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Article 3 is read:

With this object he shall maintain the laws which were in force in the country in time of peace, and shall not modify, suspend or replace them unless necessary.

The President recalls that his Excellency Mr. BEERNAERT has proposed that Article 3 be omitted as superfluous.

General den Beer Peertugael supports this view of his Excellency Mr. BEERNAERT.

The President admits that Article 3 is contained in part in Article 2. [96] Mr. Lammasch deems that the article nevertheless has a certain value, especially as far as weak States are concerned and by reason of the ~~restriction~~ restriction introduced by the words "unless necessary." He is in favor of keeping the article.

Baron Bildt is of opinion that it is necessary to adopt the principle of avoiding as far as possible any modifications of the text adopted at Brussels. The article is humanitarian and there is no reason for abolishing it. From this standpoint, and not having yet heard any clear and decisive argument in favor of emitting the article, he is of opinion that it ought to be maintained.

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His Excellency Mr. Beernaert objects that it is impossible to attribute certain powers in advance to the victor over the territory of the defeated by means of a convention; on the other hand, the proposed provision affords only an apparent guaranty since the invader will have the privilege of modifying, extending and superseding the existing laws, in other words, he will do as he pleases.

Baron Bildt is rather inclined to side with Mr. Martens who, in his eloquent speech, showed plainly how advantageous it is to the weak and the conquered to find the obligations of the victor limited and circumscribed. Doubt and uncertainty can be of advantage only to the strong. The article presents this advantage, that while it allows the victor to be the judge, it requires that there should be a ~~necessity~~ necessity to take the measures in question. It must, however, be admitted that the question here is rather one of a moral obligation.

Mr. Stancieff says that at all events it will be necessary to add the restricting word "imperious" to the too vague word "necessity."

General Zuccari remarks that as the different amendments of his Excellency Mr. Beernaert form an aggregate, it would be better to suspend the vote until each of them has been discussed separately.

Mr. Beldiman asks to make an observation regarding the order of discussion similar to that made by General Zuccari. The propositions of his Excellency Mr. Beernaert constitute an aggregate. It is impossible to vote for the abolition of one article without first agreeing as to the principle which dominates them all. Otherwise, a premature judgment would be formed as to the decision affecting the propositions as a whole. In treating one of them it is necessary to keep the others in mind. Accordingly, he proposes that the vote be postponed.



Mr. Metene does not think that there is such a connection between the articles to which the amendments of his Excellency Mr. Beernaert relate as would render it impossible to reach a decision on each of them separately.

The President, in agreement with his Excellency Mr. Beernaert, thinks that the articles ought to be discussed successively, as a deliberation and vote on them as a whole would become too complicated.

Mr. Leon Bourgeois states that, inasmuch as a discussion on Articles 3, 4, and 5 as a whole would on the one hand be too difficult, and since on the other hand a common principle dominates them all, the votes given separately on each of them ought to be considered as tentative. It is necessary to allow a second discussion as a preparation for a confirming vote.

This mode of proceeding is approved.

Mr. Odier wishes to explain in what sense he will be able to agree with the proposal of his Excellency Mr. Beernaert to eliminate Articles 3, 4 and 5. While adhering to the humane principle which influenced the drafting of these articles, and while hoping that the occupying authority may be exercised in the most moderate manner, he deems it impossible to ask the conquered State to subscribe in advance, by means of a convention, to measures which might be vexing to the populations; it is also impossible to delegate, so to speak, to the occupant the powers which the de jure State has been forced to relinquish. It is for this fundamental reason that Mr. Odier is able to declare himself in accord with the proposal to eliminate the articles indicated by his Excellency Mr. Beernaert, but on condition, however, that it be stated in the minutes that, if this subject could be regulated by means of texts of conventions the spirit in which they should be adopted as articles or conventions ought to be the one which prevailed during the drafting of these provisions.

His Excellency Mr. Eyschen states the grounds of his vote. He will vote in favor of the emission proposed by his Excellency Mr. Beernaert, but he wishes to point out that in his opinion the duties of economic, legislative and military guardianship which devolve upon the occupant ought to be construed in the sense of the Brussels Declaration.

~~and that he desires that his declaration be inserted in the minutes.~~

He desires that his declaration be inserted in the minutes.

His Excellency Mr. Beernaert says that he agrees with the declaration of Mr. Odier and of his Excellency Mr. Eyschen.

The President has a vote taken.

The following voted to eliminate Article 3: United States, Belgium, China, Spain, Luxemburg, Netherlands, Persia, Russia, Siam and Switzerland. [97] The following voted to maintain Article 3: Germany, Austria-Hungary, Denmark, France, Great Britain, Italy, Japan, Mexico, Portugal, Serbia, Sweden and Norway, Turkey and Bulgaria.

Romania reserves its vote.

It is understood that this vote, like those on the two following articles, will be considered tentative, as Mr. Bourgeois mentioned upon voting.

Article 3 is therefore tentatively maintained by a vote of 13 to 10, with one abstention.

The President puts to vote the proposition of his Excellency Mr. Beernaert to eliminate Article 4 worded as follows:



The functionaries and employees of every rank class who consent on his invitation to continue their functions shall enjoy his protection. They shall not be dismissed or subjected to disciplinary punishment unless they fail in fulfilling the obligations undertaken by them, and they shall not be prosecuted unless they betray their trust.

The following voted to eliminate Article 4: United States, Belgium, China, Spain, France, Italy, Luxemburg, Mexico, Netherlands, Persia, Portugal, Russia, Siam, Switzerland and Bulgaria.

The following voted to maintain Article 4: Germany, Austria-Hungary, Denmark, Great Britain, Japan, Serbia and Sweden and Norway.

Roumania and Turkey refrained from voting.

Article 4 is therefore tentatively eliminated by a vote of 15 to 7, with two absentions.

Messrs Bourgeois and Zenil explained their votes by saying that in their opinion Article 4 is not of the same nature as Article 3.

The President finally puts to vote the elimination of Article 5, proposed likewise by his Excellency Mr. Beernaert:

~~The army of occupation shall collect the taxes, dues, duties and tolls~~

The army of occupation shall only collect the taxes, dues, duties and tolls imposed for the benefit of the State, or their equivalent, if it is impossible to collect them, and, as far as possible, in accordance with the existing forms and practice. It shall devote them to defraying the expenses of the administration of the country to the same extent as the legitimate Government was so obligated.

The following voted to eliminate Article 5: United States, Belgium, China, Spain, France, Luxemburg, Persia, Russia, Siam, Switzerland and Bulgaria.

The following voted to maintain Article 5: Germany, Austria-Hungary, Denmark, Great Britain, Italy, Japan, Mexico, Netherlands, Portugal, Serbia and Sweden and Norway.

Roumania and Turkey reserved their vote.

Eleven votes were therefore cast in favor of maintaining Article 5 and eleven against, two votes being reserved.

His Excellency Mr. Beernaert says that as his propositions regarding the elimination of Articles 40 to 42 and the introduction of new additional articles are but the development of the principle on which are based his ~~propositions~~ propositions in regard to Articles 3, 4, and 5, it would perhaps be preferable to vote also tentatively on the latter.

The wording of Article 3, which was tentatively maintained, is now taken up.

Mr. Odier proposes the following wording:

With this object he shall maintain the laws which were in force in the country in time of peace. He may only suspend their enforcement to the extent and for the time that may be necessary for the purpose of maintaining order.

Colonel Gress von Schwarzhoff thinks it will be very difficult for military men to accept this wording.



Mr. Rolin, giving due regard to the observations made by his Excellency Mr. Beernaert at the preceding meeting, is of opinion that the right of the victor should not be recognized by convention in advance. The idea which predominates in these articles is to set limits which the victor shall not exceed, except in case of the necessities of war. It is not a question here of stipulating what the victor is authorized to do, but what he ought to be prohibited doing. For this reason he proposes to draft the article as follows:

The existing laws remain in force in the occupied territory, and if the occupant is induced, owing to the necessities of war, to modify, suspend, or replace them, the effect of these measures shall be limited to the extent and duration of the occupation.

Mr. Lammasch, although agreeing fundamentally with Mr. Rolin, regrets that he is unable to fully endorse his proposition. He is afraid that this wording might be construed as meaning that the effect of the acts committed by virtue of the occupation should be limited to the period of the occupation; it seems to him, on the contrary, that these acts are governed by the laws which were in [98] force during this time and that thus, by modifying the adage "locus regit actum" so as to read "tempus regit actum," the same laws will continue to govern these acts after the occupation has ceased.

Mr. Lammasch states that the wording suggested by Mr. Rolin might be construed in a manner contrary to this principle.

Mr. Rolin thinks that it will be possible for him to do justice to the observation of Mr. Lammasch by very slightly modifying the wording which he proposed.

The President remarks that Article 3 is the result of thorough discussion. If it is desired to find a wording which will provide for all cases, one might deliberate for a very long time. Expressing his personal opinion, he thinks it would be desirable to adopt this article in its original text.

At the request of Colonel Gilinsky note is taken of the fact that, as a technical delegate, he has defended the military laws and the necessities of war at this meeting. Owing to these considerations of a military nature, the laws of the occupied country can only be upheld in so far as they are not in contradiction with the military laws of the invader.

The declaration of Colonel Gilinsky will be inserted in the minutes.

His Excellency Mr. Beernaert and Mr. Bourgeois ask that the vote be postponed until the next meeting.

The President agrees to this and asks the delegates who have proposals to make regarding Chapters I, II and IX as a whole, to send them in writing today to the Bureau so that they may be distributed and examined before the next meeting.

The meeting adjourns.