

ORGANIZATION FOR ECONOMIC
COOPERATION AND DEVELOPMENT

REPORT

OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

ON

EXECUTIVE E, 87TH CONGRESS, 1ST SESSION

DAVID M. HARRIS, CHIEF OF STAFF
DANIEL S. CLINE, CLERK

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MARCH 8, 1961.—Ordered to be printed

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COMMITTEE ON FOREIGN RELATIONS

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SENATE

{ EXECUTIVE REPT.
No. 1

ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT

MARCH 8, 1961.—Ordered to be printed

Mr. FULBRIGHT, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Ex. E, 87th Cong., 1st sess.]

The Committee on Foreign Relations, having had under consideration the Convention on the Organization for Economic Cooperation and Development, together with two protocols relating thereto, signed at Paris on December 14, 1960 (Ex. E, 87th Cong., 1st sess.), reports the convention and protocols to the Senate and recommends that the Senate give its advice and consent to ratification.

PURPOSE AND BACKGROUND OF THE CONVENTION

Since the end of World War II, vast changes have swiftly transformed relations between the non-Communist industrial nations, as well as relations between these powers and the less developed but politically awakened areas of the world. The Organization for Economic Cooperation and Development (OECD) reflects these changes, and has been designed to cope with those that can determine economic stability and growth.

Structurally, the OECD consists of the 18 European members that comprised the OEEC (Organization for European Economic Cooperation), plus the United States and Canada. The OEEC was established in 1948 to help Europe recover from the war. It recommended allocations of Marshall Plan aid to member countries, established the European Payments Union and liberalized intra-European trade. The OECD amounts to a recognition that the objective of the predecessor organization has been attained, and has given way to another and equally urgent set of problems that can be adequately dealt with only by a remodeled organization, in which the United States and Canada are participants.

The OECD has two broad purposes. One is to promote economic stability and the orderly growth of the economies of member countries. The other is to devise more effective methods of assisting the less developed countries, and for arranging to distribute the aid burden more equitably. Thus, on the one hand, the OECD reflects the growing interdependence of the economies of its member countries. And, on the other, it acknowledges the urgent need to narrow the gap between the rich and the poor countries, yet in a form that will not tax the economic vitality of any one of its members.

The OECD concept—the need for such an institution—has been widely discussed here and abroad in recent years. In the fall of 1959, behind an American initiative, these discussions assumed an official character. Next, in December 1959, the heads of Government of the United States, France, Germany, and the United Kingdom, meeting in Paris, publicly recommended an intensive study of methods of promoting consultations on major economic problems. This was followed by a ministerial meeting of January 14, 1960, in which representatives of the 18 OEEC countries and the United States and Canada adopted a resolution establishing a group of 4 experts to determine means by which the 20 nations could improve their cooperation on economic problems and development assistance.

On April 7, 1960, the Group of Four published its report, which proposed that the OEEC be reconstituted as the OECD. On May 25, senior officials of the 20 nations presented their governments' views on the Group of Four report and established a Working Party to draw up a draft convention remodeling the OEEC and to begin reviewing the OEEC acts.

On July 23, a Ministerial Conference reviewed the status of the project and established a Preparatory Committee to complete the transformation of the OEEC into the OECD. The Committee's report was adopted at the Paris Ministerial Meeting of December 13, 1960, and the convention with related protocols was signed the next day by the representatives of the 20 governments.

SUBSTANCE OF THE CONVENTION

The OECD Convention consists of 21 articles and 2 related protocols. The aims of the organization, as well as the methods and provisions for achieving these aims, are set forth in articles 1-6. A comparison of these six articles with the OEEC Convention reveals the following: The objectives of the OECD are broader than those of the OEEC. But the obligations are fewer and considerably less demanding. The OECD Charter provides for consultation and voluntary cooperation. The OEEC embodied rules and obligations to which each of its members was bound. Although preoccupied at the start with the distribution of Marshall Plan funds, the OEEC became generally concerned with intra-European trade and payments problems. For example, the OEEC countries developed a code of liberalization, which removed quantitative restrictions on member imports within a system of reciprocal commitments. As a concession to the United States, the OEEC's Code of Trade Liberalization has been discarded in its entirety. For some members, this was a major—and painful—concession.

Many of OEEC's other codes and obligations have also been allowed to lapse. None of those that will be carried over will apply to the United States. However, the United States has agreed to certain recommendations of the OEEC. The terms of these recommendations do not obligate the United States, or other members, to courses of action. Appendix No. 1 to this report is a memorandum of understanding which formally commits the 18 OEEC members to vote in the OECD Council for adoption of those OEEC acts that have been recommended by the Preparatory Committee. However, the United States and Canada are not similarly bound. Under paragraph 2 of this memorandum, the United States and Canada shall be released from the commitment to vote in the OECD Council for adoption of any acts in this category if appropriate notification is given no later than 10 days after the deposit of either country's instrument of ratification. The act then becomes applicable to all the other members, but not to an abstainer.

The OECD's basic purposes—to promote orderly economic growth within its 20 member community, and to assist more effectively the less developed countries—is embodied in article 1. Under article 2, the members agree to pursue these aims by promoting the development and most efficient use of their economic, scientific, and technological resources.

They also agree, under article 2 (c), to—
pursue policies designed to achieve economic growth and internal and external stability and to avoid developments which might endanger their economies or those of other countries.

This language clearly reflects the rapid and sweeping postwar changes that have inspired the creation of the OECD. It acknowledges the growing and relentless interdependence of the economies of the member countries. These economies have together become an elaborate skein, the threads of which are the payments balances and economic policies of the member countries (and others, like Japan). The process of reaction and adjustment between them is a constant rhythm. Ideally, this process should also provide equilibrium, just as the free gold standard was once supposed to provide automatic equilibrium. Unfortunately, the tangled skein of international economics lacks the element that would assure stability, or automatic equilibrium. The OECD, through its Economic Policy Committee, will provide advice and recommendations designed to protect each member from economic disequilibrium.

The Secretary of the Treasury, Mr. Dillon, in testifying before the Committee on Foreign Relations, illustrated the need for the OECD mechanism with this reference to the U.S. balance of payments difficulties of 1960.

During the first half of 1960 our balance of payments deficit on an annual basis was \$2.9 billion—down markedly from the level of \$3.8 billion in 1959. Last spring our Federal Reserve discount rate was at 4 percent, the German Bundesbank rate was 4 percent, and the Bank of England rate was 5 percent. In other words, all those rates were close together. Then, as business began to slow in the United States, our Federal Reserve began to ease credit and reduced its rate first to 3½ percent, and later to 3 percent. Meanwhile the German Bundesbank, with its eye on the domestic boom in Germany, and with the objective of controlling inflation at home, increased its discount rate to 5 percent in June. The Bank of England promptly followed suit and upped its rate to 6 percent.

These actions brought about a sharp imbalance in short-term interest rates. The results were bad for all concerned. A flood of short-term funds left New York seeking the higher return in Frankfurt and London. This sharply increased our balance-of-payments deficit from an annual rate of \$2.9 billion in the first 6 months to a rate of \$4.7 billion in the second 6 months. This sudden and sharp increase shook confidence in the dollar and the result was a substantial increase in the outflow of gold. This, in turn, brought on the speculative outbreak in the private gold market in London last October when for a day or two gold sold at \$40 an ounce.

Meanwhile the large inflow of American funds frustrated the efforts of the German authorities to tighten up on investment in Germany. When this became clear, the German and British authorities both cut back their discount rates, the flow of short-term capital slowed and confidence was gradually restored.

The lesson to be learned by all this is that in these days of convertible currencies there must be close cooperation and coordination between our financial and monetary authorities and those of the major industrialized countries of Western Europe. This is now recognized on all sides. The OECD is the forum in which this coordination can be worked out and through which we can avoid similar episodes in the future. As such, it is a vitally important element in our drive to right our payments deficit without infringing on the actions that must be taken to reinvigorate our economy here at home.

Development Assistance Committee.—Under article 2(e), the OECD members have agreed to meet their development assistance responsibilities by providing capital and technical assistance to the less developed countries, as well as helping them to secure and expand export markets. The OECD instrument for this activity will be its Development Assistance Committee, successor to the Development Assistance Group, which operated throughout 1960 on an interim basis. Appendix No. 2 to this report is a breakdown of official assistance provided by the OECD members and Japan to less developed countries. It should be noted that the French figures include assistance to Algeria, which in the past has been regarded by French governments as part of Metropolitan France.

The Development Assistance Committee (DAC) initially will consist of nine OECD members—Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, the United Kingdom, and the United States—and also Japan. The DAC will not of itself be an operating, or “burden sharing,” agency. Instead it will review aid programs, recommend levels and kinds of aid, as well as more efficient and equitable aid programming. It will be a clearinghouse for information concerning the needs of the less developed areas and a forum in which the capacities of the major industrialized nations of the West, along with Japan, can be measured against these needs. The DAC will thus enable nations which are meeting their responsibilities in this area to encourage laggard nations to assume their share of the burden.

Trade provisions.—Articles 1(c) and 2(d) provide that the OECD members will “pursue their efforts” to expand world trade “on a multilateral, non-discriminatory basis in accordance with international obligations”; also to try to “reduce or abolish obstacles to the exchange of goods and services * * *.” The OECD’s concern will be the broad outlines of trade policy, not tariff negotiations, or trade rules. These matters are the concern of the GATT (General Agreement on Tariffs and Trade) of which all OECD members, excepting Iceland, are contracting parties. Congress has never approved the GATT, and approval of the OECD will not constitute approval of the GATT. Articles 1(c) and 2(d) do not obligate members to take any actions which they otherwise would not take. These articles do mean that the OECD, as an extension of its function of providing economic

stability, will become a consultative forum in which members can deal with general trade problems of concern to some or all of them.

As an example, Western Europe has divided into two trade blocs. Leaving aside the unproductive competition inherent in such a division, other problems appear. On January 1, 1961, the Common Market "Six" scaled down its internal tariffs on industrial items and some agricultural goods. The effect of these first adjustments has created some discrimination against imports from countries outside the "Six." Obviously, the United States and others must encourage the "Six" and the "Seven" (European Free Trade Association) countries to adjust their general trade policies in a way that will avoid further discrimination against those who are members of neither bloc. The OECD will be a forum for such discussions, as well as for the larger question of ending the trade division in Europe in a manner that will protect every country's interests. The problem affects the rich and poor alike.

In Africa, those countries which formerly were French colonies have the privilege of association with the "Six." This means that they can—and do—sell their goods in a preferred market. It also means that neighboring African States—Nigeria, for example, which in 1959 sold 35 percent of its exports to the "Six"—must compete for this market against a rising tariff wall. Appendix No. 3 to this report contains two tables, (a) and (b), which show respectively the importance of OECD countries as a market for the less developed countries; and the proportion of export earnings of selected less developed countries derived from their primary products.

In article 2(d), one of the two trade provisions, the members also agree to try to "maintain and extend the liberalisation of capital movements." At present, only Belgium-Luxembourg, Canada, the United States, and Germany, among the members, permit the unrestricted flow of capital from their countries. This is another example of a problem that can be discussed within the broad, multilateral framework of the OECD.

Other provisions.—In article 3 the members agree (a) to "keep each other informed"; (b) to "consult together on a continuing basis"; and (c) to "co-operate closely and where appropriate take co-ordinated action."

The language "where appropriate" makes article 3(c) permissive rather than mandatory. Furthermore, article 6(3) provides that—

No decision shall be binding on any Member until it has complied with the requirements of its own constitutional procedures. The other Members may agree that such a decision shall apply provisionally to them.

Articles 7-14 are concerned with organization and procedural matters. Subsidiary bodies, such as the Economic Policy Committee and the DAC, would be established under the authority of article 9.

Article 15 concerns the status of OEEC acts that might be carried over. It provides that " * * * decisions, recommendations and resolutions of the Organization for European Economic Cooperation shall require approval of the Council to be effective after the coming into force of this Convention." Under article 6, each member shall have one vote on the Council, and "decisions shall be taken and recommendations shall be made by mutual agreement of all the Members."

Article 17 allows any member to terminate membership in the convention by giving 12 months' notice of that intention to the depositary government.

Articles 18-21 cover the location of the OECD Headquarters (Paris); budgetary procedure; and notification responsibilities of the depositary government.

Protocols.—There are two supplementary protocols to the convention. The first gives the members of the European Economic Community the option of acting individually within the OECD, or jointly through one of their commissions, such as the High Authority of the Coal and Steel Community, or the European Atomic Energy Community. The second protocol covers the privileges, exemptions, and immunities of OECD officials and representatives.

COMMITTEE ACTION

The convention, with related protocols, was transmitted to the Senate by President Eisenhower on January 17, 1961. On February 14 and 15, the Committee on Foreign Relations examined the convention in public session. Witnesses from the executive branch, representing President Kennedy, were heard on February 14. They were the Secretary of the Treasury and the Under Secretary of State for Economic Affairs. On February 15, the committee heard testimony from all other persons who had asked to appear.

The Chairman, Mr. Fulbright, asked whether article 6 (1) endowed the individual members with a veto power over the decisions and recommendations of the OECD Council. Under Secretary Ball, answering in the affirmative, said:

A nation which opposes a particular proposal has the option either of voting against it, in which case the proposal is killed, or of abstaining, in which case the proposal does not apply to that country.

The chairman, in referring to Secretary Dillon's comment on the relationship between discount rates and capital outflows, asked whether the OECD's authority would "affect the power of the Federal Reserve Board to alter our discount rates." Secretary Dillon said no. Senator Morse carried the question a step further and asked whether the jurisdiction of the Federal Reserve Board might be enlarged by the creation of the OECD. Secretary Dillon replied:

* * * this convention, will not in any way, shape or form enlarge the authorities of the Executive or of the Federal Reserve or any other organization in the U.S. Government to take actions which are not already provided for * * * under act of Congress.

OECD and GATT.—Senator Sparkman asked whether this organization would, or could, perform any of the functions that had been contemplated for the ITO (International Trade Organization), or whether the OECD bears any relationship to the GATT.

Secretary Dillon said that there is no connection whatsoever. He added that during the OECD discussions some of the countries objected to the elimination of the code of trade liberalization, because they felt they drew a measure of protection from these trade rules. However, the American position was accepted at the July OECD ministerial meeting. It was stated then by Secretary Dillon as follows:

* * * In the [U.S.] Constitution it is * * * specified that foreign trade is within the competence of the Congress of the United States and not within the competence of the Executive. All the actions which the Executive takes in this field and has taken over the past years in the form of trade agreements and so forth have been taken on this specific authority which has been voted by the Congress of the United States through the original Trade Agreements Act and

its various extensions, the last of which occurred in 1958. It is impossible for the United States to agree to anything which would infringe this competence of the Congress.

One thing to which this happens to apply is the question of detailed and fixed procedures and rules which have to be approved by the Congress as part of our joining, working with, any new organization. We have suggested three times in the last 10 years to our Congress, once under the Democratic administration, and twice under the administration of President Eisenhower, that rules and procedures which had been worked out by experts, and which would help the functioning of the GATT, be specifically approved by the Congress. Three times the Congress has refused to do that, allowing us to continue to operate within the framework of the GATT, but saying that as a Congress they would not approve any specific rules which might have the effect of binding or making it more difficult for them to operate with freedom in the field of trade in the future. It is very clear that this same consideration applies to this Convention. Any attempt to tie in rules of trade, rules of procedure that are fixed and definite, would not be acceptable to our Congress and that is the reason why the United States Representatives have continually objected to such rules and regulations.

It is not a question of substance, the substance of whether we wish to talk about things or do not wish to, but it is a very important question of procedure and the prerogative of our Congress, which we are bound to uphold. It would be no use for us to reach an agreement around this table that we know would not be acceptable to our Congress, and would be doing a disservice to all of us sitting here. That is why I have dwelt on this problem.

Senator Aiken also sought a more precise understanding of the intent of articles 1(c) and 2(d), the trade provisions. And the following exchange occurred between him and Secretaries Dillon and Ball:

Senator AIKEN. * * *

The Senator from Alabama asked what the relationship of OECD would be to GATT, and you said there would be no relationship whatsoever.

But reading this pledge to pursue efforts to reduce or abolish obstacles to the exchange of goods and services and current payments, makes one wonder whether OECD intends to operate parallel to GATT. What is the purpose there?

Secretary DILLON. Well, in the field of capital flow and money, the GATT does not operate, and in that field I think that OECD would operate.

We have always had a completely free regime for the flow of our capital and investments overseas; since the war, certainly, and probably for quite some time before that, the European countries have not.

Now that their currencies are becoming convertible, it is in our interest to press for a greater freedom of these capital flows so that European funds will come to the United States for investment with greater ease than is presently the case. This would be a forum through which this objective would be sought, and that is what I think is referred to here when they talk about current payments and liberalization of capital movements.

Senator AIKEN. But GATT and OECD would perform parallel functions as they relate to removal of trade barriers.

Secretary DILLON. Well, that is the specific policy of the GATT, and in OECD it is not its specific policy.

However, the countries agree that they will pursue their efforts individually, that is, to reduce and abolish obstacles.

Now, by obstacles to the exchange of goods, we do not mean tariffs.

What is really meant there are discriminatory provisions such as the chairman was talking about, which we have a few of in the agricultural field, and of which the European countries have many more.

This is a pledge to work toward reducing or abolishing these, but how quickly results will be achieved I do not know, and certainly this organization is not the primary forum in which this will be discussed.

Mr. BALL. Senator, I might add that this organization will not be an organization that makes trade rules or that enforces trade rules or that modifies existing trade rules.

There is a very clear distinction between what is contemplated here and the operations of the GATT in Geneva.

Senator AIKEN. It would simply make findings and, on the basis of those findings, make recommendations to its members or just release its findings?

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Mr. BALL. The major interest of the United States in this, as Secretary Dillon has said, is in relation to the resolution of the existing problems between the Six and Seven. Our concern there is to see that in the consideration of this problem the interests of the United States are represented.

The chairman pursued this matter further and raised with the two executive branch witnesses some comments of the opposition to the OECD:

The CHAIRMAN. * * *

Since I asked you my question about the opposition, I have sent for, and have received, this statement which is apparently the principal statement of the opposition to this treaty. I think it would be well for the record if you would comment on it.

First the ITO and OTC [Organization for Trade Cooperation] are described and how they were defeated by the Congress. Then the statement says "They both also sought to use the sanctity of an international agreement as a means of making permanently supreme the economic outlook of people then in the executive branch of the Government and especially in the State Department."

Do you think this is a true characterization of this agreement?

Secretary DILLON. Not at all, Mr. Chairman.

The other two agreements did provide a mechanism for establishing trade rules and, as such, they would have much more explicitly recognized the GATT.

The executive branch, at that time, felt that this was advisable because it was thought that the GATT was a useful instrument to prevent discrimination.

But the OECD has nothing whatsoever to do with trade rules at all. We have made that very clear. We would be glad to repeat it again. It does not reflect the philosophy of any particular group.

It is a broad, bipartisan measure that is in the national interest, and it simply recognizes the new facts of this era of convertibility, that we have to have a forum for the interchange of economic information, and where we can develop closer coordination and exchange views on methods and means by which each of our countries is successful in pursuing the objectives, its own objectives, of greater economic growth.

The CHAIRMAN. The statement says:

"While Congress has the constitutional authority and responsibility to regulate our foreign commerce, it could no longer do so without encountering and, perhaps running afoul, of provisions of the international agreement."

Do you think that is true?

Secretary DILLON. No, sir.

The CHAIRMAN. It says:

"Ratification of the agreement would, therefore, transfer some of the most meaningful aspects of the enumerated congressional powers into the hands of the Executive without bothering about a constitutional amendment. Surrender by Congress in this matter would mean breaking faith with the electorate and, in fact, betrayal of its trust."

Would you think it is a true statement?

Secretary DILLON. It would not transfer one single thing from the Congress to the Executive.

The CHAIRMAN. It states:

"How would this come about? It would come about through an authorization of membership in an international organization having aims which could not be carried out without entrenching upon the functions of Congress."

Mr. BALL. As has been pointed out repeatedly here, Mr. Chairman, the decisions of this organization can only be carried out through the constitutional processes of the United States. It does not add, it does not detract one bit from the powers of Congress. It does not expand the powers of the Executive.

Secretary DILLON. That was the very reason that that language was specifically written into the charter in subparagraph 3 of article 6, so that there could be no misunderstanding on this subject. We were afraid that otherwise some people would misinterpret this thing. But with that language in there there can be no misunderstanding.

The CHAIRMAN. So it is very clear that any specific agreement must return to the Congress and follow the usual procedure. None is authorized in advance by this agreement?

Secretary DILLON. That is correct.

Senator Sparkman suggested that a memorandum outlining the history of the GATT "from the standpoint of its consideration by Congress," along with some background on its activities, would be helpful to the committee. The Legislative Reference Service of the Library of Congress was asked to prepare such a memorandum. It appears on page 102 of the printed hearings.

Functions of DAC.—Senator Sparkman was interested in whether the DAC would be an operating agency, and, if so, would there be any overlapping of its functions with those of other multilateral organizations, such as the International Bank for Reconstruction and Development (IBRD).

His question produced the following exchange:

Mr. BALL. I would like to point out a distinction here which, I think, could be the subject of some confusion. This is not going to be an operating agency in the area of foreign assistance. The OECD will provide a forum in which the problem of foreign assistance can be freely discussed among the nations which have the resources to contribute to that effort.

Senator SPARKMAN. Is that true of the OECD and the DAC, both?

Mr. BALL. Yes. The DAC is simply a committee established under the OECD in which the problems of assistance are going to be discussed, and in which the effort will be made to mobilize the greatest amount of effort and resources for the purpose. But it is not contemplated that this will be an agency which administers aid.

Secretary DILLON. Senator, I might say that in the meetings that we had last year of this Development Assistance Group, which is the predecessor organization, the World Bank and some of the U.N. agencies participated as observers, and they worked very closely with this group.

This group might lead to closer coordination of national efforts, but, as Secretary Ball says, it has nothing to do with operations and therefore would not interfere with these other agencies at all.

Secretary Dillon added to the committee's understanding of the purpose and function of the DAC with this observation:

We found when we started to discuss this last year in the earlier meetings of the Development Assistance Group, which will be the predecessor of this committee, that there was not even agreement on the definition of what was foreign aid. Some countries were calling foreign aid ordinary exports, which they financed on a 2- or 3-year basis, and so there was a good deal of discussion on that. We are now discussing what is aid and what is simply ordinary exports that one is financing. Statistics are being gathered, and it will become clear whether one or more of the big industrialized countries is not doing what it is obviously supposed to be doing. For any country not carrying a fair share of the burden, there will be moral pressure on that country to do better.

Now, certainly no one could expect the United States to do any more since we have been carrying the bulk of the load from the beginning with help from particularly the French and the British.

So, therefore, the effect of this committee will be, from our point of view, since we are already doing what we should, to throw the spotlight on those who have not yet met their full responsibilities. In that way it is a very important financial tool and very helpful to the United States in seeing that the program is better shared.

Relationship to NATO.—The chairman asked whether the OECD might have the effect of downgrading the importance of NATO. The opinion of the executive branch witnesses is that the two organizations will perform complementary functions. Senator Morse pursued the matter further, and drew this comment from Secretary Dillon:

I would like to say one thing about this. One field in which the OECD will be active, which is the responsibility of the Development Assistance Committee, is the coordination and discussion of policy for development assistance to underdeveloped countries throughout the world, many of which are neutral countries.

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This is a function which simply could not be carried out successfully by NATO, because NATO is looked upon as a military alliance, and a strong partisan of one side—our side—in the cold war.

So these neutral countries of Asia and Africa would not feel comfortable if their aid was being coordinated by that sort of an organization. They have made that very clear. So that is the great advantage of having the OECD, which does not have that connotation and which does have all the neutral countries of Europe as members.

Senator MORSE. Mr. Secretary, I could not agree with you more. That is why I pursue this matter a moment longer. Secretary Ball pointed out that Sweden and Switzerland will be members of OECD. They are not members of NATO.

Legal interpretation.—Several committee members were especially interested in having a precise understanding of articles 5 and 6. Specifically, they were concerned with what, if anything, distinguishes the “decisions” of 5(a) from the “recommendations” of 5(b); also whether article 6(3) clearly and adequately protects the balance between the legislative and executive branches of the Government. In response to a committee request, the Legal Adviser to the Department of State prepared a memorandum addressed to these specific questions. It appears as Appendix 4 to this report. Under article 5(a), the Organization may “take decisions which, except as otherwise provided, shall be binding on all the Members.” The Legal Adviser says: “Thus, by the very terms of a decision, it may be restricted in its obligatory application to only certain of the members of the Organization.”

Under 5(b), the Organization may “make recommendations to Members * * *”. The Legal Adviser says:

* * * Recommendations may recommend a course of action by members, or study of a matter, or adherence to an international agreement drafted in an OECD committee, etc. For example, the OECD will normally deal with substantive problems such as economic policy and assistance to the less-developed countries by exchanging information and by informal discussions. To the extent that additional action were necessary, this would normally be taken by the OECD Council in the form of a recommendation to member governments. Thus, the OECD Council might follow a discussion of assistance to the less-developed countries by a recommendation to member governments that they increase the length of the credits extended to the less-developed countries. In such cases, the member governments would not be legally bound by the recommendations, but they would endeavor to carry out the recommendations.

The Legal Adviser says that articles 1 and 2 are—

void of any grant of power to the Executive, and the power, in any particular case, of the U.S. Executive to bind the United States must be sought and found in an independent source outside the [OECD] Convention.

His conclusion is that—

paragraph 3 of article 6 allows for full compliance with U.S. constitutional procedure and the division of functions between the Executive and the Congress.

Other questions.—Senator Aiken asked about the anticipated size of the OECD staff and the cost of maintaining the Organization. The following exchange occurred between him and Secretary Dillon:

Senator AIKEN. Mr. Secretary, how large an organization do you expect this to be in terms of personnel?

Secretary DILLON. We have a feeling that this will be smaller than the present OEEC organization because this organization had a very considerable number of personnel engaged in certain functions which would probably not be continued.

I think that the total effort in Paris will be several hundred.

The figures, I think, on the OEEC now are somewhere under 1,000 people working in that organization.

Senator AIKEN. It may be 1,000. What was the estimated cost of maintaining the organization a year?

Secretary DILLON. Well, the OEEC's costs were approximately \$4 million, so we thought that our share would be about \$1 million, if we had the same assessment as our assessment in NATO, which is roughly 25 percent.

Senator AIKEN. 25 percent.

Secretary DILLON. We might have a smaller assessment here because this is a larger organization somewhat. In NATO our assessment is 24.2 percent. Here there are the few extra smaller countries, so it might be possible that we could negotiate something between 20 and 25 percent, which, I think, would be fair.

Senator Morse asked whether consideration was given to inviting Japan to be a full-fledged member of the OECD. Secretary Dillon replied that the United States "would like to see that happen." However, the European countries, while agreeing to Japanese participation in the DAC, opposed a general membership for Japan. Secretary Dillon observed that this feeling might change and at some later date Japan could be invited into full OECD membership.

The chairman and Senator Morse indicated that their further questions would be submitted in written form. The contents of their correspondence can be found in the appendix to the record of the OECD hearings. Among other things, their questions dealt with the balance of payments problem; discriminations against U.S. products; restrictions against capital movements in and out of the OECD countries; the U.S. tariff position and the benefit to the United States of GATT participation; examples of decisions that might be made by the OECD Council in regard to the aims set forth in article 1.

Among those who asked to bring their views on the OECD before the committee were three Members of Congress, Senator Jacob K. Javits of New York; Representative W. J. Bryan Dorn of South Carolina; and Representative James C. Davis of Georgia. Senator Javits supports the convention. Congressmen Dorn and Davis oppose it on the grounds that it could, in their view, expand the authority of the executive branch to regulate foreign commerce. They were followed by seven public witnesses, six of whom oppose the convention for reasons similar to those expressed by Congressmen Dorn and Davis. The committee received over 600 communications concerning the OECD. There was an approximately even division between those who were for, and those who were against the convention.

Further committee action.—On March 1, the committee met in executive session to hear further testimony from Secretaries Dillon and Ball. Senator Long questioned the language of article 2(d), and the following explanation was offered by Secretary Dillon:

What this means—the English text was construed by the people who drafted the language, and by those who signed it, to mean that they would pursue their efforts to reduce or abolish obstacles and to maintain and extend the liberalization of capital movements.

In other words, the "maintain and extend the liberalisation of capital movements" follows after "pursue their efforts to," and therefore the agreement is to pursue efforts to maintain and extend the liberalization of capital movements. No flat commitment is made to maintain and extend them; in the French text, which is equally valid, that is made very clear, because the word "to" is in there in the French text.

There is a word "to" before "maintain."

The question arose again when Senator Gore asked this question of Secretary Ball and the Legal Adviser to the Department of State, Mr. Chayes:

If by this treaty we specifically agree to maintain and extend the liberalization of capital movements, would a statutory enactment contrary to such liberalization of capital movement be in conflict with the treaty?

Mr. Chayes responded and the following exchange ensued:

Mr. CHAYES. Well, Senator, your hypothetical case depends upon reading article 2(d) as an absolute engagement to maintain and extend the liberalization of capital movements.

I think the Secretary has already said that the article is to be construed as an engagement merely to pursue efforts to maintain and extend the liberalization of capital movement.

Senator GORE. May I ask a question right there? Suppose that instead of the Secretary's interpretation, the Court should hold that, in fact, this is an agreement to maintain and extend the liberalization of capital movements; what would then be the confrontation?

Mr. CHAYES. Well, with deference, Senator, I cannot conceive a court so holding in view of the fact that the French and English text have equal status, and any ambiguity that appears in the English text is fully clarified by the French text.

Senator Gore was specifically concerned with the meaning of the term "current payments" and the phrase "liberalisation of capital movements" as they appear in article 2(d). The Department of the Treasury, in order to define these terms precisely, offered a memorandum that appears in the appendix of the printed hearings.

Several members sought further assurance that none of the provisions of the convention could endow the President with authority that he does not already have; these members also sought further clarification of the constitutional guarantees contained in article 6(3). The Legal Adviser, Mr. Chayes, responded with a memorandum dated March 6, which appears in appendix 5 to this report.

The committee met again in executive session on March 6. Under Secretary Ball and the Legal Adviser, Mr. Chayes, were present. Some members were interested in U.S. policies regarding most-favored-nation treatment. Upon request, the Department of State submitted one memorandum explaining American policy on this subject, and another which set forth provisions of the GATT that allow contracting parties to adopt discriminatory policies under certain circumstances. These memorandums may be found on page 245 of the hearings.

Senator Williams observed that the President's authority under the Trade Agreements Act is discretionary. He asked whether a decision by the OECD Council might compel the President to act within the scope of his authority, thus depriving him of his option not to act. This produced the following exchange between the Senator, Under Secretary Ball, and Mr. Chayes:

Mr. BALL. No; he could not bind himself to do anything unless he has the power to do. I do not quite understand how this could possibly occur—do you, Mr. Chayes?

Mr. CHAYES. Well, I do not think he could even bind himself to waive his discretion in the case of a subsequent escape clause proceeding since he does not have, I do not think, constitutional power to waive that subsequent discretion.

Mr. BALL. You see, he has to make a finding.

Senator WILLIAMS. That is right.

Mr. BALL. We cannot waive his power to make the finding. He has to make the finding to comply with the statute. Otherwise he has no power.

* * * * *

Mr. CHAYES. I do not know just what the terms of our arrangements in GATT are. But it is perfectly clear that in the case of any agreement in GATT, or any other agreement under the Trade Agreements Act—and notice when we are talking about the hypothetical case of an agreement under this Convention, it is only an agreement carried out within the terms of the authority delegated by the Trade Agreements Act—no such agreement can be made until the President's discretion has been exercised in accordance with all the terms and conditions of the act.

Senator Hickenlooper asked whether any provision of the convention could give the President tariff-making authority and prevent the Congress from taking back that authority.

Under Secretary Ball and Mr. Chayes replied that this would not be possible.

The committee feels that in giving its advice and consent the Senate must emphasize, as an inherent part thereof, that it accepts and relies upon the assurances of the executive branch of the Government that nothing in the Convention enlarges, diminishes, or alters the powers of the President or the Congress in respect to any substantive actions taken or that may be taken by the Organization for Economic Cooperation and Development and that a clear expression of such interpretation and understanding should be incorporated as an integral part of such advice and consent. The committee felt that the resolution of ratification should contain the relevant assurances that had been offered by Secretary of State Herter, Secretary of the Treasury Dillon, Under Secretary Ball, and the Legal Adviser of the Department of State. Secretary Herter's statement appears in his letter of January 16 to President Eisenhower, which can be found on page 2 of the message from the President transmitting the convention to the Senate (Ex. E, 87th Cong., 1st Sess.). Statements of the other deponents may be found in this report and appendixes thereto. The full text of the resolution of ratification itself follows:

RESOLUTION OF RATIFICATION

Having regard to and in reliance on the statement in the letter of January 16, 1961, from Secretary of State Herter to President Eisenhower and transmitted by him to the Senate on January 17, 1961, that "the U.S. representative will not have any additional powers in substantive matters to bind the United States after the convention enters into force than now exist in the Executive, but that any act of the Organization outside the power of the Executive will require action by Congress or the Senate, as the case may be, before the United States can be bound," and having regard to and in reliance on the testimony of Secretary of the Treasury Dillon and Under Secretary of State Ball in behalf of the administration, and having regard to and in reliance on the Opinion of the Legal Adviser of the Department of State dated March 6, 1961, and quoted in the committee report on this convention:

Resolved (Two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention on the Organization for Economic Cooperation and Development, together with two protocols relating thereto, signed at Paris on December 14, 1960, by representatives of the United States of America, Canada, and the 18 member countries of the Organization for European Economic Cooperation (Executive E, 87th Congress, 1st session), with the interpretation and explanation of the intent of the Senate that nothing in the convention, or the advice and consent of the Senate to the ratification thereof, confers any power on the Executive to bind the United States in substantive matters beyond what the Executive now has, or to bind the United States without compliance with applicable procedures imposed by domestic law, or confers any power on the Congress to take action in fields previously beyond the authority of Congress, or limits Congress in the exercise of any power it now has.

CONCLUSION

The Committee on Foreign Relations believes that the OECD member countries are undergoing the gravest test of their collective history. To prevail will depend, as much as anything else, on their ability to promote stability and growth within their delicately balanced, interdependent economies. Yet even this will not be enough, if the product of this growth is not in sufficient measure devoted to programs that will encourage the development of less favored peoples in a way that is consonant with their best purposes. If the energies and resources of the aspirant and newly independent peoples were turned to uncongenial purposes, the consequences for Western civilization would ultimately be decisive.

This thesis is understood by the leaders of both the Soviet Union and the United States, and apparently by a majority of the people of the United States. It is also understood by some, but by no means all, of the leaders of West Europe. Many of them do not yet understand either the moral imperatives or the cold logic of foreign assistance. And what is true of these leaders can be safely said to apply, as well, to their constituents.

In that light, the OECD will be an educational forum. Terms can be defined. Foreign aid itself is a term that badly needs definition. To some, exports financed with short term, high interest credits, are foreign aid, and sums for this purpose are cited, not as investment, but as evidence of good faith. To others, funds invested in a colony fall within the definition of foreign aid. The American experience with foreign aid must be brought to bear upon the consciousness of other capital exporting countries. Bilateral talks, even if conducted at the White House level, are no substitute for the education that can be spread throughout the OECD membership by joint exposure to the same information, to the philosophy and the logic that have motivated American foreign aid from the beginning.

If Europeans have not developed a keen appreciation for foreign aid, it is also true that Americans have been laggard in acknowledging the economic interdependence of the Atlantic Basin countries. The truth is that the West can no longer tolerate economic disequilibrium. Too much depends on the vigor of its interdependent economy, greater by far than the sum of the individual parts.

More important than the collective GNP (\$775.5 billion) of the OECD members are the scientific and technical resources upon which it is built. With the OECD, these resources can be mobilized and directed toward productive purposes. For the first time, a group of countries with common interests, beset by common problems, will be free to discuss their goals and problems within an organization designed for precisely that purpose.

This is a time of sweeping political, social, and technological change. History is being shaped within a swirl of events that often develop with bewildering speed. The committee believes that the OECD will enable its members to see these events in a broader and, hence, more relevant perspective. It will enable them to look above the crises of today to problems that lie ahead; to dispose of many problems in a systematic, orderly fashion, thus avoiding the harsh urgency that so often distorts bilateral efforts to solve problems that become critical overnight. The committee, therefore (by a vote of 16 to 0), recommends that the Senate give its advice and consent to the ratification of the pending treaty.

APPENDIXES

APPENDIX 1

MEMORANDUM OF UNDERSTANDING ON THE APPLICATION OF ARTICLE 15 OF THE CONVENTION ON THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Article 15 of the Convention on the Organisation for Economic Co-operation and Development (hereinafter called the "Convention") provides that decisions, recommendations and resolutions (hereinafter called "acts") of the Organisation for European Economic Co-operation shall require approval of the Council of the Organisation for Economic Co-operation and Development (hereinafter called the "Council") to be effective after the coming into force of the Convention.

Pursuant to a Resolution adopted at the Ministerial Meeting of 22nd-23rd July, 1960, a Preparatory Committee has been established and instructed to carry further the review of the acts of the Organisation for European Economic Co-operation, to determine which acts should be recommended to the Council for approval, and to recommend, where necessary, the modifications required in order to adjust these acts to the functions of the Organisation for Economic Co-operation and Development.

At the said Ministerial Meeting it was agreed that there should be the maximum possible degree of certainty as regards approval by the Council of acts of the Organisation for European Economic Co-operation in accordance with the recommendations of the Preparatory Committee; it was also agreed that Canada and the United States, not being Members of the Organisation for European Economic Co-operation, should have a certain latitude with respect to the said recommendations.

Therefore the Signatories of the Convention have agreed as follows:

1. The representatives of the Signatories on the Council shall vote for approval of acts of the Organisation for European Economic Co-operation in accordance with the recommendations of the Preparatory Committee, except as otherwise provided hereinafter.

2. Any Signatory which has not been a Member of the Organisation for European Economic Co-operation shall be released from the commitment set out in paragraph 1 with respect to any recommendation or part thereof of the Preparatory Committee which it specifies in a notice to the Preparatory Committee no later than ten days after the deposit of its instrument of ratification or acceptance of the Convention.

3. If any Signatory gives notice pursuant to paragraph 2, any other Signatory, if in its view such notice changes the situation in regard to the recommendation or part thereof in question in an important respect, shall have the right to request, within fourteen days of such notice, that the Preparatory Committee reconsider such recommendation or part thereof.

4. (a) If a Signatory gives notice pursuant to paragraph 2 and no request is made pursuant to paragraph 3, or, if such a request having been made, the reconsideration by the Preparatory Committee does not result in any modification of the recommendation or part thereof in question, the representative on the Council of the Signatory which has given notice shall abstain from voting on the act or part thereof to which the recommendation or part thereof in question pertains.

(b) If the reconsideration by the Preparatory Committee provided for in paragraph 3 results in a modified recommendation or part thereof, the representative on the Council of the Signatory which has given notice may abstain from voting on the act or part thereof to which the modified recommendation or part thereof pertains.

(c) Abstention by a Signatory pursuant to sub-paragraph (a) or (b) of this paragraph with respect to any act or part thereof shall not invalidate the approval of that act or part which shall be applicable to the other Signatories but not to the abstaining Signatory.

5. The provisions of this Memorandum relating to actions to be taken before the voting in the Council shall come into force upon its signature; the provisions relating to the voting in the Council shall come into force for each Signatory upon the coming into force of the Convention as regards that Signatory.

IN WITNESS WHEREOF, the undersigned have appended their signatures to this Memorandum.

DONE in Paris, this fourteenth day of December, Nineteen Hundred and Sixty, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited with the Government of the French Republic, by whom certified copies will be communicated to all the Signatories.

[Signatures omitted.]

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APPENDIX 2

Official assistance to the less-developed countries by OECD countries and Japan

[Dollars in millions]

	1956	1957	1958	1959	1956-59
Austria:					
GNP.....	\$4,238	\$4,665	\$4,938	\$5,264	\$19,105
Aid.....	\$2	\$1	\$6	\$4	\$13
Aid as percent of GNP.....	0.05	0.02	0.12	0.08	0.07
Belgium-Luxembourg:					
GNP.....	\$10,860	\$11,650	\$11,616	\$12,000	\$46,126
Aid.....	\$17	\$24	\$23	\$52	\$116
Aid as percent of GNP.....	0.16	0.21	0.20	0.43	0.25
Denmark:					
GNP.....	\$4,461	\$4,769	\$4,918	\$5,270	\$19,418
Aid.....	\$3	\$1	\$4	\$5	\$13
Aid as percent of GNP.....	0.07	0.02	0.08	0.09	0.07
France:					
GNP.....	\$37,513	\$41,867	\$47,532	\$51,000	\$177,912
Aid.....	\$487	\$639	\$787	\$954	\$2,867
Aid as percent of GNP.....	1.30	1.53	1.66	1.87	1.61
Germany:					
GNP.....	\$46,648	\$49,905	\$52,929	\$56,645	\$205,527
Aid.....	\$21	\$46	\$78	\$107	\$253
Aid as percent of GNP.....	0.05	0.09	0.15	0.19	0.12
Ireland:					
GNP.....	\$1,510	\$1,588	\$1,630	\$1,710	\$6,438
Aid.....	\$1	\$1	\$1	\$1	\$2
Aid as percent of GNP.....	0.06	0.06	0.06	0.06	0.03
Italy:					
GNP.....	\$23,414	\$25,088	\$26,638	\$27,970	\$103,110
Aid.....	\$16	\$16	\$31	\$17	\$81
Aid as percent of GNP.....	0.07	0.06	0.12	0.06	0.08
Netherlands:					
GNP.....	\$8,610	\$9,315	\$9,592	\$10,175	\$37,692
Aid.....	\$33	\$34	\$41	\$43	\$151
Aid as percent of GNP.....	0.38	0.37	0.43	0.42	0.40
Norway:					
GNP.....	\$3,725	\$3,950	\$3,894	\$4,100	\$15,660
Aid.....	\$1	\$2	\$3	\$4	\$10
Aid as percent of GNP.....	0.03	0.05	0.08	0.10	0.06
Portugal:					
GNP.....	\$1,945	\$2,015	\$2,071	\$2,135	\$8,166
Aid.....	\$7	\$5	\$4	\$21	\$38
Aid as percent of GNP.....	0.36	0.25	0.19	0.98	0.47
Sweden:					
GNP.....	\$9,470	\$10,245	\$10,623	\$10,850	\$41,188
Aid.....	\$3	\$12	\$4	\$10	\$29
Aid as percent of GNP.....	0.03	0.12	0.04	0.09	0.07
Switzerland:					
GNP.....	\$6,846	\$7,355	\$7,593	\$8,000	\$29,794
Aid.....	\$1	\$1	\$3	\$1	\$5
Aid as percent of GNP.....	0.01	0.01	0.04	0.01	0.02
United Kingdom:					
GNP.....	\$57,960	\$61,328	\$63,484	\$65,700	\$248,472
Aid.....	\$208	\$243	\$264	\$356	\$1,070
Aid as percent of GNP.....	0.36	0.40	0.42	0.54	0.43
Total, above countries:					
GNP.....	\$216,600	\$233,740	\$247,458	\$260,819	\$958,617
Aid.....	\$799	\$1,025	\$1,247	\$1,575	\$4,648
Aid as percent of GNP.....	0.37	0.44	0.50	0.60	0.48
United States:					
GNP.....	\$419,200	\$442,500	\$441,700	\$478,000	\$1,781,400
Aid.....	\$2,144	\$2,343	\$2,415	\$2,438	\$9,340
Aid as percent of GNP.....	0.51	0.53	0.55	0.51	0.52
Canada:					
GNP.....	\$30,182	\$31,773	\$32,509	\$34,700	\$129,614
Aid.....	\$28	\$46	\$88	\$57	\$219
Aid as percent of GNP.....	0.09	0.14	0.27	0.16	0.17
Japan:					
GNP.....	\$24,650	\$28,050	\$27,750	\$30,000	\$110,450
Aid.....	\$16	\$15	\$205	\$41	\$277
Aid as percent of GNP.....	0.06	0.05	0.74	0.14	0.25

NOTES

1. GNP figures are at current market prices. The figures for 1959 are estimated.
2. Both the GNP and aid figures have been converted to dollars at current exchange rates.
3. Aid figures are based primarily on actual expenditures. For all the countries they include: (a) net official grants, (b) gross official bilateral loans of 5 years or over, (c) official contributions and subscriptions to international organizations paid during the period (i.e., net IBRD subscriptions, IFC capital contributions, contributions to the EEC Development Fund, net contributions to United Nations technical assistance and relief agencies). For the United States, the increase in U.S. holdings of local currencies derived from Public Law 480, title I sales is included to reflect the transfer of resources. For Japan, the yearly breakdown on gross official bilateral loans of 5 years or over is estimated. Reparations payments have not been included.
4. This definition of assistance has not been accepted by the countries involved and has no international standing.

APPENDIX 3

TABLE A.—Importance of OECD countries as a market for less developed countries—Exports from less developed countries to OECD members by principal commodities, total exports, and proportion taken by OECD countries, 1959

	Rubber	Tea	Cocoa	Coffee	Rice	Tobacco	Petroleum	Cotton ¹	Tin	Copper	All LDC exports
Imports from LDC's into—	Thousand long tons	Metric tons	Thousand long tons	Thousand metric tons	Thousand metric tons	Thousand metric tons	Million metric tons	Thousand bales	Metric tons	Thousand metric tons	Millions
Austria.....	11.3	534	10.0	9.8	1.6	1.9	0	48.6	0	2.6	\$70
Belgium/Luxembourg.....	14.3	60	10.0	54.8	22.5	11.2	6.7	269.5	2,001	180.3	580
Canada.....	45.3	16,739	12.5	56.8	8.2	.3	15.8	201.3	967	0	440
Denmark.....	6.2	843	3.4	38.4	0	6.0	(²)	25.4	0	.5	80
France.....	120.4	1,496	55.3	197.0	82.4	12.2	28.8	686.2	339	53.8	1,880
Germany.....	143.9	6,965	102.3	136.7	45.4	18.3	16.5	889.9	50	219.3	1,710
Greece.....	1.9	109	2.4	7.2	1.3	0	1.3	1.1	88	.2	60
Iceland.....				1.6	0	0	0	0	0	0	(²)
Ireland.....	3.8	9,962	5.8	.4	0	.1	.9	13.9	0	0	80
Italy.....	56.1	1,315	26.2	83.6	.6	0	22.5	323.1	2,342	76.7	860
Netherlands.....	20.6	9,605	74.3	50.3	39.9	12.9	12.4	288.9	80	10.7	750
Norway.....	2.9	71	4.0	25.1	.5	.7	.1	12.0	0	0	120
Portugal.....	4.8	167	1.0	10.5	.7	.8	1.2	222.4	0	2.8	120
Spain.....	21.4	57	21.4	.1	0	(²)	7.2	137.4	0	14.1	(²)
Sweden.....	21.3	1,040	6.7	68.0	0	.6	2.4	31.5	0	30.7	300
Switzerland.....	6.4	(³)	12.0	(³)	(³)	(³)	(³)	120.0	57	14.2	140
Turkey.....	3.8	5,912	.8	1.0	0	0	0	0	163	0	(²)
United Kingdom.....	167.3	228,272	77.2	52.9	23.2	57.6	46.2	777.2	0	336.2	3,920
United States.....	557.4	45,258	204.7	1,396.6	0	14.5	58.7	136.3	24,162	206.4	5,040
Total OECD imports from LDC's.....	1,209.0	328,402	630.0	2,240.9	226.1	137.0	220.9	4,184.7	30,249	1,148.6	17,150
Total world imports from LDC's.....	2,042.5	479,655	750.4	2,511.8	3,833.7	241.7	317.3	8,115.0	50,052	1,430.0	26,210
OECD imports as percentage of world imports from LDC's.....	59	68	84	89	6	57	70	52	60	80	65

¹ Cotton figures are for crop year 1958-59.
² Negative.

³ Not available.

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TABLE B.—Proportion of export earnings of selected less developed countries derived from principal primary products, 1959

[Percentages]

Countries	Cocoa	Coffee	Copper	Cotton	Petroleum	Rice	Rubber	Tea	Tin	Tobacco
Bolivia									69	
Brazil	5	57		2						
Chile			69							
Colombia		77			16					
Costa Rica	5	50								8
Dominican Republic	17	13								
Ecuador	13	3								
El Salvador		64		21						
Guatemala		71								
Haiti		55								
Honduras		24								
Mexico		0	4	26						
Nicaragua		21		45						
Panama										
Paraguay	3									
Peru			8	7	5					
Venezuela				22	87					
Egypt				71		1				
Iraq					93					
Sudan				60						
Syria				48						
Ethiopia		61								
Ghana	67									
Burma				2		71				
Ceylon							17	60		
India								20		
Indonesia					26		48		4	
Malaya							66		10	
Pakistan				12						
Thailand						34	31		6	
Vietnam						32	63			

APPENDIX 4

DEPARTMENT OF STATE,
February 27, 1961

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: In the course of the hearings on the Convention on the Organization for Economic Cooperation and Development on Wednesday, February 15, 1961, before the Foreign Relations Committee a request was made for a memorandum setting forth the legal analysis of article 5 and article 6.

I attach such a memorandum and hope it will be helpful to your committee in the consideration of the convention. I wish to point out that the Department of Justice has been consulted in the preparation of this memorandum.

Sincerely yours,

ABRAM CHAYES, *The Legal Adviser.*

Enclosure: Memorandum.

MEMORANDUM

Article 5 of the Convention on the Organization of Economic Cooperation and Development reads as follows:

"In order to achieve its aims, the Organization may:

"(a) take decisions which, except as otherwise provided, shall be binding on all the Members;

"(b) make recommendations to Members; and

"(c) enter into agreements with Members, non-member States and international organizations.

Article 6 reads as follows:

"1. Unless the Organization otherwise agrees unanimously for special cases, decisions shall be taken and recommendations shall be made by mutual agreement of all the Members.

"2. Each Member shall have one vote. If a Member abstains from voting on a decision or recommendation, such abstention shall not invalidate the decision or recommendation, which shall be applicable to the other Members but not to the abstaining Member.

"3. No decision shall be binding on any Member until it has complied with the requirements of its own constitutional procedures. The other Members may agree that such a decision shall apply provisionally to them."

It appears that the discussion in the committee which gave rise to the request for the present memorandum concerned in the main article 5 and article 6, paragraph 3.

Under article 5(a) the Organization may act by taking decisions. Such decisions are binding on all the members, except as otherwise provided. Thus, by the very terms of a decision, it may be restricted in its obligatory application to only certain of the members of the Organization.

Under article 5(b) the Organization may act by making recommendations. As the term signifies, these are not of an obligatory nature, but a member would be expected to endeavor to carry out such a recommendation, unless the member abstained from voting for it. Recommendations may recommend a course of action by members, or study of a matter, or adherence to an international agreement drafted in an OECD committee, etc. For example, the OECD will normally deal with substantive problems such as economic policy and assistance to the less-developed countries by exchanging information and by informal discussions. To the extent that additional action were necessary, this would normally be taken by the OECD Council in the form of a recommendation to member governments. Thus, the OECD Council might follow a discussion of assistance to the less-developed countries by a recommendation to member governments that they increase the length of the credits extended to the less-developed countries. In such cases, the member governments would not be legally bound by the recommendations, but they would endeavor to carry out the recommendations.

Under article 5(c) the Organization may enter into agreements with members, nonmembers, or international organizations. One such type of agreement is referred to in Supplementary Protocol No. 2, namely, an agreement by the Organization with Canada or a nonmember government regarding the legal capacity and privileges and immunities of the Organization on the territory of Canada or such nonmember government. Also the Organization might enter into an agreement with another international organization, such as the International Monetary Fund, for participation of representatives of the IMF as observers in certain committees of the OECD.

The question was raised in the hearings before the committee whether the statement of the aims of the Organization in article 1 and the agreement in elaboration of such aims in article 2 could be construed, assuming Senate ratification, to confer power upon the executive branch of the United States Government acting through its representative on the Council of the Organization, to bind the United States by participating in a decision of the Organization within the fields described in articles 1 and 2 which define the substantive scope of the Organization. As stated in the letter of January 16, 1961 of the Secretary of State to the President, which the President enclosed with his message to the Senate of January 17, 1961, and as reiterated by Government spokesmen at the hearings, it is not considered that by the convention the Executive will have any additional powers in substantive matters that now exist in the Executive. In short, articles 1 and 2 set forth the general agreement between the member nations and limit the proper scope of activities of the Organization; these articles are void of any grant of power to the Executive, and the power, in any particular case, of the United States Executive to bind the United States must be sought and found in an independent source outside the convention.

With this as background, consideration may now be given to article 6, paragraph 3. This important paragraph states that no decision shall be binding on a member until it has complied with the requirements of its own constitutional procedures.

Thus, if a decision were proposed to the Council for the establishment of a committee of representatives of member governments to study the promotion of tourism, the executive branch would consider it had power to agree to such a decision. Similarly, if a decision were proposed to the Council for the establishment of a fund for the period of a year, contributed to by all members, to encourage tourism in member countries, the United States Executive would consider it had

power to agree to such a decision, if the United States Congress had authorized and appropriated funds for the promotion of tourism to the United States. If no such congressional authorization and appropriation existed, the executive branch through its representative would either veto the decision, or abstain (thus permitting the decision to become binding as to other member countries) or approve, subject to compliance with United States constitutional procedures. In this last event, appropriate United States congressional action would have to be taken before the decision could be binding on the United States. Similarly, a decision might be proposed to the Council involving an international agreement of a type which would require Senate advice and consent under United States treaty procedure. In this case, again, the United States representative could veto, abstain, or approve subject to compliance with United States constitutional procedures. In this last event, Senate advice and consent would need to be given before the decision could be binding on the United States. In conclusion, it is our view that paragraph 3 of article 6 allows for full compliance with United States constitutional procedures and the division of functions between the Executive and the Congress.

It may be noted that it is expected that most of the decisions taken by the OECD Council which will be binding on member governments will not pertain to substantive matters but will pertain to administrative matters, such as the establishment of committees and working parties. For example, the OECD Council will have to take decisions to establish the appropriate subsidiary bodies of the OECD. Council decisions will also be taken concerning the terms of reference of these committees. Later Council decisions will be taken covering the activities of these committees.

APPENDIX 5

MARCH 6, 1961.

OPINION OF THE LEGAL ADVISER

The Legal Adviser of the State Department is of the opinion that nothing in the Convention on the Organization for Economic Cooperation and Development confers any power on the Executive to bind the United States in substantive matters beyond what the Executive now has, or on the Congress to take action in fields previously beyond the authority of Congress. Conversely, nothing in the convention diminishes the power of the Executive or Congress in these respects.

The attached memorandum sets forth the reasoning underlying this opinion.

ABRAM CHAYES, *The Legal Adviser.*

MEMORANDUM

1. There is nothing in the convention which expands or enlarges the power of the Executive in substantive matters.

Article 1 states the aims of the Organization and article 2 sets forth the general agreement of the members in elaboration of these aims. Then article 5 states that the Organization may take decisions and article 6 describes the process by which these decisions be taken. This process provides two safeguards for the United States. In the first place no decision may be imposed on it without its consent. Secondly, that consent must be given in compliance with the requirements of U.S. constitutional procedures before the decision becomes binding upon us.

The argument has been intimated that since the Organization under article 5 is authorized to take decisions and since the executive branch will be representing the United States in the Organization, the convention will operate to give the Executive power to agree on decisions in the substantive fields covered by articles 1 and 2. This argument is based on the erroneous assumption that the convention in any way concerns itself with the distribution of powers within the United States or any other member state. Properly viewed, articles 1 and 2 merely set forth a general agreement between the member nations on broad lines of public policy and define the area of concern of the Organization. Under article 5 the Organization may take decisions, but the convention is silent as to the process by which a member nation, within its own internal system, arrives at the point where it may cast an effective vote in favor of a particular decision. Articles 1 and 2 are void of any grant of power to the Executive. Thus, the power of the United States to cast a favorable vote and bind the United States in any particular case must be sought in a source outside the convention.

Paragraph 3 of article 6 was urged upon the other countries by the United States. The United States in the negotiations emphasized that under our constitutional system certain matters were in the purview of Congress and that the agreement of the United States to Council decisions on such matters even after the ratification of the convention would remain subject to further action by the Congress before being binding on the United States. Paragraph 3 of article 6 would have been unnecessary and meaningless if the mere ratification of the convention served to clothe the Executive with powers to take action in the fields covered by articles 1 and 2.

It may be pointed out that the view that the convention does not enlarge the power of the Executive in substantive matters (1) was stated in the letter of January 16, 1961, of Secretary of State Herter to President Eisenhower which he enclosed with his message to the Senate of January 17, 1961, (2) was repeated several times by Secretary Dillon and Under Secretary Ball at the hearings before the Foreign Relations Committee, and (3) was developed in some detail in a memorandum of the Legal Adviser of the State Department concurred in by the Department of Justice and enclosed with a letter of February 27, 1961, from the Legal Adviser to the chairman of the Foreign Relations Committee.

2. There is nothing in the convention which expands or enlarges the power of the Congress to take action in fields previously beyond the authority of the Congress.

The argument appears to have been made that the provisions of articles 1 and 2 may in some way serve as the source of authority for Congress to legislate in the future in fields which are reserved to the States by the 10th Amendment. As was stated at the hearings by Government spokesmen, articles 1 and 2 define the broad aims and goals of the Organization. The language of article 2 is that of agreeing to "promote," "pursue policies," "pursue * * * efforts" and "contribute * * * by appropriate means." The concrete steps by which the broad aims and goals are to be effectuated remains in the complete discretion of each member nation. We wish to emphasize the point made in Under Secretary Ball's letter to the chairman of February 27, 1961, that such language in article 2 does not constitute a commitment to take any concrete action or refrain from any concrete action. We are merely bound to consult and exchange views and information in a regular and systematic manner on matters within the purview of the article. In our view this language cannot serve as any authorization to Congress to take any action it otherwise could not take.

In this connection it should also be pointed out that treaties, like laws, are subordinate to the Constitution. They cannot violate the Constitution.

Finally, reference is again made to paragraph 3 of article 6. This paragraph, on its face, defers to our constitutional system not only in its distribution of powers between the Executive and the Congress, but also in its distribution of powers between the Federal Government and the States.

3. Nothing in the convention diminishes the power of the Executive or Congress.

In the course of the hearings the question was raised whether provisions of article 2 might not override congressional actions or inhibit congressional actions on particular subjects. As stated before, the terms used in article 2 do not constitute commitments to take any concrete action or refrain from any concrete action. In this view, it is difficult to envisage any statute of Congress or any act of the Executive that could be inconsistent with the terms of article 2. We therefore conclude that the terms of article 2 will not diminish the powers of Congress or the Executive in the fields therein described.

