Document:-
A/CN.4/3285

Summary record of the 3285th meeting

Topic:
Draft report of the International Law Commission on the work of its sixty-seventh session

Extract from the Yearbook of the International Law Commission:-
2015, **vol. I**

Paragraph (21)

77. Mr. FORTEAU proposed that the expression "in order to be representative" be deleted since it could give rise to confusion.

78. Mr. MURPHY said that the basic idea that should be conveyed in the paragraph was that draft conclusion 11, paragraph 2, referred to the importance of the practice of an international organization as a whole for the purpose of subsequent agreements and subsequent practice. Yet, as currently worded, paragraph 2 focused more on the possibility of the practice of two or more organs being representative of the international organization. It was important to capture the idea that practice could arise from a plenary organ but that it could also be generated by two or more organs. He therefore proposed that the paragraph be split into two sentences; the first should end after "the practice of an organ of an international organization" and the second sentence should read: "The practice of an international organization"—and the phrase "in order to be representative" might be deleted as Mr. Forteau proposed—"can arise from the conduct of a plenary organ, but can also be generated by the joint conduct of two or more organs."

79. Sir Michael WOOD said that, as he understood it, paragraph (21) was not about the practice of an international organization as a whole, but about the practice of more than one organ. The paragraph could be simplified along the lines proposed by Mr. Forteau and Mr. Murphy, but he did not consider it appropriate to refer to "joint conduct". His preference would be to refer to the conduct of more than one organ; that conduct need not be joint but perhaps should be based on the same interpretation.

80. Mr. NOLTE (Special Rapporteur) said that the paragraph was based on the wording of the statement by the Chairperson of the Drafting Committee on the topic.[335] Moreover, the practice of an international organization for the purpose of subsequent agreements and subsequent practice could arise from the practice of one or more organs, and the one organ in question need not necessarily be a plenary organ. A case in point was the 1989 advisory opinion of the International Court of Justice in *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, which referred to the practice of the Secretary-General of the United Nations. The amendments proposed by Sir Michael and Mr. Murphy would alter the substance of the paragraph and be tantamount to saying that the practice of an international organization could only be the practice of a plenary organ or of two or more organs, which was considerably different from what was said in the report of the Chairperson of the Drafting Committee and relevant case law.

81. Mr. FORTEAU said that the paragraph reproduced almost verbatim the text of the statement by the Chairperson of the Drafting Committee on the topic, except for the expression "in order to be representative".

82. Mr. NOLTE (Special Rapporteur) said that he supported the proposal to delete that expression.

83. Mr. MURPHY said that he failed to understand how the practice of the Secretary-General related to draft conclusion 11, paragraph 2, which referred to the practice of States parties in relation to the constituent instrument of an organization and not to the practice of the organization itself. In his view, the purpose of paragraph (21) was to explain that in draft conclusion 11, paragraph 2, reference was being made to the practice of an international organization rather than to an organ of that organization, because the State parties' practice could arise from one or more organs. His intent was not to alter the substance of the text as originally drafted, but to make it clear that such practice could arise from a plenary organ as well as from one or more organs acting together.

84. Mr. NOLTE (Special Rapporteur) said he had not been suggesting that the practice of the Secretary-General in the case he had cited came under the scope of draft conclusion 11, paragraph 2, but that it could give rise to the practice of an organization. In that case, the Secretary-General had initiated a practice that had come to be accepted by the Member States without the involvement of the General Assembly or the Security Council. The basic thrust of paragraph (21) was that draft conclusion 11, paragraph 2, referred to the practice of an organization, or of one or more of its organs that might or might not reflect the practice of the States parties. He was willing to change the wording of paragraph (21), but not its basic thrust.

85. The CHAIRPERSON said that the Commission would continue its consideration of the paragraph at the next plenary meeting.

The meeting rose at 1 p.m.

3285th MEETING

Tuesday, 4 August 2015, at 3.05 p.m.

Chairperson: Mr. Narinder SINGH

Present: Mr. Caflisch, Mr. Candioti, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Kolodkin, Mr. Laraba, Mr. McRae, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Draft report of the International Law Commission on the work of its sixty-seventh session (*continued*)

Chapter VIII. *Subsequent agreements and subsequent practice in relation to the interpretation of treaties* (*continued*) (A/CN.4/L.861 and Add.1)

1. The CHAIRPERSON invited the Commission to resume its consideration of document A/CN.4/L.861/Add.1, paragraph by paragraph, beginning with paragraphs

[335] Mimeographed; available from the Commission's website, *Analytical Guide*, at: https://legal.un.org/ilc/guide/gfra.shtml.

(20) and (21) of the commentary to draft conclusion 11, which had been left pending from the previous meeting.

C. Text of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties provisionally adopted so far by the Commission (*continued*)

2. Text of the draft conclusion and commentary thereto provisionally adopted by the Commission at its sixty-seventh session (*continued*)

Commentary to draft conclusion 11 (Constituent instruments of international organizations) (*continued*)

Paragraph (20) (*concluded*)

2. Mr. NOLTE (Special Rapporteur) proposed an amendment to the first two sentences of the paragraph, to read: "The International Court of Justice, although it did not expressly mention article 31, paragraph 3 (*a*), when relying on the General Assembly Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations for the interpretation of Article 2, paragraph 4, of the Charter of the United Nations, emphasized the 'attitude of the Parties and the attitude of States towards certain General Assembly resolutions' and their consent thereto. In this context, a number of writers have also confirmed that subsequent agreements within the meaning of article 31, paragraph 3 (*a*) may, under certain circumstances, arise from or be expressed in acts of plenary organs of international organizations, such as the General Assembly of the United Nations." Noting that the reference to Alan Boyle and Christine Chinkin in the second footnote to the paragraph was less specific than the other references, he proposed its deletion and the addition at the end of the footnote of the following sentence: "All the resolutions to which the writers are referring have been adopted by consensus." In that connection, he confirmed that General Assembly resolution 51/210 of 17 December 1996, entitled "Measures to eliminate international terrorism", had also been adopted by consensus.

It was so decided.

Paragraph (20), as amended, was adopted.

Paragraph (21) (*concluded*)

3. Mr. NOLTE (Special Rapporteur) proposed that the paragraph be amended to read: "Paragraph 2 refers to the practice of an international organization. The practice of an international organization can arise from the conduct of an organ but can also be generated by the joint conduct of two or more."

4. Sir Michael WOOD said that the word "joint" was unnecessary and should be deleted.

It was so decided.

Paragraph (21), as amended, was adopted.

Paragraph (22)

5. Mr. FORTEAU suggested that, in the last sentence, the words in the French text *était une condition suffisante pour établir* should be replaced by the words *permettait d'établir*, in order to reflect more faithfully the words of the International Court of Justice in its advisory opinion regarding *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

It was so decided.

Paragraph (22), as amended, was adopted, with a minor editorial amendment to the English text.

Paragraphs (23) to (25)

Paragraphs (23) to (25) were adopted.

Paragraph (26)

6. Mr. FORTEAU, noting that, generally speaking, the commentary contained references to the literature only in English, said that it would be appropriate to add some citations from French and he suggested that, in the footnote to the paragraph, after the reference to the advisory opinion of 1996, a reference should be made to pages 379 to 384 of a book by Denys Simon, entitled *L'interprétation judiciaire des traités d'organisations internationales: morphologie des conventions et fonction jurisdictionnelle*.[336]

7. Mr. NOLTE (Special Rapporteur) said that he had no objection to the proposal. It should, however, be noted that most of the references in the commentary were taken from decisions of the International Court of Justice, which were published in English and French, both languages being authentic.

Paragraph (26), as amended, was adopted.

Paragraphs (27) to (31)

Paragraphs (27) to (31) were adopted.

Paragraph (32)

8. Mr. TLADI said that, as currently worded, the fifth sentence could imply that subsequent agreements and subsequent practice were relevant only to the object and purpose of a treaty, whereas they were also relevant to the ordinary meaning given to the terms of a treaty and to its context. He therefore suggested that the sentence be amended to read: "Indeed, as a general matter, subsequent agreements and subsequent practice may be relevant for clarifying the ordinary meaning, the context and the object and purpose of the treaty" and that a footnote be added referring to the relevant paragraphs of the first report on the topic "Subsequent agreements and subsequent practice in relation to the interpretation of treaties".[337]

9. Mr. MURPHY suggested the deletion of the last three sentences of the paragraph, which were confusing because the Special Rapporteur drew a parallel between two very different sets of circumstances, namely the subsequent agreements and subsequent practice of the parties to a treaty and the practice of international organizations as such.

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[336] D. Simon, *L'interprétation judiciaire des traités d'organisations internationales: morphologie des conventions et fonction jurisdictionnelle*, Paris, Pedone, 1981.

[337] *Yearbook … 2013*, vol. II (Part One), document A/CN.4/660.

10. Sir Michael WOOD said he did not think that the word "necessarily" in the third sentence was entirely justified, in view of what had been said by the International Court of Justice in its advisory opinion regarding *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.* It should be replaced by the word "generally".

11. The CHAIRPERSON suggested that the paragraph be left pending in order to enable the Special Rapporteur to discuss the matter with the members concerned.

Paragraph (33)

12. Mr. MURPHY said that the words "to take" should be replaced by the word "taking" in the second sentence.

It was so decided.

13. Mr. FORTEAU said that the problem raised by Mr. Tladi with regard to paragraph (32) applied also to paragraph (33). When engaging in their consultations, members should consider paragraphs (32) and (33) together and amend them in the same way.

14. The CHAIRPERSON suggested that paragraphs (32) and (33) provisionally be left open so that the Special Rapporteur could discuss the issues with the members who had made proposals and that the Commission should return to them at a later stage.

It was so decided.

Paragraph (34)

15. Mr. FORTEAU suggested that the following reference be added to the first footnote to the paragraph: "A. Peters, 'L'acte constitutif de l'organisation internationale', in *Droit des organisations internationales*, Issy-les-Moulineaux, LGDJ, 2013, pp. 216–218."

16. Mr. MURPHY suggested that the first sentence of the paragraph be amended to read: "Thus, article 5 of the 1969 Vienna Convention allows for the application of the rules of interpretation in articles 31 and 32 in a way which takes account of the practice of an international organization as such, in the interpretation of its constituent instrument, including taking into account the specific institutional character of the international organization or of the practice concerned, as an aspect of the object and purpose of the treaty." Moreover, the footnote to that sentence should be deleted, since the academic debate on the topic, although interesting, did not throw any useful light on the draft.

17. Sir Michael WOOD, after expressing support for Mr. Murphy's suggestions, said that he would favour deleting the end of the first sentence, beginning with the words "including for taking into account the specific institutional character". The first footnote to the paragraph should be retained, in his view, but a source should be cited in support of the assertion in the phrase "while such an approach has been recognized, in particular, for the founding treaties of the European Union, it has not been generally accepted for most other international organizations".

18. Mr. NOLTE (Special Rapporteur) said that he supported the amendments suggested by Mr. Murphy. He did not, however, think that the first sentence should be shortened in the way proposed by Sir Michael, since the specific institutional character of an international organization was an important factor that should be mentioned. As for the first footnote to the paragraph, he said that Tunisia had suggested the establishment of an international constitutional court and there was an ongoing debate on the constitutional character of the European Convention on Human Rights and the American Convention on Human Rights: "Pact of San José, Costa Rica". The Commission should not abstain from mentioning the debate, which was not purely academic. It should show that it was aware that the debate existed, without, however, giving its opinion. He therefore considered that the footnote in question should be retained.

19. Mr. McRAE also considered that the footnote should be retained, since many readers would be surprised if the Commission seemed not to know of the existence of the debate. He suggested, however, replacing the words "it has not been generally accepted" in the last line of the footnote by the words "it is more controversial".

20. Sir Michael WOOD said that, if the Commission decided to retain the footnote, the Special Rapporteur should add to it by referring to authors who had a different opinion on the question. Noting that some States did not have a Constitution, he wondered whether the phrase "which receives inspiration from national constitutional law" should not be deleted.

21. Mr. NOLTE (Special Rapporteur) said that Sir Michael should say which commentators rejected the constitutional interpretation of constituent instruments, so that they could be cited in the footnote in question. He proposed shortening the introductory sentence of the footnote by deleting the words "in combination with the principles and values which are enshrined in their constituent instruments" and, in view of Sir Michael's comment, amending it to say that the constitutional interpretation "may receive inspiration from national constitutional law". Lastly, he said that he supported the amendment proposed by Mr. McRae.

22. Mr. HMOUD said that he could not see a logical connection between the second sentence of the paragraph and the first. He would welcome an explanation.

23. Mr. NOLTE (Special Rapporteur) said that the second sentence implicitly referred to draft conclusion 3,[338] in which the Commission had dealt with the question of whether the interpretation of a treaty could evolve over time. If the members of the Commission considered it necessary to spell that out and to give specific examples in order to avoid any confusion, examples of the case law of the International Court of Justice could be included in the paragraph.

24. Mr. FORTEAU said that he was growing increasingly sceptical about the relevance of the paragraph; he did not understand at all what was meant by the concept

[338] *Ibid.*, vol. II (Part Two), p. 24.

of a "specific institutional character" or how it was connected with the question of the role of subsequent practice. In his view, the paragraph did not make the draft conclusion any clearer but rather complicated matters.

25. Mr. KOLODKIN concurred. The issue of the "specific institutional character" was undoubtedly important, but it was a new idea. The Drafting Committee had not discussed it and it did not reflect the Commission's discussions in plenary. It was therefore not appropriate to use the term in the paragraph.

26. Mr. NOLTE (Special Rapporteur) said that there was a difference between the reference in the footnote to the paragraph to a constitutional interpretation of constituent instruments and the reference to the "specific institutional character of the international organization" in the paragraph itself. He had added the word "specific" in order to meet the concerns of some members. Now, however, some members seemed to doubt that each international organization had its own institutional character, although that fact was supported by well-established case law. The Commission should not go over the case law again, but nor should it ignore what was an important issue. The least it could do was to mention the ongoing debate in the footnote.

27. Sir Michael WOOD said that, if there was established case law on the issue, it should be cited in the footnote in question.

28. The CHAIRPERSON suggested that the Special Rapporteur consult the members who had put forward suggestions with a view to submitting an amended version of the paragraph.

It was so decided.

Paragraph (35)

29. Mr. MURPHY suggested amending the first sentence of the paragraph in line with the corrections made to paragraph (21), so that it would read: "Paragraph 3, like paragraph 2, refers to the practice of an international organization as a whole, rather than to the practice of an organ of an international organization. The practice of the international organization in question can arise from the conduct of an organ, but it can also be generated by the conduct of two or more organs in order to be representative."

Paragraph (35), as amended, was adopted.

Paragraph (36)

30. Mr. TLADI said that there was an implicit contradiction between paragraph 3 of draft conclusion 11 and draft conclusion 5,[339] which was reflected in the last sentence, in particular. The two draft conclusions related to different points: paragraph 3 of draft conclusion 11 dealt with subsequent agreements and subsequent practice under article 31, paragraph 1, of the 1969 Vienna Convention, while draft conclusion 5 dealt with subsequent agreements and subsequent practice under article 31, paragraph 3. He therefore suggested the deletion of the last sentence of the paragraph.

31. Mr. FORTEAU said that there was indeed a contradiction between draft conclusion 11 and the provisions of other draft conclusions, in that, in the past, the Commission had defined subsequent practice under article 32 of the 1969 Vienna Convention as being the practice only of parties to treaties, whereas, in the paragraph under consideration, it held that the practice of international organizations was a practice under article 32. In his view, the problem of the connection between the draft conclusions should be addressed by retaining the last sentence of the paragraph.

32. Mr. TLADI said that, to his knowledge, the Commission had never considered that practice under article 32 was restricted to the practice of States parties.

33. Mr. MURPHY said that he agreed with Mr. Tladi on that point. He also thought that there was no point in saying that the Commission might revisit the text of draft conclusion 5, because it had already been said on two occasions in the commentary that the Commission might reconsider various points. He therefore also suggested deleting the last sentence.

34. Mr. FORTEAU said, in reply to Mr. Tladi, that paragraph 3 of draft conclusion 4[340] and paragraph 1 of draft conclusion 5 related to the parties to a treaty and that an international organization was not a party to its treaty.

35. Sir Michael WOOD suggested, as a compromise, moving the last sentence to the end of the first footnote to the paragraph.

36. Mr. SABOIA and Mr. ŠTURMA said that they supported the solution suggested by Sir Michael.

Paragraph (36) was adopted, with the amendment suggested by Sir Michael Wood.

Paragraph (37)

Paragraph (37) was adopted, with a minor editorial amendment.

Paragraph (38)

Paragraph (38) was adopted.

Paragraph (39)

37. Mr. MURPHY said that the sudden use of the term "established practice of the organization" in the last sentence could lead to confusion, since, in paragraphs 3 and 4 of draft conclusion 11, the terms used were "practice of an international organization" and "relevant rules of the organization". He was not against the use of the phrase "established practice of the organization", which also appeared in the case law of the International Court of Justice, but an explanation should be added, in view of the fact that it was the first time that it appeared in the commentary. He therefore suggested that the last sentence of paragraph (42) be moved to the end of paragraph (39).

[339] *Ibid.*, p. 34.

[340] *Ibid.*, p. 28.

38. Mr. NOLTE (Special Rapporteur) said that Mr. Murphy's concern could be addressed by making a reference to the International Court of Justice rather than to the author cited in the last footnote to paragraph (42). According to the Court, the "general practice" of an organization could be far broader than simply the organization's "own practice", which was why it would be a good idea to refer to "terminological overlapping".

39. Mr. MURPHY said that, if the three concepts "practice of the organization as such", "general practice of the organization" and "established practice of the organization" really referred to different situations, it would be better to give the reader an explanation for each one.

40. Mr. NOLTE (Special Rapporteur) said that the commentary should not specifically identify the connection between each of the concepts, especially since it was possible that the International Court of Justice had not done so, but simply say that there existed a number of terms, which could overlap.

41. Mr. ŠTURMA suggested that, for the sake of consistency, and in order to simplify the discussion, the Commission should use only the term "established practice", which had already appeared in its previous work.

42. Mr. MURPHY suggested adding a sentence that would read: "The concept of 'established practice' differs from the concept of 'practice of the organization as such' and also differs from but may overlap with the concept of 'general practice of an organization'".

43. After consulting with Mr. Murphy, Mr. NOLTE (Special Rapporteur) proposed adding the sentence "The 'established practice of the organization' is a term which is narrower in scope than the term 'practice of the international organization as such'" at the end of paragraph (39).

It was so decided.

Paragraph (39), as amended, was adopted.

Paragraph (40)

44. Mr. FORTEAU said that he was disturbed by the interpretation that the Special Rapporteur put on the case law of the Court of Justice of the European Union. He suggested deleting paragraph (40) as a whole, since the Court did not have specific case law on excluding taking agreements into account for the purposes of interpretation.

45. Mr. TLADI said that the draft article as a whole was Eurocentric. The Commission should also give consideration to the approach of other regional organizations with regard to subsequent agreements and subsequent practice.

46. Mr. NOLTE (Special Rapporteur) said that the Andean Tribunal of Justice had provided an example, but, although he had tried, it had been difficult to find sources from other regional organizations. Some practices were more openly visible, in his view. The example of case law given in the paragraph showed only that it was possible for the rules of an organization to exclude taking into account agreements between the parties regarding the interpretation of its constituent instruments.

47. Mr. TLADI said that, even though some practices were not immediately accessible, they might in fact reflect very different points of view, which might have implications for the direction taken by the discussion.

48. Mr. FORTEAU said that Mr. Tladi's comment confirmed the need to delete paragraph (40). Moreover, the Commission's practice, when it adopted a clause without prejudice, was not to comment on special rules to which that clause related, yet that was just what the paragraph was attempting to do. In view of the numerous contradictions and uncertainties involved, it would be best to delete the paragraph.

49. Sir Michael WOOD said that he was in favour of Mr. Forteau's suggestion that paragraph (40) be deleted in its entirety. A middle way was possible, however, whereby only the second half of the paragraph was deleted, after the sentence "The Andean Tribunal of Justice has adopted a similar approach", although in that case the footnote to the end of that sentence should be expanded with examples drawn from the case law of the Tribunal, rather than just containing a reference to an article in the *European Law Journal*.

50. Mr. NOLTE (Special Rapporteur) said that he could provide examples of the case law of the Andean Tribunal of Justice, if the Commission deemed it necessary. If, however, a majority of members considered that the analysis of the practice of the Court of Justice of the European Union in paragraph (40) was not relevant to the purposes of the commentary on paragraph 4 of draft conclusion 11, he would, although he was strongly of the opposite view, consent to the deletion of the paragraph, in order not to prolong the discussion unduly.

51. After an exchange of views in which Ms. JACOBSSON, Mr. FORTEAU, Mr. PETRIČ, Mr. WAKO and Mr. MURPHY took part, the CHAIRPERSON said he took it that, with the exception of Ms. Jacobsson, the other members were in favour of deleting paragraph (40).

Paragraph (40) was deleted.

Paragraph (41)

Paragraph (41) was adopted.

Paragraph (42)

52. Mr. MURPHY said that, in view of the amendments to paragraph (39), the last sentence of the paragraph should be deleted.

Paragraph (42), as amended, was adopted.

53. The CHAIRPERSON said that, since there were to be informal consultations about the paragraphs that had been left pending, the Commission would conclude its consideration of document A/CN.4/L.861/Add.1 at its next meeting.

Chapter V. *Protection of the atmosphere* (A/CN.4/L.858 and Add. 1)

54. The CHAIRPERSON invited the Commission to consider document A/CN.4/L.858, paragraph by paragraph.

A. Introduction

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraph 3

55. Sir Michael WOOD, noting that the Sixth Committee had not, as such, made any comments, suggested replacing the word "by" in the second sentence with the word "in", so that the beginning of the sentence would read: "Building upon the first report, in the light of comments made in the Commission and the Sixth Committee of the General Assembly …".

It was so decided.

56. Mr. TLADI suggested deleting the words "In each instance" at the beginning of the fourth sentence.

It was so decided.

57. Mr. MURPHY recalled that, when the Commission had adopted chapter VII on crimes against humanity, it had decided, in order to avoid any possible confusion, not to reproduce in the footnotes the drafts initially proposed by the Special Rapporteur in cases where it had adopted an amended version during the session. In accordance with that decision, the first footnote to the paragraph should be deleted.

58. Mr. MURASE (Special Rapporteur) said that, on the contrary, his understanding had been that what had been decided in the case of the chapter on crimes against humanity would not apply to all chapters. In his view, the footnote should be retained.

59. Mr. TLADI said that he had no strong views on whether the footnote should be retained or not, but the Commission should abide by its own decisions. It should therefore apply to the entirety of the report the decision that it had taken to delete the footnotes containing the Special Rapporteur's initial proposals in the chapter on crimes against humanity.

60. Mr. VÁZQUEZ-BERMÚDEZ said that he was not as certain as Mr. Tladi about the general application of the Commission's decision in that regard. In his view, the Special Rapporteur's preference should be taken into consideration and he supported the retention of the footnote, as recommended by Mr. Murase.

61. Mr. HMOUD said that the Commission's practice had never been uniform in that regard. In his view, retaining the footnote would be useful for the transparency and readability of the report.

62. Mr. CANDIOTI said that he too considered that the footnote should be retained.

63. Mr. PARK said that the Commission's report should be consistent. If the footnote in the chapter under consideration was retained, the footnotes deleted in the chapter on crimes against humanity should be restored.

64. Ms. ESCOBAR HERNÁNDEZ said that, although she was in favour of retaining the footnotes, her understanding had been that the decision on the chapter on crimes against humanity would apply to the whole of the report.

65. Mr. SABOIA said that the point of the footnote was not to provide transparency so much as to facilitate access to information. True, the drafts proposed by the Special Rapporteur could be consulted in his second report (A/CN.4/681), but it was undoubtedly more practical to allow the reader to read them directly in the Commission's report. The footnote should therefore be retained.

66. Mr. NOLTE said that experience had shown that reproducing in the footnotes to the Commission's report draft texts that were no longer relevant was confusing for States, so he was in favour of deleting the footnote in question. If, however, it was retained, as the Special Rapporteur wished, the introductory sentence should be redrafted in order to make it clearer that the text reproduced was not that which had been adopted by the Commission at the current session.

67. Mr. FORTEAU, supporting Mr. Nolte's suggestion, proposed that the Commission should follow the example of footnote 530 relating to paragraph 71 of the report of the Commission on the work of its sixty-sixth session[341] and set out all the draft guidelines proposed by the Special Rapporteur in a single note, rather than reproducing each draft guideline in a separate footnote, as was currently the case. The footnote should begin with the following sentence: "The draft guidelines proposed by the Special Rapporteur read as follows (for the text of the draft guidelines adopted by the Commission and the corresponding commentary, see section C):".

It was so decided.

68. The CHAIRPERSON said that, in view of the discussion that had taken place, the question of deciding whether the Commission should establish a consistent practice with regard to the reproduction in the report of draft texts proposed by special rapporteurs of which an amended version had been adopted in plenary during the session could be further discussed under the agenda item on methods of work.

Paragraph 3 was adopted, with the two editorial amendments proposed by Sir Michael Wood and Mr. Tladi and the new footnote proposed by Mr. Forteau.

The meeting rose at 6.05 p.m.

3286th MEETING

Wednesday, 5 August 2015, at 10 a.m.

Chairperson: Mr. Narinder SINGH

Present: Mr. Al-Marri, Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna,

[341] *Yearbook … 2014*, vol. II (Part Two) and corrigendum, p. 106.