

NUCLEAR MONITOR

A PUBLICATION OF WORLD INFORMATION SERVICE ON ENERGY (WISE)
AND THE NUCLEAR INFORMATION & RESOURCE SERVICE (NIRS)

wise

World Information Service on Energy
Founded in 1978



JULY 13, 2007 | No. 658

MONITORED THIS ISSUE:

INDIGENOUS PEOPLE IN CANADA RESISTS URANIUM EXPLORATION	1
GERMANY: FIRE DID AFFECT NUCLEAR REACTOR; PHASE- OUT PLANS TO STAY	2
SCOTLAND OPTS OUT OF NEW WASTE CONSULTATION	3
EURATOM: COUNTRIES FREE TO STEP OUT	4
NOMADIC REBELS IN NIGER ATTACKED URANIUM MINING FIRMS	6
IN BRIEF	7

EURATOM: COUNTRIES FREE TO STEP OUT

Governments of non-nuclear EU member states proved unable, or unwilling, to push for a reform of the European Atomic Community (Euratom) during the EU constitutional process (2001-2004), when even a single country could have made a Euratom revision conference a condition for its approval of the constitution treaty. This opportunity having passed away, what a non-nuclear country can now do on its own without having to wait for the approval of all 26 other Euratom member states is to withdraw from the Euratom treaty and community. Austrian NGOs have been waging a campaign aimed at just such a withdrawal since the beginning of this year in which the European Atomic Community became 50 years old.

(658.5818) **PLAGE** - In a press conference three months ahead of the 50th anniversary of the Euratom Treaty, on January 17, 2007, the five main Austrian antinuclear NGOs launched a campaign to get the Austrian parliament and government to decide that the country will step out of the Atomic Community and terminate the Treaty. Even before Austria submitted its

application for membership in the European Communities including Euratom to the Commission in 1989, the no nukes movement warned of the consequences and demanded an open debate, which the "big coalition" government of Social and Christian Democrats (SPOE/OEVP) refused throughout the negotiation period and in the run-up to the June 1994

referendum on accession. With ups and downs, ever after accession on January 1, 1995, the nuclear-critical stance of Austria's policy within the Union has become less vigorous. The impression now is increasingly one of Euratom holding non-nuclear member states in its grip rather than these influencing Euratom decisions, let alone structures. One of the more recent examples is

The vices in Euratom

1. The Euratom Treaty (ET) is an anachronism: The very fact that it has remained unchanged since it was signed in 1957 as one of the then three legal pillars of the European Community shows that it is a relic from another age. It is completely incompatible with scientific and economic experience and public opinion as they have evolved since that date. Not even the Chernobyl nuclear catastrophe has led to the slightest change in the Treaty. On top of all that, while the European Coal and Steel Treaty expired after 50 years in 2002, no expiration date was laid down in the ET. Obviously, Euratom was meant to be for eternity. And its fathers were not even aware of nuclear's eternity problem: no explicit provisions for nuclear waste in the ET!

2. Treaty for Special Treatment: no other branch of the energy industry is warranted by such a high-ranking treaty. In fact, no single other economic activity is! This is in glaring contradiction with what the great majority of the people want: if for any, there would be consensus in favor of a treaty for renewables in European society today (EURENEW instead of EURATOM). In a breath-taking analogy, there has been global backing for nuclear energy for more than 50 years through the UN's International Atomic Energy Agency (IAEA), while the creation of a UN Agency for Renewable Energies (IRENA) is overdue.

3. Competition distortion & violation of the EU's supreme free-market rule: This special treaty has in fact established a special economic zone for nuclear energy within the European Community and Union. It is the most massive obstacle to (coming anywhere near creating) a level playing-field for all forms of energy and all actors in the energy field. For 50 years now, the ET has been the legal basis for the Euratom loans system, which provides subsidized credit for developing nuclear projects - for instance even in a rich country itself fostering nuclear energy in all possible ways like France. Privileges for nuclear energy under Euratom extend into the field of research: again, no other branch of energy has a research program of its own, with a budget of its own. And in all EU framework research programs over the past decades, nuclear energy has totaled bigger funds than all other forms of energy (conventional, renewable, efficiency) taken together.

4. Democracy deficit: The European Parliament can talk, but it has no say in matters nuclear. Which gives a large margin of manoeuvre to the non-elected Commission and to the Councils of ministers and of the heads of state whose meetings and decisions take place far away from the public eye. More generally, keeping up Euratom flies in the face of public opinion and public will as ascertained by the pro-nuclear EU Commission itself: over the past two decades at least, the regular EU opinion poll "Eurobarometer" has shown a majority against continued development of nuclear power, even in the "nuclear country par excellence", France.

5. Military intentions behind? The ET does not include any provisions on the military use of nuclear power. It would be astonishing, however, if the strategic minds on top EU level and especially within the EU's two military nuclear powers France and Great Britain were not aware of the perfect civil screen Euratom provides for maintaining or expanding a nuclear infrastructure parts of which can easily be put to military use (e.g. plutonium production in civil reactors and reprocessing plants). Cp. French Admiral Pierre Lacoste's foreword to the book *30 Years Experience with Euratom - The Birth of a Nuclear Europe*, by Olivier Pirotte et al.: "Will Europe (...) on its path to unification, advance toward complete mastery of nuclear energy? In its military form, it is undoubtedly bound to play an irreplaceable role for years (...). Its industrial use can guarantee our access to never-ending energy, the supreme condition for development and well-being and, thus, for peace." See Iran, see Chernobyl.

approval of the vastest singular nuclear investment ever, the nuclear fusion experimental reactor ITER. In light of this, the antinuclear platforms of the Upper Austria and Salzburg regions (atomstopp_oberoesterreich and PLAGE), Global 2000 (Friends of the Earth Austria), Greenpeace Austria and Umweltdachverband (the umbrella for a great number of conservationist organizations) find increasingly paradoxical that a country explicitly declared non-nuclear should stay within, and keep paying for, what is the most massive legal and bureaucratic stronghold of the nuclear industry worldwide. In a way, while Austrian membership may at times have influenced EU nuclear policy, it gives additional credit to pro-nuclear decisions: How could one doubt such decisions indeed, when "even the most inveterate non-nuclear country has voted for them"?

The industry's survival warrant - after Chernobyl

No local or national antinuclear achievement, no successful resistance against any single nuclear project or program has changed a comma about the Euratom Treaty. Nor has Chernobyl. On the contrary, rather. To give but one example: In the wake of the biggest disaster of the nuclear industry so far, radioactive contamination limits that were far more restrictive in several countries were "harmonized" to higher levels under the Euratom cap. Thus, at similar radioactivity levels, should big-surface contamination occur in the future, salads and other vegetables, milk and meat would not have to be kept out of the German, Austrian or other markets as they had to in 1986-87, but would simply be "fit for human consumption". (See, e.g., *Nuclearized country, second try? - Austria's civil and military integration into the European Atomic Community*, ed. Anti Atom International, Vienna, 1993, chapter 8.)

Revision conference for EURATOM reform?

The process leading up to the EU constitutional treaty raised new awareness among the antinuclear movement of just what a fortress of guarantees and privileges the Euratom Treaty is for the nuclear players. Thus, from 2002 to 2004 in particular, numerous European NGOs tried to make Euratom a topic. Exposing its glaring contradictions with such supreme principles of the European Union as democratic rule and undistorted competition, they demanded that Euratom be abolished

or, at least, thoroughly reformed. A number of delegates to the Convention drafting the Constitution, mostly Greens and some Social Democrats, tried to put reform proposals on the agenda, which the Convention's presidency under French ex-president Valéry Giscard d'Estaing, himself a man of the nuclear lobby, superbly ignored. No national government made a real move for a change of the Euratom Treaty. The best that could be achieved was to prevent the worst: then German vice chancellor Joschka Fischer and Austrian member of the European Parliament and delegate to the Convention, Johannes Voggenhuber, both from the Greens, managed to keep Euratom out of the Constitutional Treaty, as a stand-alone treaty.*⁽¹⁾ At that moment of history, when approval of the EU Constitution hinged on each single member government's signature, Austria - and/or others - could at least have made their signature dependent on the promise of all member states to hold a Euratom revision conference within a given time limit. This occasion is gone. In a declaration attached to the Constitutional Treaty, Austria, Germany, Hungary, Ireland and Sweden did express their support for an inter-governmental conference (IGC) on updating Euratom. But with no time limit set and with no formal promise from the other states, this has not changed the status quo at all. There might be another occasion when some kind of substitute EU reform treaty is to be signed in 2008-2009, as intended by many EU leaders. At present, in order not to just sit there and wait for another such occasion which may never come, and in order to make pressure for at least some fundamental changes in the Euratom Treaty, the best we can do is take the offensive: if we cannot abolish or reform Euratom, let us abolish our membership there.

Leave Euratom, stay in EU: it's possible, 2 legal expertises say

When atomstopp_oberoesterreich, Greenpeace Austria, Global 2000, PLAGE-Salzburg and Umweltdachverband launched their Step Out Campaign early this year, they had confirmation for this strategy from two expert opinions (see box). In two entirely separate expertises, professors of international law Manfred Rotter, Linz University, and Michael Geistlinger, Salzburg University, came to the same basic conclusion: "according to international customary law underlying art. 56 of the Vienna Convention on the

Legal expertises on a single country's withdrawal from Euratom (Two Austrian expertises, and one done in Germany. Each was done completely independently from the others.)

1. Manfred ROTTER: Rechtlich geordneter Austritt aus der Europäischen Atomgemeinschaft vor und nach Inkrafttreten des Verfassungsvertrages (*Orderly Withdrawal from the European Atomic Community, before and after the Coming into Force of the Constitutional Treaty*), Dec. 2003. A 22-page expertise commissioned by the Regional Government of Upper Austria. - M. Rotter is professor of international law, international relations and European law at the Johannes Kepler University in Linz, Austria.

2. Michael GEISTLINGER: Some Ideas on the Possibility of Unilateral Withdrawal from the Euratom Treaty, prepared for the conference on "Energy Intelligence for Europe - The Euratom Treaty and future energy options", Copenhagen, Sept. 23, 2005. A 3-page fast expertise commissioned by the Danish environmental NGO NOAH. Also available in German. - M. Geistlinger is professor of international law at the Paris Lodron University in Salzburg, Austria.

3. Bernhard WEGENER: Die Kündigung des Vertrages zur Gründung der Europäischen Atomgemeinschaft (Euratom) (*The Termination of the Founding Treaty of the European Atomic Community*), March 2007. A 70-page expertise commissioned by The Greens in the German Bundestag (Parliament). - B. Wegener is professor of public law, comparative law and European law at the Friedrich Alexander University in Erlangen-Nuremberg.

(Complete versions of 1 & 2 from info@plage.cc, 3 from versand@gruene-bundestag.de)

Law of Treaties, there is a right to unilateral withdrawal from the Euratom Treaty." Both also conclude that such a withdrawal is legally possible whether or not the Constitutional Treaty signed in 2004 is in force. And, very importantly, since the Euratom Treaty, though being linked to the other EC/EU

treaties, is an individual, separate treaty, it is perfectly possible to step out of it while staying within the Union as a whole. The step, of course, would be unheard-of. It would cause turmoil in Europe's - and in fact the world's - nuclear establishment. Even its mere announcement is likely to be a formidable lever for opening that public and inter-state debate on Euratom that has so long been overdue.

And a third expertise!

It was more than just an agreeable surprise when in February 2007 one of the leading figures of the Green Party in the Bundestag, MdB Hans-Josef Fell, told PLAGE that an expertise on withdrawal from Euratom was forthcoming in Germany, too. With a view to the 50th anniversary of the Euratom Treaty, ever unreformed, the German Greens had commissioned professor of public and European law, Bernhard Wegener, from the University of Erlangen-Nuremberg to look into the question of *Terminating the Founding Treaty of the European Atomic*

Community (EURATOM). Not only does Prof. Wegener, like Rotter and Geistlinger, conclude to the legal possibility and feasibility of the termination of the Euratom Treaty by individual member countries: with its 70 pages, his expertise is the most extensive of the three and examines the question under a number of additional, related aspects. So there are now three entirely separate scientific investigations into the matter that corroborate one another. Not a single written expert statement has been put forward contradicting the three legal opinions that are on the table. The only obstacle to implementation of the steps thus clearly indicated: the lack of political will and courage. NGOs in Austria are determined to move along on the long and winding road toward the point where government and parliament will pluck up that courage. Support from the outside for this struggle inside Austria will be welcome. (End of Part 1)

Constitution, the Euratom Treaty can be changed by a "simple" inter-governmental conference (IGC). Tackling Euratom provisions integrated into the Constitution, however, would have meant to put the whole Constitutional Treaty back on the table - a horror picture to most EU governments and leading figures, since discussion and wrestling about provisions other than those on nuclear energy could then easily start all over again.

Source and Contact: Heinz Stockinger at PLAGE (Platform Against Nuclear Dangers), Nonntaler Hauptstr. 86, A 5020 Salzburg, Austria. Tel/Fax: +43 662-643567 Email: info@plage.cc web: www.plage.cc or: Roland Egger (Upper Austrian Platform) at WISE Austria

*1 - Standing apart from the

Political step

Effect on scope of action against Euratom

Treaty abolition & revision conference	= no movement, locked in status quo, repeating same demands	= being at the mercy of the nuclearized states (e.g. France)	= Impotency
Unilateral withdrawal	= new dynamics	= autonomous action possible	= Empowerment