

United Nations Nations Unies

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REFERENCE:

5 May 2004

Dear Ms. Kuwabara-Yamamoto,

Re: Basel Convention on the Control of Transboundary Movements of Hazardous wastes and their Disposal (the Convention)

I refer to your memorandum of 30 April 2004 concerning the entry into force of amendments to the above Convention. In this regard, please note that the memorandum dated 8 March 2004, referenced in your memorandum dated 30 April 2004, reflected the views of the Office of Legal Affairs.

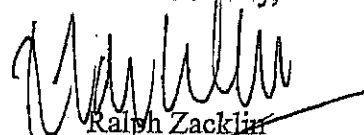
You state in your memorandum that the phrase "three-fourths of the Parties who accepted them", contained in Article 17(5) of the Convention, has historically been interpreted to mean three-fourths of the parties that were present at the time of adoption of the amendment. However, we noted that there is only one amendment to the Basel Convention deposited with the Secretary-General and there is no applicable precedent to guide us. No formal document is available to confirm the above interpretation. Furthermore, neither the provision in question itself nor the travaux préparatoires appear to offer assistance in the interpretation. In these circumstances the normal practice of the Secretary-General as depositary of multilateral treaties must be applied in the case of the Basel Convention and its amendments.

In such circumstances, the practice of the Secretary-General is to calculate the number of acceptances on the basis of the number of parties to the treaty at the time of deposit of each instrument of acceptance of an amendment (the current time approach). As far back as 1973, the Secretary-General, as depositary, applied the current time approach to the amendment of Article 61 of the Charter of the United Nations. This approach was reaffirmed, on 30 September 1998, by the Assistant Secretary-General for Legal Affairs in a letter to the Legal Counsel of the World Health Organization. The current time approach has consistently been followed in similar situations, e.g., the entry into force of amendments to the Constitution of the World Health Organization, and amendments to the Convention on the International Maritime Organization.

Ms. Sachiko Kuwabara-Yamamoto
Executive Secretary
Secretariat of the Basel Convention
UNEP

In the light of the above factors, the current time approach should be adopted in relation to the entry into force of amendments to the Basel Convention as well.

Yours sincerely,



Ralph Zacklin

Assistant Secretary-General
In charge of the Office of Legal Affairs