

EDITORIAL

The OAU Council of Ministers, at its meeting from 28.2. to 4.3., agreed to amend the African Convention, signed in 1968 by the Heads of State of all the independent African countries. This will ensure that this Convention — long recognized as being the most advanced regional convention — will now, together with the Asean Convention, remain the most progressive.

We understand that UNEP has recently completed an internal evaluation of its programme activities, listing achievements and omissions and reflecting on its role in the future. In the light of the task of the World Commission on Environment and Development, to make proposals for future perspectives — also in the institutional sphere — it is of especial interest that UNEP has begun a critical view of its activities. The WCED, in its "mandate for change" has stated that it will, inter alia, formulate innovative concrete action proposals to deal with the critical issues of environment and development, in co-operation with the relevant organizations of the UN system, including UNEP. It could be that UNEP wishes to forestall any possible action to alter its structure by seizing the initiative itself, in proposing fundamental changes to its terms of reference.

We expect, therefore, that the next UNEP Governing Council will have before it a proposal for some changes in the structure of its Programme sphere before the appearance of the final report of the WCED, to be submitted to the United Nations General Assembly in 1987.

When it was established in 1972, UNEP's role was seen to be a catalytic one. There has been criticism in this Journal and elsewhere, now apparently accepted by UNEP, that no real effort has been made in the past to assess the catalytic effect UNEP has had on others. UNEP has ever increasingly been regarded as a funding body rather than a UN Programme. It has been slow in taking initiatives with regard to the development and carrying-out of projects and has mostly left the initiative to others.

Furthermore, readers will remember that in our editorial following last year's Governing Council, we expressed our disappointment that the documents and proceedings of the Governing Council and the extensive reports prepared for other meetings do not receive the recognition they deserve, nor are they widely available. We have been informed that UNEP has now also recognized this shortcoming and intends to undertake measures to improve public awareness.

But if UNEP really does intend — or feels compelled — to grasp the initiative to draw up project objectives and initiate proposals for action it is difficult to see how this will fit into its classical role, as it will entail a drifting away from the catalytic function. Perhaps it is time for at least a partial change — as we are now in 1986 and no longer in 1972 — and have learned since then that the other components in the UN family have not co-operated so intensively in the environment field as the drafters of the resolution had expected.

24 February 1986

Wolfgang Bruehl

LETTER TO THE EDITOR

(Re: Hainburg Power Station — Article in Environmental Policy & Law, Vol. 15, 1985)

Dear Sirs,

In Environmental Policy and Law 15 (1985) there is an article by H. Soell and F. Dirnberger dealing with the ruling by the Austrian Administrative Court of 2 January 1985 regarding the Hainburg Case. It seems necessary to make some annotations so that the reader may have all the facts:

1. In the authorization procedure it is possible to deal first with general aspects leading to a general authorization, and to deal afterwards with all details necessary, leading to an amount of detail authorizations. Both the Administrative Court and the Constitutional Court have admitted this as correct.

2. The plaintiff's estates are far away from that area, where the approved opening up of the construction site was to take place.

3. Nevertheless, the Administrative Court felt, that the cleaning of the area for the construction site could have some influence on the ground water below the plaintiff's estate (this to the great astonishment of experts), and therefore granted suspensory effect to the plaintiff's application.

4. It is not in accordance with the regular jurisdiction of the Administrative Court and the Constitutional Court, that all detail authorizations have to be completed before starting on a project.

5. The DoKW AG was entitled to start the opening of the construction site, because of given general authorization, specific detail authorization and arrangement with the owner of this estate. Since the plaintiff's estates were not influenced, it was neither necessary nor possible for the Bundesministerium für Land- und Forstwirtschaft to deal with them, especially issuing an authorization under Art. 122(3) WRG 1959.

6. From this point of view there may be doubts if the ruling of the Administrative Court of 2 January 1985 was correct. There is no doubt about its positive effects in bringing peace to the quarrelling parts. There is good hope that the definite decision of the Administrative Court will bring back light into this affair.

7. An eminent question has been answered in the meantime by the decision of the Constitutional Court of 5 October 1985 rejecting an application of the same plaintiff. It is clear now, that an infringement of the plaintiff's constitutional rights has not taken place and that the legal instrument of designating a hydraulic engineering project as one of high priority (under Art. 100 (2) WRG 1959) is correct from the constitutional point of view.

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