, considered 'that the term "enforced disappearance" could be used in an extended sense, referring to disappearances initiated by forced independent of or hostile to a State party, in addition to disappearances attributable to a State party'.[41]

It is possible to reason by analogy with the crime of torture. Conceived in the crucible of human rights, the initial definition of the crime of torture, set out in the 1984 United

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[39] UNHRC 'Methods of Work' (2 May 2014) UN Doc A/HRC/WGEID/102/2, para 8. For the original formulation, which is more nuanced as it only makes a statement in terms of competence and not of substance, see UNCHR (n 20) para 19: 'In transmitting cases of disappearances, the Working Group deals exclusively with Governments, basing itself on the principle that Governments must assume responsibility for any violation of human rights on their territory. If, however, disappearances are attributed to terrorist or insurgent movements fighting the Government on its own territory, the Working Group has refrained from processing them. The Group considers that, as a matter of principle, such groups may not be approached with a view to investigating or clarifying disappearances for which they are held responsible'. See also UNHRC 'Report of the Working Group on Enforced or Involuntary Disappearances' (25 January 2007) UN Doc A/HRC/4/41, para 18: 'In the context of internal armed conflict, such as in Nepal, Uganda and Colombia, opposition forces have reportedly perpetrated disappearances. While the mandate of the Working Group is limited to violations carried out by State agents or non-State actors acting with the consent or acquiescence of the State, the Working Group condemns the practice of disappearance irrespective of who the perpetrators may be'.

[40] See UNCHR (n 26) para 42: 'In the report submitted to the Working Group in September 1993, Mr van Dongen proposed that all cases of missing persons in any part of the former Yugoslavia should be considered under a special procedure, regardless of whether the victim was a civilian (non-combatant) or a combatant, and regardless of whether the perpetrators were in effect connected to the Government or not. In other words, the target group of missing persons would be wider than the one covered by the Working Group.' See also Nowak's first report, UN Doc E/CN.4/1995/37, para 12: '(e) In principle, the special process deals with all cases of missing persons, regardless of whether the perpetrators are in effect connected to government authorities or not. Only cases that are clearly the result of common crimes are excluded; (f) It follows from the general approach of the special process that the experts submits individual cases to both the Government and de facto authorities involved at the national, regional or local levels. (…) This is another major difference from the methods of the Working Group, which deals exclusively with national Governments. As has been pointed out in Mr van Dongen's report, in the context of the former Yugoslavia the traditional method of the Working Group would be a "self-defeating approach" (E/CN.4/1994/26/Add.1, para 74)'.

[41] See eg UNHRC *Zilkija Selimović v Bosnia and Herzegovina* (17 July 2014) Comm 2003/2010, para 12.3.

Nations Convention, restricted the scope to acts perpetrated by State agents or under their aegis. When an indictment came before it as a war crime, the Trial Chamber and then the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia decided in the case of *Kunarac* that such connection with the State could not be considered a constitutive element of the crime.[42] There are certainly pros and cons to extending the definition of enforced disappearances to non-state actors and, as a consequence, extending the competence of the WGEID to find cases attributable to non-State actors admissible. The WGEID has recently decided to consider the matter, as explained in its 2015 annual report:

> The Working Group is concerned about increasing instances of abductions carried out by non-state actors, which may be tantamount of acts of enforced disappearances. The Working Group has decided to continue paying attention to and studying the question of disappearances carried out by non-state actors in order to determine if those situations fall under its mandate and, if so, what actions should be taken.[43]

ii. Processing individual cases

Discussions about the Working Group's mandate have never ceased. There have always been voices to denounce the Working Group's choice to confine itself to a 'humanitarian' mandate with respect to individual cases. Those critics considered that there was in this an unwarranted form of self-limitation and that the Working Group should take on a quasi-judicial role instead. By this it was meant that as the outcome of examining cases submitted to it, it should adopt an 'opinion' or 'findings' ruling on the State's responsibility in international law and the consequences of such responsibility, especially in terms of reparation.

The Working Group has on several occasions justified its choice to adhere to a humanitarian approach. In 1984, the Working Group examined the value of this approach as follows:

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[42] *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Appeal Judgment) ICTY-96-23 & ICTY-96-23/1-A (12 June 2002). This reasoning was apparently followed by the International Commission of Inquiry on Syria in 'Conference Room Paper: "Without a Trace: Enforced Disappearances in Syria"' (19 December 2013) para 5: 'Under international law, an act of enforced disappearance is committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, thus resulting in a human rights violation. In the context of international humanitarian law, this requirement must be interpreted to include agents of non-State actors, in order for this prohibition to retain significance in situations of non-international armed conflict such as Syria' <www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/ThematicPaperEDInSyria.pdf> accessed 9 March 2016. On enforced disappearances as a crime against humanity, see O de Frouville, *Droit international pénal* (Paris, Pedone: 2012) 173.

[43] UNHRC 'Report of the Working Group on Enforced or Involuntary Disappearances' (10 August 2015) UN Doc A/HRC/30/38, para 107.

> The essential basis of the Group's inquiries has been explained, not only in previous reports, but also in all approaches to Governments with which it has been in contact: no accusations are involved, no confessions or self-incriminations are sought. The critical fact is that only a Government has the resources which can help to solve the cases. So long as the exercise is recognized as being entirely humanitarian, neither responsibility for a disappearance nor the question of punishment enters in the Working Group's consideration … The Group's reports show that the policy has been borne out in practice. Reactions in the Commission's debates and governmental responses show that this strict and consistent approach is being increasingly recognized and relied upon. It is at present the Working Group's main source of strength, backed as it is by successive consensus approval of its actions over nearly four years in all United Nations forums.[44]

The essence of the humanitarian mandate is to be found in the methods of work; namely, the inclusion of each individual case in a special database maintained and updated by the Office of the High Commissioner for Human Rights and the repeated transmission each year of outstanding cases to the States concerned. Each case listed is updated regularly in light of the information transmitted by the two parties (State and source) for so long as the case is held in the database. The Working Group is therefore the custodian (with the Office of the High Commissioner for Human Rights) of a sort of international register of disappeared people. A register that is incomplete, admittedly, and which gives only a glimpse of the overall problem so to speak – but a stable and protected register, sheltered from the vicissitudes and disturbances of life within individual States. And so it is a guarantee that each of the disappeared persons will continue to be the subject of international attention and the State will continue to be reminded of its responsibility regardless of any changes in its government.

Each case received by the Working Group is examined against five elements that determine whether it is admissible. The author must state the victim's name, the date of disappearance, the place where the victim was arrested or abducted, the agents suspected of causing the disappearance and the measures taken by the family to determine the disappeared person's fate or whereabouts. If the communication comes from an organisation or person mandated by the family, that organisation or person must state expressly that the family has consented to the case being put before the Working Group in their name. In practice, the

[44] (n 23) para 176.

secretariat does not automatically set aside forms that do not contain all five elements, but gets back in touch with those who have submitted the cases to ask them to complete the form in full. It is only when the author fails to answer such requests that, after one year, the case is 'set aside', knowing that the source can always return later to provide the missing information and so have the case recorded in the database. This flexible approach to the 'conditions of admissibility' is consistent with the strictly humanitarian nature of the procedure, which cannot be likened to judicial proceedings.

Once the Working Group has found the case admissible, it is transmitted to the State concerned through its delegation in Geneva. The case is counted in the statistics for the State concerned and included in the Working Group's public report in the chapter for the relevant State. What happens when several countries are implicated in the enforced disappearance (either because the agents of one State abducted the person on another State's territory or because the agents of two or more countries cooperated in abducting the person)? In such instances, the Working Group practised, and in 1989 codified in its methods of work, the rule of 'territoriality';[45] namely, the information is forwarded to all 'government[s] concerned, however the case would only be counted in the statistics of the country in which the person was reportedly arrested, detained, abducted or last seen'.[46] The Working Group modified this rule in 2011. It added to its methods of work that '[i]n exceptional circumstances, and if the humanitarian mandate of the Working Group so requires', cases involving several countries may be counted in the statistics 'of a different State'.[47] In such a case, the 'territorial' State is provided with a copy of all communications exchanged with the 'other State' in the hope that it can provide information to help clarify the case.

This change was decided on by the Working Group in light of a number of situations in which enforced disappearances clearly had to be attributed to a State acting unlawfully in another State's territory. This was the case in particular of the 'abductions' ascribed to North Korea in the territory of Japan and other States. It appeared odd and above all ineffective that such cases should be addressed in the context of dialogue with the territorial State rather than the State responsible. In the humanitarian outlook of the procedure, however, such 'responsibility' or 'attribution' has no strictly legal sense inasmuch as it is based on what for the Working Group remain 'allegations' and not findings in law.

[45] UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances: Addendum – Visit to Colombia (24 October–2 November 1988)' (6 February 1989) UN Doc E/CN.4/1989/18, para 23.
[46] See UNHRC (n 36) para 16 of the methods of work.
[47] ibid para 20.

Transmission to the State is by either the *standard procedure* or the *urgent procedure*. The distinction between the two depends on the date of the disappearance. If the case occurred within three months preceding the Working Group receiving the communication, the Working Group authorises its Chair-Rapporteur by delegation to forward the communication 'through the most direct and rapid means possible'.[48] All other communications are examined by the Working Group in full at one of its three annual sessions. During its three sessions, the Working Group also examines all new information transmitted by States or sources. Often, such new information does not make it possible to reach a conclusion about the fate of the disappeared person; it is transmitted to the other party. But the Working Group may also be confronted with information that brings it to take a number of decisions and notably to put an end to a case. First, the Working Group may decide that a case is 'clarified' when 'the fate or whereabouts of a disappeared person' is clearly established'.[49] If the information about the fate or whereabouts of the disappeared person comes from the Government – and not from the family or a UN fact-finding mission, for example – the Working Group will send such information to the source and submit the case to what is called the 'six-month' rule. This means that if the source 'does not respond within six months of the date from which the State's reply was communicated to it, or if it contests the State's information on grounds that are considered unreasonable by the Working Group, the case will be considered clarified'.[50]

The Working Group may furthermore take two other types of decision that put an end to examination of a case. It may 'decide to archive a case when the competent authority specified in the relevant national law issues a declaration of absence as a result of enforced disappearance'.[51] However, such a decision may only be made if 'the relatives or other interested parties have manifested, freely and indisputably, their desire not to pursue the case any further'. The methods of work specify that 'These conditions should at all times respect the rights to truth, justice and integral reparation'.[52] Alternatively, the Working Group may 'in exceptional circumstances' decide 'to discontinue the consideration of cases where the families have manifested, freely and indisputably, their desire not to pursue the case any further, or when the source is no longer in existence or is unable to follow up the case, and the

[48] UNHRC (n 36) para 10.
[49] UNHRC (n 36) para 24.
[50] UNHRC (n 36) para 25.
[51] UNHRC (n 36) para 27.
[52] UNHRC (n 36) para 27.

steps taken by the Working Group to establish communication with other sources have proven unsuccessful'.[53]

C. Difficulties and prospects

It has to be observed that the number of cases recorded each year in the database (both standard and urgent procedures included) far outstrips the number of cases clarified, closed or archived. The total number rises continuously from year to year. Worse still, the secretariat is chronically overwhelmed by the number of cases and is unable to record them all in the database, including sometimes at the initial stage – that is, with a view to presenting them to the Working Group for it to decide on their admissibility. This has resulted in a backlog of cases, which became very large in the early 2000s. That backlog gradually dwindled and was wiped out by 2009 but has grown again since 2011. By 2014, the Working Group still had a backlog of 100 or so cases – that is, 100 or so cases which, although they have reached the secretariat, have not yet been presented to the Working Group for a determination on their admissibility. These fluctuations in backlog are not attributable to the Working Group itself but rather to the number of staff assigned to the Working Group's secretariat by the UN Office of the High Commissioner for Human Rights. With two or fewer staff, the Working Group simply cannot operate at full capacity because there are a number of tasks that cannot be performed by members who, by definition, as UN volunteers, hold down full-time jobs besides their mandate.

The Working Group has often pondered how to achieve greater efficiency in clarifying individual cases, with a view to better answering the desperate cry of families which, in some instances, place all their hopes on the WGEID.[54] In the early 2000s, the Working Group experimented with a 'new approach' based on the idea of mediation or friendly settlement between victims' families and governments.[55] This approach was put into practice with Sri Lanka and led to the clarification of nearly 6,000 cases within a few years, a rate which was previously unheard of.[56] However, it has to be observed that most of those 'clarifications' did not shed light on the fate or whereabouts of the disappeared persons.

[53] UNHRC (n 36) para 28.

[54] See especially the summary of discussions with States and NGOs on the Working Group's methods of work, UNCHR (n 19) paras 72ff, esp para 74: 'Emphasis was placed on the need for the Working Group to obtain more concrete results, the lack of which had led to a tendency for relatives to shift their resentment against Governments to disappointment with the Working Group.'

[55] See UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (18 January 2002) UN Doc E/CN.4/2002/79, executive summary and para 288.

[56] See UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (23 December 2004) UN Doc E/CN.4/2005/65, para 303: Clarification of 5,377 cases among which 5,338 were clarified on the basis of information provided by the Government. CHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (27 December 2005) UN Doc E/CN.4/2006/56, para 486: 1193 additional cases clarified.

Rather, they resulted in fact from an agreement between the Government, families and the Working Group acting as a sort of mediator. This agreement resulted in payment of compensation in exchange for the relatives' accepting a death certificate in the absence of any body. This approach has not been adopted in other cases. It is doubtful whether it will be again. This is due to the fact that the members of the Working Group have reasserted many times since then their attachment to a clear separation between clarification and 'closure' or archiving, meaning that clarification must be based on 'detailed information' about the fate or whereabouts of the disappeared person.

In practice, the Working Group requires an address, if the person is alive, including the address of a place of detention, and a death certificate if the person is deceased. But in this latter situation, the Working Group checks, as has been the practice in the last few years, that the death certificate is based on identification of the remains of the disappeared person. Otherwise, the case is processed by the closure procedure. Conditions for closure were made more stringent in 2008 and 2009: first, closure occurs primarily on the basis of a declaration that the person is missing 'as a result of enforced disappearance' or failing that on the basis of a presumption of death (and not a death certificate). Second, closure cannot occur unless the relatives 'or other interested parties' 'have manifested, freely and indisputably, their desire not to pursue the case any further'.[57] By 'freely', the Working Group means without any form of constraint, including financial constraint. Consent granted in exchange for compensation comes under suspicion in its essence insofar as the Working Group is aware that many families are quite destitute because of their relatives' disappearance and see compensation from the State, in exchange for acceptance of a death certificate, as material support that they cannot reasonably do without.

The truth of the matter is that the main cause of the inadequate number of clarifications is not primarily attributable to the Working Group. It is States that are primarily responsible for this. The Working Group does not have the resources to conduct its own investigations. It is up to States to investigate and more specifically to put in place special-purpose search mechanisms with sufficient resources and tried-and-tested methods, ranging from investigation by collection of testimony to exhumation and identification of remains. Of course, that does not exonerate the Working Group from attempting at all times to improve its methods. In fact, efforts must be made all round and solutions can only be found through joint effort and open discussion among States, the Working Group and families. As Chair-

[57] UNHRC (n 36) para 27.

Rapporteur, I made an appeal along these lines at the Working Group's 100th session held in New York in July 2013:

> We cannot say we are satisfied to have in our database more than 42,000 unclarified cases of enforced disappearances. As we have often said to the States with which we have regular dialogue: our dearest wish would be to resolve all the cases of enforced disappearance registered under that State. Our objective is to bring the truth to the families and to put an end to their suffering as fast as possible. Holding a case in our database is therefore a synonym of failure for the Working Group.
>
> Ways and means must be found in order to resolve the individual cases examined by the Working Group. But we must be clear: the Working Group acts in this regard in the strict framework of its methods of work, conceived to make sure that the clarification of a case is done in the absolute respect to the right to truth of the families of the disappeared. We will not accept any compromise in this respect: enforced disappearance is an act of torture inflicted on families, families who have an absolute right to know the truth regarding the fate or the whereabouts of their loved ones.
>
> How to move forward? It is up to States to reflect on this together with the Working Group and the representatives of the families of the disappeared. Plans could be made to bring together all parties around a table, with a view to exchanging best practices and devising methodologies allowing the resolution of cases of enforced disappearances? This must be reflected upon.[58]

Methods of work are the 'public' side of the functioning of a Working Group. There are the written rules of procedures, known to the stakeholders, used to implement the mandate entrusted to the Working Group. But mastering the working methods is only part of what is required from a member of the Working Group. There are also numerous rules and/or practices which for the most are unwritten and which are crucial for the Working Group to function on a daily basis: these are the rules and practices on the 'private life' of the Working Group. The chapter will now turn to these.

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[58]OHCHR 'Countering Enforced Disappearances Today: Sharing Experiences and Building Strategies' (100 Sessions of the Working Group on Enforce or Involuntary Disappearances, New York, 15 July 2013) <www.frouville.org/Actualites/Entrees/2013/7/15_100_sessions_of_the_WGEID__files/WGEID-100-statement-OdeF.pdf> accessed 12 February 2016.

III. The Private Life of the Working Group: Internal Rules and Practices

The rules and practices that make up the 'private life' of the Working Group could be called the 'internal rules' of procedure. A strange feature of these rules and practices is that they change with times – they are continuously reinvented. There are two reasons for that. First, as they are unwritten, they do not enjoy the same authority and stability as 'working methods'. Second, as the members of the Working Group, as well as the members of the secretariat change, rules and practices are altered. During my tenure, I discovered that there was a lack of continuity as far as rules and practices are concerned. This appeared to me both as positive and negative. Negative because we spent quite of lot of time trying to reinvent ways of functioning when this work had already been done by our predecessors. Positive as it allowed us to keep a maximum of flexibility and to avoid the syndrome of bureaucratisation which is an almost unavoidable consequence of working in the UN environment.

As we have seen, working methods are quite complex. Giving an account of the daily 'private' life of a Working Group is even harder, however. Below I offer insights on some of the more important issues that affect aspects of this daily life of the WGEID. I shall not deal with some more particular aspects, which would require a study in itself, like visits on the field. Instead I discuss what I see as four core topics: first, chairing a Working Group; second, sessions; third, building cooperation with stakeholders; and finally, the relations with others – in particular, with victims and human rights defenders.

A. Chairing a working group: consensus building or peace-making?

i. The role of the Chair-Rapporteur

Every working group has a Chair-Rapporteur and may have one or two Vice-chairs. It is obvious that there needs to be at least one Vice-chair to supplement the Chair in case he or she is absent or not in the capacity of fulfilling the mandate. The Chair represents the WGEID at a number of official occasions or meetings, the first of them being the presentation of its annual report to the Human Rights Council and, until recently, to the Third Committee of the General Assembly. The Chair is the one who speaks out for the Working Group as a whole. He or she is generally the one who is invited to make a presentation in conferences organised by stakeholders, for instance parallel events to HRC's sessions. Most of the Working Groups also delegate their Chair to decide upon and sign press releases issued by the OHCHR. At one point this became a problem in the WGEID, as members questioned the fact that the quotations cited in the press releases were attributed solely to the Chairperson and not to the Group as a whole. As a consequence, the WGEID decided that, contrary to the practice of

other Working Groups, the name of the Chair would not appear and would be substituted by formulas such as 'The WGEID noted that … and said that…'.[59] This ceased however as the composition of the WGEID changed.[60] It is, arguably, desirable that a collective body has one representative, appearing as a figurehead and easily identifiable by stakeholders and by the press.

It is the practice that the Chair would also attend the annual meeting of mandate holders of Special Procedures – and would thus have the possibility to put forward his/her candidacy to become a member of the Coordination Committee of the Special Procedures.[61] This practice has been subject to continuous criticism. There are good reasons for this: annual meetings are a fantastic opportunity for mandate holders to meet and discuss their experience, not only as 'mandates', but also as individuals. Others oppose such participation – in particular some 'individual' Special Procedures mandate holders, in the name of a certain conception of 'equality' which would impose that each mandate is represented by one individual. But, in my view, the only serious argument that goes against having all the members present is financial – and this is mostly supported by the secretariat which insists that including all members of all working groups will represent a huge extra cost which is hardly justifiable in these times of crisis.

Further with regard to the Chair's role, most States' representatives – particularly ambassadors – like to have direct contacts with the Chair, and not with members. They appreciate having the Chair included in a country visit, although this is not always feasible, as each member generally does one mission once a year to allow a turnover between members.

Finally, the Chair is in charge of the daily work of the Working Group. In this capacity, he or she is the privileged interlocutor of the secretariat. Practically, there are almost daily contacts between the Chair and the WGEID's secretary or other members of the secretariat, either via email or by phone. This contact is partly imposed by methods of work: the Working Group delegates to its Chair-Rapporteur the task of transmitting a number of communications, notably of all urgent communications (which include urgent cases and

[59] See eg press release of 11 March 2014 on the case of Mr Somchai Neelaphaijit in Thailand, OHCHR, 'Thailand: 10 Years After Somchai's Disappearance, Family Still Awaiting Truth and Justice' (*OHCHR*, 11 March 2014) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14353&LangID=E> accessed 12 February 2016.

[60] See eg OHCHR, 'Many Government Have More Information on the Number of Mobile Phones than on the Number of Disappeared Persons' (*OHCHR*, 10 September 2015) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16462&LangID=E> accessed 12 February 2016.

[61] For more on the Coordination Committee of the Special Procedures, see M'jid's contribution to this volume.

urgent appeals).[62] But there are many other issues for which the cooperation between the Chair and the secretariat is necessary, including the preparation of sessions and other meetings, the preparation of country visits, and daily contacts with stakeholders. It is very clear that a Working Group chair must dedicate more time to the mandate than other members. The Chair is a *primus inter pares*. He or she is but one independent expert, just like his or her colleagues and deserve no more respect that the other members. But he or she undoubtedly has more responsibility and must show a great sense of dedication to the mandate.

ii. Appointing the Chair-Rapporteur

In recent years, most of the Special Procedure Working Groups have decided to design rules for the election of their officers. This was widely discussed among members of all Working Groups during special meetings that took place parallel to the annual meeting of mandate holders. In the end, all agreed that precise rules should be set, but all have adopted more or less different rules. The WGEID revised its methods of work in 2014. In doing so, it decided to include rules on elections. These rules had been previously drafted and used as 'internal rules' for some years – when it appeared that consensus was not always sufficient for the purpose of electing a new chair.[63]

The Working Group unfortunately had to use the voting procedures on several occasions in the context of electing a chair, whereas, in my opinion, consensus should have remained the rule. But the use of consensus – as we will see below – requests a lot of modesty and sense of dedication from all members. These are required from those who must agree to withdraw in a case where there is a clear majority favouring one candidature, and from those who have remained in office for a certain period of time and who must voluntary step down in order to let others put their energy, talents and new ideas at the service of the mandate. The majority of the WGEID has always maintained the position, rightly in my view, that rotation among members should not be automatic and that consideration related to 'equitable geographical distribution' should not be set out as an absolute or an exclusive criteria. The determining factors for election as chair should be the commitment of the candidate and his or her readiness to dedicate sufficient time to the mandate.

[62] See paras 39–40 of the revised methods of work (n 39).
[63] See paras 64–65 of the revised methods of work (n 39).

iii. Governance by consensus

Special Procedures Working Groups are five-member bodies, which should make them an extremely efficient and flexible tool. The condition for achieving this capacity is consensus. It is not conceivable to have a five-member working group voting on each and every matter to be decided. The least divisive vote that a working group can achieve is a majority of three against two. But most of the time one member will find him or herself in the minority, with the four other members in the majority. Such votes create frustration among members, with the temptation to issue dissenting opinions – something which has rarely been done in the history of the Working Group. Those that have been issued have mostly been on procedural issues.[64] For a chair to govern through majority is neither healthy nor productive. It only increases divisions among members and ruins the collective efficiency of the mechanism.

But first, it must be clear what consensus means. Consensus is not unanimity. Consensus is first and foremost a *process*; deciding by consensus means *building* consensus among members, which implies rounds of consultations and negotiations, in order to find a compromise position. The compromise position the Chair should be aiming at, however, is not the lowest common denominator (as is often said). Rather it is the solution that, while not raising the strict opposition of any member, best accommodates the interests of the mandate.

Building consensus may be fast for easy matters, but it may take longer for complex or controversial issues. It is one of the major tasks – if not the major task – of the Chair. The Chair's role is first to identify the issues which may divide members, and second to undertake a process of consultation in order to try to find a solution that would gather consensus. A basis for consensus building is mutual respect among members and between members and the Chair. Lack of respect for one's opinion, summary dismissal of a valid argument or of a carefully-prepared position will always lead to frustration and in the end to a request for a vote.

A well-chaired Working Group, working in harmony and consensus, is a great strength to the mandate. Not only are five persons instead of one committed to do the work,

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[64] There was a series of 'separate opinions' in relation to the length of the report, which was drastically reduced to 32 pages in 1999 and 2000 and then re-expanded from 2001. This triggered opinions first from Diego Garcia-Sayan (UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (21 December 1999) UN Doc E/CN.4/2000/64, para 145) and Manfred Nowak (UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (18 December 2000) UN Doc E/CN.4/2001/68, para 128) and then from Ivan Tosevski (UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (18 January 2002) UN Doc E/CN.4/2002/79, 67 and UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (21 January 2003) UN Doc E/CN.4/2003/70, 60), who favoured the 32-page format. See also the 'personal opinion' of Ivan Tosevski added to the WGEID's comments on the draft international convention on the protection of all persons from enforced disappearances: UNCHR 'Report of the Working Group on Enforced or Involuntary Disappearances' (18 December 2000) UN Doc E/CN.4/2001/68, 36.

but it is enriched by a plurality of views, approaches, cultures and competences. It is especially useful when dealing with countries from all continents; some experts have obviously more knowledge when dealing with a particular region or a group of countries than others. And this greatly facilitates contacts and cooperation. On the contrary, an ill-chaired working group can become hellish. When a working group comes down to a collection of oversized egos, who do not want to make any effort to listen to the point of view of others, it can rapidly become impossible to work out. Deciding by consensus becomes particularly important during sessions, where a number of decisions must be taken in a limited time.

B. In session

The Working Group holds three sessions a year – spring, summer, autumn – two of them lasting one week (five days), and the third one a week and a half (eight days). The reason for the extra time for the latter is that it is the session where the annual report to be presented to the HRC is drafted and adopted. In any case, it is a short time to do an enormous amount of work. Sessions take place in the UN premises, generally in Geneva but sometimes in New York or in other places.[65] They are serviced by the secretariat of the WGEID, and interpretation in UN official languages is provided when needed, especially during meetings with States' or other stakeholders' delegations. Sessions are 'formal', in the sense that they take place in a formal setting, with the secretariat, conference services and interpreters present. Sessions are private for the most part, as matters dealt with by the WGEID are extremely sensitive and involve most of the time individual cases and issues of protection. The debates are fully recorded, even though no transcripts or summary records are produced. In the beginning of my tenure, the secretariat used to produce informal transcripts of the sessions, based on notes taken by interns. But the secretariat stopped the practice with the consent of the WGEID. I personally regretted it, but accepted the underlying reasons, which were basically about saving time for more pressing priorities – and these were many! We asked the UN whether we could benefit – like UN treaty bodies – from the transcription service and get summary records, but the response was negative. The problem with this lack of records is that we lose memory of our 'internal rules and practices', which, as I said, are

[65] From 1981, the WGEID used to hold one session a year in New York. The practice stopped in 2003. Exceptionally the WGEID went back to New York, on the occasion of its 100th session in July 2013. The WGEID also regularly held sessions in the regions: San José, Costa Rica, 1984 (UN Doc E/CN.4/1984/15, para 18); Buenos Aires, Argentina, 1985 (UN Doc E/CN.4/1986/18, para 10); Bangkok, Thailand, 2005 (UN Doc E/CN.4/2006/56, para 24); Buenos Aires, Argentina, 2008 (UN Doc A/HRC/10/9, para 10); Rabat, Morocco, 2009 (UN Doc A/HRC/13/31, para 10); Sarajevo, Bosnia and Herzegovina, 2010 (UN Doc A/HRC/16/48, para 11); Mexico City, Mexico, 2011 (UN Doc A/HRC/19/48/Rev.1, para 11); New York City, United States of America, 2013 (UN Doc A/HRC/27/49, para 9); Buenos Aires, Argentina, 2015 (UN Doc A/HRC/30/38, para 9).

unwritten. We also lose institutional memory of our 'precedents', in particular of the rationale underlying our decisions on individual cases. It has happened several times that the WGEID had to re-discuss matters that had already been discussed and decided upon in the past, thus losing precious time – generally to come up with the same solution!

During my tenure, the activities of the Working Group have drastically increased. The WGEID has adopted a great number of complex General Comments on certain aspects or articles of the Declaration for the Protection of All Persons against Enforced Disappearances.[66] It has started studying thematic issues.[67] It also has endeavoured to carry out a thorough reflection on its methods of work which resulted in a number of important amendments and, eventually, a global revision in 2014.[68] And it worked hard to progressively change the format of its report, with several proposals and long discussions which eventually ended up with concrete results in 2013–2014.[69] Finally, as the Working Group was becoming ever-more visible, it attracted more requests for meetings during its sessions from various stakeholders and those meetings progressively took an increasing part of its session time.

The only way to undertake this increasing workload was to improve our proceedings. In my view, consensus was key to this. Discussing a controversial issue for the first time in formal session is generally a waste of time. Formal settings attract 'statements', rather than open and reasoned questioning, which is more likely to take place in an informal setting. And

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[66] During my tenure, the WGEID adopted six new General Comments: on enforced disappearances as a crime against humanity; enforced disappearances as a continuous crime; the right to the truth in relation to enforced disappearances; the right to recognition as a person before the law, in the context of enforced disappearances; children and enforced disappearances; women and enforced disappearances. See <www.ohchr.org/EN/Issues/Disappearances/Pages/GeneralComments.aspx> accessed 12 February 2016.

[67] See UNHRC 'Best Practices on Enforced Disappearance in Domestic Criminal Legislation' (28 December 2010) UN Doc A/HRC/16/48/Add.3; UNHRC 'Reparations and Enforced Disappearances' (28 January 2013) UN Doc A/HRC/22/45, paras 46–68; UNHRC 'Enforced Disappearances and Economic, Social and Cultural Rights' (10 August 2015) UN Doc A/HRC/30/38/Add.15.

[68] See revised methods of work (n 39).

[69] There have been several proposals in order to make the WGEID's report more informative and reflective of the state of enforced disappearances in the world but none gathered the necessary consensus. The process was, however, accelerated because of more technical problems. Following the WGEID's decision not to limit itself to the 32-page limit requested by the General Assembly and to revert to its previous practice, with a report of over 100 pages (which triggered Ivan Tosevski's dissent (n 66) the WGEID requested each year a derogation to the translation services, so as to have the report as a whole translated in the six UN official languages. This was put into question by the UN administration in 2013, with the result that country's sections of the 2012 report were not translated and were issued only in English (see UNHRC 'Report of the Working Group on Enforced or (28 January 2013) Involuntary Disappearances' UN Doc A/HRC/22/45, para 5). Taking note of the UNOG's refusal to translate the document as a whole, and the lack of support of the High Commissioner to the WGEID on this, the WGEID decided that it would from now on issue 'post-sessional reports' containing country's sections with a summary of the Working Group's activities on these countries during the session and, when appropriate, texts of General Comments or other documents (eg, revised methods of work) adopted during the session. It was decided that these post sessional reports would then be supplemented by an annual report, which would contain a summary of the activities during the year, possibly a thematic study (which may also be placed in annex to the main document), tables on cases and other communications, and more substantive observations on each country's situation.

there is a risk that addressing an issue in a formal context will result in protracted debate with positions being frozen, thereby reducing the chance of an evolution in views for quite a long time. This demonstrates the importance of trying to build consensus on such issues *before* the session starts – or during the session in an informal way – before discussing it in formal session. The setting up of the agenda of the session is crucial to that session's success: it may be useful to defer the consideration of certain issues to the end of the session, so as to allow time for consultations between the members. And of course if, despite those precautions, discussions get controversial, experience demonstrates that a coffee-break is generally a good way through!

We also tried to improve our proceedings with regard to cases. Previously, all cases were reviewed one by one during the session, which took a lot of time. Various possibilities were explored so as to avoid such a lengthy process. The basic idea was that instead of reviewing all the cases in session we should only review and discuss those that were, for any reason, problematic or which called a particular discussion from the WGEID. An advantage of proceeding in such a way was to identify well in advance the so-called problematic cases, and thus to possibly allow the Chair to undertake some consultations so as to try to find a consensus well in advance before the session.

Similarly, as a Chair, I tried as much as possible to avoid undertaking drafting exercises during a formal session. Drafting is always cumbersome and complicated and can only be done properly in an informal setting on the basis of a single text in one language (which would generally be English). And as obvious as this may seem to well-trained diplomats, it is not necessarily so for people who, like many independent experts appointed as mandate holders, are not accustomed to the practice of negotiation and standard setting.

C. Building cooperation with stakeholders

Special Procedures are cooperative procedures. By that it is meant first that legally they operate on the basis of the obligation of States to cooperate in good faith with the United Nations in the field of human rights, as stated in articles 55 and 56 of the UN Charter. But it also means that they cannot operate efficiently without the cooperation of States. Certainly it could be said that Special Procedures have an added value in publicising, with the UN authority and legitimacy, allegations of violations of human rights, and strengthening the naming and shaming activity of human rights activists and NGOs. But this would only be of limited added value if it did not in turn lead States to cooperate with UN mechanisms and

civil society with a view towards taking concrete measures in order to respond to the criticisms and improve the situation.

i. Virtuous cycle of cooperation

A virtuous cycle of cooperation could be mapped out as follows:

- Starting point: there is no cooperation between the Government and civil society on the search for persons who may be victims of enforced disappearances.

- Domestic civil society organisations (CSOs), possibly supported by international NGOs, transmit allegations (individual cases or general allegations) to one or several UN mechanisms, including the WGEID.

- The WGEID transmits those allegations to the State concerned, asking for its cooperation in solving those matters (either taking necessary steps to locate the disappeared person(s) or taking the necessary measures to address issues in relation with the implementation of the Declaration).

- The State agrees to cooperate with the WGEID through various means (eg, replies to the WGEID's queries, meetings followed with recommendations from the WGEID, onsite visits).

- The WGEID's recommendations are accepted by the Government who agrees to report on their implementation and to cooperate with domestic civil society (very often associations of families of the disappeared in this case) to that end.

- The Government, as well as domestic CSOs report on the implementation of the WGEID's recommendations and on further issues to be resolved.

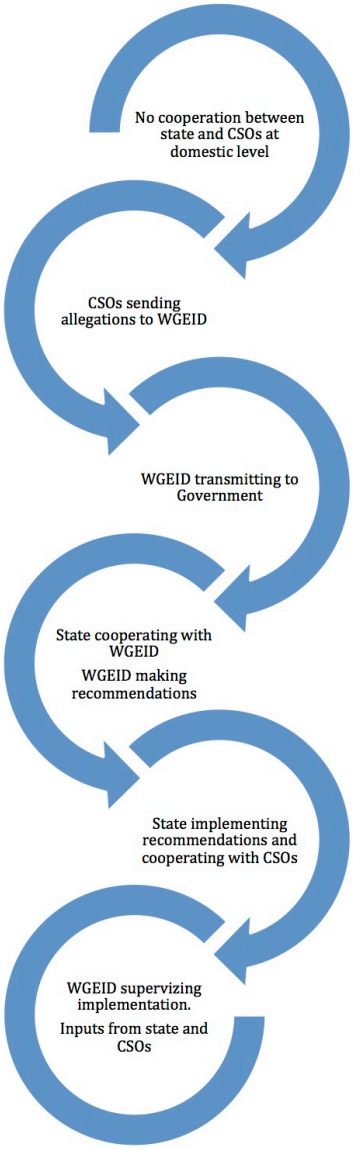

Fig. *A virtuous cycle of cooperation*

Of course, this is only a theoretical, model situation. However, aiming at realising such a model is probably the best way to achieve concrete results. A condition for this is the building of cooperation with both States and CSOs. This may appear in some situations as a contradiction – for instance, when there is a situation of direct conflict between a government and some local NGOs. One could argue that building cooperation with States is more important than building cooperation with CSOs, as the UN is first and foremost an intergovernmental organisation. Certainly States are major players and not much can be

achieved without their cooperation. But at the same time, there are few examples of anything concrete and useful being achieved without the cooperation of local CSOs. This is because they are the ones who will be able to monitor, on a daily basis, progresses made by States in the implementation of recommendations. This is also because they are generally the most knowledgeable people on issues to be addressed and should be included from the beginning in the process of clarifying facts, conceiving appropriate recommendations and implementing them. I can recall a number of processes where we had good cooperation from the government, but eventually nothing happened, either because civil society was not sufficiently implicated or because it was too weak, persecuted, or even non-existent due to continuous pressure and repression exercised by the government.

ii. Building cooperation with States

Building cooperation with States is not only about exchanging *notes verbales* and other communications. It is also about personal links and contacts. A first step is to get to know the ambassador and other people in charge of human rights issues at the country's mission in Geneva. Building trust between the members of the Working Group and the ambassador is key to success; apart from some circumstances, when the decision comes from the capital, it is generally the ambassador in Geneva who will ultimately trigger cooperation on the part of his country with the UN mechanism and recommend the level at which this cooperation should take place. In particular, most of the time, the ambassador plays an important role in a State's decision to invite a Special Procedure for a country mission and to prepare the ground for this country mission. It can even happen that one ambassador or another diplomat from the mission travels to the country when the Working Group undertakes its mission in order to see that everything goes smoothly and that the perspective from the delegation in Geneva is well understood by the different agencies and bodies of the State met by the WGEID during the mission.

Building trust starts with informal meetings, generally at the request of the Working Group. It can continue with a formal meeting during a session and then with a formal meeting with a delegation coming from the capital, and accompanied by the ambassador. This will certainly result into a deeper understanding between the two parties. And it may – or may not – result in concrete steps taken on the part of the State to achieve the goals of the mandate.

It is very clear that cooperation does not mean success. States may cooperate because they want to 'appear' cooperative.[70] It is for the Working Group to take responsibility and to know when cooperation must be interrupted, because such 'cooperation' has reached the point where it is solely serving the State's interests, rather than those of the victims.

iii. Building cooperation with CSOs

Building cooperation with CSOs may seem easier but can prove not so simple in the end. First it sounds like a truism that CSOs are willing to cooperate with and use Special Procedures to their ends. But it is not so obvious in practice. It may happen that CSOs in a country have other strategic goals or tactical plans. For instance, they may well focus their efforts on using regional bodies, and may not clearly see the added value of presenting their case to a UN body. Alternatively, they may simply be too busy with their domestic activities to engage seriously with an international body at all. It may also happen that CSOs decide to engage with a Special Procedure in the preparation of a visit, but then fail afterwards to monitor the implementation of the mission report recommendations. I was personally disappointed several times, having worked intensively with CSOs both in the preparation and during the course of a visit, by their lack of engagement in the follow-up of the process. Short-termism is unfortunately not the monopoly of governmental actors.

D. Relations with others: victims and human rights defenders

In this section I would like to address the day-to-day interactions that a working group like the WGEID has with others. I will in particular deal with those involving victims and human rights defenders. I will not deal with three other aspects which would require a study for themselves; that is, the WGEID's relationship with the OHCHR,[71] the HRC[72] and the other Special Procedures.[73]

[70] For more on this point, see the contributions of Gaer, and Freedman and Crépeau to this volume.

[71] This in particular raises the question of the dual role of the OHCHR, both as the Office of the High Commissioner for Human Rights – a human rights body in its own right – and as a 'secretariat' in charge of supporting UN bodies. For more on this point, see Connors' contribution to this volume.

[72] This includes the issue of the links between Special Procedures and the HRC – and in particular how the HRC reacts (or not) to information provided for by the Special Procedures.

[73] This touches upon the issue of coordination between Special Procedures mandate-holders and, in particular, upon the issue of the role of the annual meeting of Special Procedures and the Coordination Committee. For more on the Coordination Committee, see M'jid's contribution to this volume.

i. Engaging with victims: The 'welcoming culture'

Part of the WGEID's mandate is to assist the families of the disappeared in their quest for truth, justice and reparation. The WGEID's mandate is thus from its origins a victims-oriented mandate. I am not sure however that everything has always been done to translate this orientation into reality.

In practice, the WGEID's members and the members of the WGEID's secretariat are constantly in contact with victims. Part of the sessions are devoted to meeting with victims, principally families and relatives of the disappeared and, occasionally, survivors of enforced disappearance who are still coping with the aftermath of the crime. Similarly, a great part of the WGEID's visits in the field focus on meeting with victims.

It is however striking that although meeting with victims and dealing with victims represents an extensive part of the time of the WGEID and members of the secretariat working with them, there has never been any thorough reflection on the various dimensions of a victim-oriented perspective. This touches upon the issue of protection against reprisals, which I discuss below, but more generally it is about reflecting upon what the condition of being a victim represents, and how someone whose mission is supposedly to help should behave when dealing with victims.

Some people are more 'gifted' than others when it comes to human relations and it is my experience that attitudes towards victims vary from one person to another. A colleague once told me during a mission that he was not differentiating between victims and other people we interviewed, be they NGO professionals or government officials; in his view, all of these people were there to provide us with information so that we could fulfil our mandate. I was in complete disagreement with that statement. And in fact in the particular circumstances in which it took place, it deeply affected me, as every day we had to meet and hear the testimony of relatives of disappeared persons who were still literally destroyed, emotionally and sometimes physically, ravaged with fear, anxiety, remorse and doubt, due to the disappearance of their loved ones that had occurred sometimes 15 years before. In contrast to my colleague, I thought that speaking to a victim was in no way similar to speaking with a well-trained professional from a NGO. And I naturally adapted my behaviour, guided both by my sensitivity and compassion and by the experience of having previously worked together with victims while volunteering for a NGO. I thought in particular that recognising verbally that the person was a victim, and expressing compassion – that is not pity, but understanding of the person's pain – was a necessary preliminary to our discussion with victims. Similarly, for instance, I took great care to let the person speak without intervening too frequently. I

tried to ask few questions, and to show my capacity to listen, even sometimes for a long time, without interrupting the person, except if it was absolutely necessary due to time constraints, or due to the need to give equal time to a number of victims being on an equal footing and all having an equal right to speak and testify.

But what disturbed me throughout all my years on the Working Group was that I was uncertain about whether I was doing 'the right thing'. I was in fact in need of proper training which was not provided for by the UN.

In September 2014 a seminar was organised in Berlin on 'The Meaning and Implementation of Victims Orientation in the Treaty Bodies of the United Nations'.[74] The seminar provided an opportunity for people with different backgrounds to meet and exchange their experience and their understandings of 'victim orientation'. An idea that came up during the dialogue was the need to develop a 'welcoming culture' towards victims within the UN. This idea gave a name to a number of things we had tried to do, albeit in an unarticulated and incomplete manner. For instance, it made me think of the way we 'welcome' people who are meeting us in sessions. As I said before, sessions are very formal. Of course, there are only five of us. However, once one adds to this the members of the secretariat (from two to five people), this is quite a number of people who may be unknown to the visitors. The rooms of the Palais des Nations themselves are quite big and are an austere place to meet. The topology of the place might in itself have a psychological effect, as WGEID members sit on one side of the room and the visitors are seated in front of them. This arrangement inevitably puts us in a position of authority and may even be perceived as a sort of tribunal setting, with the experts-judges listening to witnesses.

Some of us felt all of this and tried to mitigate these potential psychological effects of a formal session. For instance, we 'welcomed' the visitors at the room's door and, with a smile, invited them to take a seat. As Chair, I would also always say a word of welcome and also expressly acknowledge the fact that the person in front of us had been victimised. I would also explain that we were here to try to help, but I would also explain the limits of our mandate, power and capacity, so as not to create false expectations. In some contexts, I would make clear that we were not UN civil servants, but independent experts, fulfilling this mandate on a voluntary basis and part-time.

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[74] See German Institute for Human Rights/Nuremberg Human Rights Centre, 'Expert Conference: The Meaning and Implementation of Victim Orientation in the Treaty Bodies of the United Nations' (German Institute for Human Rights 2015) <http://menschenrechte.org/wp-content/uploads/2015/08/DIMR_Doku_Victim_Orientation-formatiert.pdf> accessed 9 March 2016.

All of this may have been helpful and I am glad that we tried our best to give meaning to the victim orientation of our mandate. However, I feel that there is a real need for greater professionalism in this regard. In particular, I supported the Berlin seminar's recommendation that 'all experts and staff working for the various entities of the OHCHR should receive regular training' on how to incorporate a 'welcoming culture' while fulfilling their mandates.[75]

ii. Protection against reprisals

As civil society gains greater influence and is having its voice heard at the international level more and more, States are replying with more legal restrictions, but also with moral or physical attacks aimed at deterring people from defending their rights or the rights of others. The phenomenon of threats, intimidations and reprisals is certainly not new, but has grown significantly over the last 15 years.[76] Special Procedures have addressed these instances consistently, by sending urgent appeals on behalf of persons cooperating with them, and more generally on behalf of 'human rights defenders'. The WGEID has for its part developed a specific 'method of work' to address these situations: the 'prompt intervention letter'.[77]

In my experience, this method has proved quite efficient: the rapid reaction by a Special Procedure generally deters a State from 'striking hard' and prevents further serious attacks. More than that, it helps to change the perception that the legality is always on the side of the State and that the human rights defender would thus be a delinquent: if these persons are protected, it sends the message that their activity is legal according to international law and that they should not be treated as delinquents by the State. However, the growing pressure on human rights defenders in a number of countries calls for an even stronger and certainly more centralised reaction. In 2014, the UN Human Rights Council adopted Resolution 24/24 which provided for the creation of a UN focal point on reprisals, the appointment of which by the Secretary General would be a welcomed development.

IV. Conclusion

[75] *Id.*, p 22 and 26.
[76] See the reports by the Secretary General as requested by the CHR and then the HRC on 'Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights', and in particular the 2015 report (17 August 2015) UN Doc A/HRC/30/29. See also the first report of Mr Michel Forst as Special Rapporteur on Human Rights Defenders, underscoring 'global trends pointing to a threatening environment for defenders' (30 July 2015) UN Doc A/70/216.
[77] See revised methods of work (n 39) para 32.

In the end, has a Working Group proved to be preferable to an individual rapporteur in order to fulfil the mandate of assisting families of the disappearance in their quest for justice, truth and reparation? In 1999, in the course of the so-called "Selebi reform", a proposal was made to transform the two main Working Groups – on enforced disappearances and on arbitrary detention – into special rapporteurs. The proposal was finally not endorsed by the Commission, which was seen as good news by human rights defenders and families of victims.[78] Rightly or not, Working Groups are generally considered as an added strength to a mandate, or at least as an *acquis* that should not be put into question. In the case of those two Working Groups, this certainly holds true, for the simple reason that a major part of their mandate is to deal with individual cases and to take decisions upon them – and deliberation among several experts is objectively an asset in this type of activity. Still, this asset can only transform into positive results if the Working Group is following sound and well-thought working methods and internal practices, and is well managed by a responsible Chair constantly aiming at building consensus among the members. Another important dimension is the constant attention given to improving the methods of work, as new issues arise. Freedom to devise their own methods of work is, generally, key to the success of Special Procedures. The Working Group has done a great deal in the recent years to adapt its working methods. Still, challenges remain. The Working Group will have to decide if and how it will handle cases of enforced disappearances attributable to non-state actors. It will also have to face its limits when dealing with situations such a Syria, where transmission of individual cases to the government is not a proper course of action, as the disappeared or the sources may in fact face reprisals as a consequence. The Working Group, in such situations, should cooperate closely with other mechanisms, including commissions of inquiry especially set up to deal with such situations where crimes against humanity and other serious crimes are committed. It should also devise new and special methods of work, like for instance the filing of cases without transmission, so as to continue to play the role which has proven, throughout the years, to be the most precious to victims and to the international community as a whole: that of an international register of persons victims of enforced disappearances, keeping the trace and the memory alive of those who, otherwise, may fall into oblivion.

[78] About this proposal, see O. de Frouville, "Les organes subsidiaires de la Commission", *in* E. Decaux *Les Nations Unies et les droits de l'Homme. Enjeux et défis d'une réforme*, Paris, Pedone, 2006, p 180.