File No: 34128

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN

PIERINO DIVITO

APPELLANT
(APPELLANT)

AND

MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

RESPONDENT
(RESPONDENT)

CANADIAN CIVIL LIBERTIES ASSOCIATION,
DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS and
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

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PART I – OVERVIEW

1. This Court has frequently invoked Canada's international human rights obligations in the course of Charter interpretation. In an enduring dissent of Dickson C.J., recently adopted and applied by the majority of the Court, the former chief justice opined that the Charter should generally be presumed to afford protection at least as great as found in international human rights instruments to which Canada is a party.

2. This appeal raises a novel question of mobility rights. The leading international statement of mobility rights to which Canada is bound is found in art. 12 of the International Covenant on Civil and Political Rights 1966 ("ICCPR").[1] In these submissions, the British Columbia Civil Liberties Association ("BCCLA") explains the meaning and scope of ICCPR art. 12 and considers the constitutional questions before the Court in this appeal in light of that obligation.

PART II - STATEMENT OF POINTS IN ISSUE

3. What interpretive weight should Canada's international human rights obligations be given for the purposes of Charter interpretation?

4. What is the meaning and relevance to this appeal of ICCPR art. 12(4), which reads, "No one shall be arbitrarily deprived of the right to enter his own country"?

PART III – STATEMENT OF ARGUMENT

A. The role of international human rights law in Charter interpretation

5. In non-constitutional cases, this Court's interpretive approach to Canada's international legal obligations is very clear. In case after case,[2] the Court has affirmed and applied the rebuttable presumption that legislation will be presumed to conform to international law. The Court has justified this "rule of judicial policy" on the ground that the values and principles of customary and conventional international law "form part of the context in which statutes are

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[1] [1976] CanTS no. 47.

[2] See for example, *Merck Frosst Canada Ltd. v. Canada (Health)* 2012 SCC 3 at para. 117, *GreCon Dimter Inc. v. J.R. Normand Inc.* 2005 SCC 46 at para. 39, *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* 2004 SCC 4 at para. 31, *Ordon Estate v. Grail* [1998] 3 SCR 437 at para. 137, *Pushpanathan v. Canada (Minister of Citizenship and Immigration)* [1998] 1 SCR 982 at para. 51, *National Corn Growers Assn. v. Canada (Import Tribunal)* [1990] 2 SCR 1324 at 1371, *R. v. Zingre* [1981] 2 SCR 392 at 409-10, *Re Foreign Legations* [1943] SCR 208 at 231.

enacted".[3] The merits of this interpretive stance are many. It avoids bringing international responsibility upon Canada for violations of international law, and thus protects the federal executive from the legal and political difficulties that may arise from internationally non-compliant judicial decisions. It reflects Canada's actual practice of not incurring new international obligations without first ensuring that its domestic legislation (federal and provincial) is consistent with those commitments.[4] It is consistent with the judiciary's core function of upholding the rule of law. Finally, the rebuttable nature of the presumption ensures that it does not force wholly untenable interpretations upon the courts and assures respect for Canadian legislatures' traditional sovereignty to act contrary to international law by unequivocally expressed legislative intent.

6. Alongside the ordinary presumption of conformity, the Court has enunciated a Charter-specific version of the presumption which is in keeping both with Canada's international human rights obligations and the Court's stated aim of "securing for individuals the full benefit of the Charter's protection".[5] In the *Alberta Reference*, Dickson C.J. (dissenting) expressed the view that "the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified."[6] Dickson C.J. repeated this view, for the majority, in *Slaight Communications*, and added that Canada's international human rights obligations should also inform the s. 1 analysis.[7] More recently, in *Health Services* McLachlin C.J. and LeBel J. observed that "the Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified".[8]

7. This interpretive approach to the Charter shares all the merits of the presumption of conformity in non-constitutional contexts while wisely adding the qualification that Canada's international human rights obligations must be viewed only as a minimum content, or "floor" of

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[3] *R. v. Hape* 2007 SCC 26 at para. 53.
[4] E. Eid and H. Hamboyan, "Implementation by Canada of its International Human Rights Treaty Obligations: Making Sense Out of the Nonsensical" in O. Fitzgerald, ed., *The Globalized Rule of Law: Relationships between International and Domestic Law* (Toronto: Irwin Law, 2006) at 449-465.
[5] *R. v. Big M Drug Mart Ltd.* [1985] 1 SCR 295 at 344.
[6] *Reference re Public Service Employee Relations Act (Alta.)* [1987] 1 SCR 313 ("*Alberta Reference*") at 349.
[7] *Slaight Communications v. Davidson* [1989] 1 SCR 1038 at 1056.
[8] *Health Services and Support-Facilities Subsector Bargaining Assn. v. British Columbia* 2007 SCC 27 at para. 70; see also *R. v. Hape* 2007 SCC 26 at paras. 55 (quoting *Alberta Reference*) and 56 ("In interpreting the scope of application of the Charter, the courts should seek to ensure compliance with Canada's binding obligations under international law where the express words are capable of supporting such a construction.")

human rights protection, and not a limit or "ceiling" on the Charter's meaning. This makes sense because human rights treaties, being the products of international negotiation and compromise, do not always demand the same degree or depth of rights protection as Canadians enjoy or expect. Furthermore, human rights treaties themselves say they are a floor not a ceiling.[9]

8. Like the ordinary presumption of conformity, the Charter-specific version described above is rebuttable. The presumption establishes a starting-point for Charter interpretation but is not necessarily determinative of the Charter's meaning. Considerations outside of a given international human rights provision, such as the wording of the Charter, the existence of other international legal considerations, or concern for the separation of powers, may rebut the presumption. To find the presumption rebutted in a given case would not necessarily mean that Canadian law was contrary to international human rights law for, as Cromwell J. recently observed in another context, "These obligations could be fulfilled in other ways".[10] But there remains a real risk that Charter decisions which depart from Canada's international human rights obligations will attract international criticism and concern. An interpretation of the Charter that does not conform to international law should not be lightly adopted.

9. The presumption that the Charter offers human rights protection at least as great as found in Canada's binding human rights obligations was not the only interpretive approach Dickson C.J. enunciated in the *Alberta Reference*. The Chief Justice also considered that various sources of international and comparative human rights law should be treated as "relevant and persuasive sources for Charter interpretation". Dickson C.J.'s comments have been interpreted as proposing that international norms binding on Canada (such as the ICCPR) be subject to the presumption described above, while other norms (such as non-binding international instruments and comparative law) be treated as relevant and persuasive, meaning that they are given a lower, but still significant, degree of interpretive weight.[11]

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[9] E.g. ICCPR art. 5(2): "There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent."

[10] *Merck Frosst Canada Ltd. v. Canada (Health)* 2012 SCC 3 at para. 117.

[11] W. Schabas, "Twenty-Five Years of Public International Law at the Supreme Court of Canada (2000) 79 Can Bar Rev 174 at 186.

B. The right to enter one's country under ICCPR art. 12(4)

10. The leading international statement of the human right to mobility is found in art. 12 of the ICCPR, a treaty to which Canada and 166 other states are parties.[12] Article 12 is as follows:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.	1. Quiconque se trouve légalement sur le territoire d'un Etat a le droit d'y circuler librement et d'y choisir librement sa résidence.
2. Everyone shall be free to leave any country, including his own.	2. Toute personne est libre de quitter n'importe quel pays, y compris le sien.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.	3. Les droits mentionnés ci-dessus ne peuvent être l'objet de restrictions que si celles-ci sont prévues par la loi, nécessaires pour protéger la sécurité nationale, l'ordre public, la santé ou la moralité publiques, ou les droits et libertés d'autrui, et compatibles avec les autres droits reconnus par le présent Pacte.
4. No one shall be arbitrarily deprived of the right to enter his own country.	4. Nul ne peut être arbitrairement privé du droit d'entrer dans son propre pays.

11. The structure of art. 12 is significant. Three forms of mobility right are protected: freedom of movement within a state (art. 12(1)), freedom to leave (art. 12(2)) and the right to enter (art. 12(4)). The first two rights are made subject to a limitation provision, analogous to s. 1 of the Charter, which prohibits states from restricting those rights except as necessary to protect certain specified objectives, including national security and public order (*ordre public*). By contrast, the right to enter one's country is expressly not made subject to those restrictions.

12. Yet art. 12(4)'s expression of the right to enter is not unqualified. The phrase "No one shall be arbitrarily deprived of the right to enter his own country" implies that a deprivation of that right which is not arbitrary is permissible. What, then, does art. 12(4) mean by "arbitrarily"?

13. As this Court has noted,[13] international treaties are interpreted according to the interpretive rules set out in arts. 31 and 32 of the Vienna Convention on the Law of Treaties

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[12] For a list of current ICCRP treaty parties, see the UN Treaty Collection web site at http://bit.ly/CCPRstatus

[13] *Pushpanathan v. Canada (Minister of Citizenship and Immigration)* [1998] 1 SCR 982 at paras. 51-3; *Crown Forest Industries Ltd. v. Canada* [1995] 2 SCR 802 at para. 54.

1969.[14] Article 31(1) provides that a treaty shall be interpreted in good faith in accordance with its ordinary meaning and in light of its object and purpose. Article 32(a) provides that where art. 31's general rules of interpretation leave the meaning ambiguous or obscure, recourse may be had to the preparatory work of a treaty (*travaux préparatoires*) and the circumstances of its conclusion to determine the meaning.

14. The meaning of "arbitrarily" in art. 12(4) is, in context, sufficiently obscure to justify recourse to the preparatory work. The drafting history of the ICCPR is the subject of an extensive study by former UN special rapporteur Manfred Nowak. Nowak explains that an early draft of art. 12(4) provided for a prohibition of arbitrary exile and a right of all persons who have not been exiled to enter their own country. The prohibition of exile was deleted because the punishment of exile no longer existed in most countries. Yet some states still permitted it, regarding it as a more humane punishment than a lengthy prison sentence. In an effort to compromise with those states, the word "arbitrarily" was introduced into what is now art. 12(4). Nowak concludes, "In light of the historical background, there can be no doubt that the limitation on the right to entry expressed with the word '*arbitrarily*' ("arbitrairement") is to relate exclusively to cases of *lawful exile as punishment* for a crime....the *travaux préparatoires* are unambiguous in this case—every other restriction on the right to entry representing a violation of Art. 12(4)".[15]

15. The legal context in which art. 12(4) was adopted is further revealed by a 1964 UN report. Like Nowak, the report noted that the original draft of ICCPR art. 12 barred "arbitrary exile", but this phrase was rejected "as the laws of many countries either prohibited exile or did not recognize it". The report also noted that "in a very large number of countries, a national may not be exiled". Canada was cited as an example. Only five countries were identified in which exile still existed. The report concluded that "exile has virtually disappeared".[16]

16. These sources are consistent with observations made by the UN Human Rights Committee in its General Comment 27 on freedom of movement. Concerning the meaning of

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[14] [1980] CanTS no. 37.
[15] M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd rev. ed., 2005) at pp. 283-4 (emphasis in original).
[16] United Nations Department of Economic and Social Affairs, "Study of the right of everyone to be free from arbitrary arrest, detention and exile" (New York: United Nations, 1964) at 197-204.

"arbitrarily" in art. 12(4), the Committee considered that there were "few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable".[17]

17. The ICCPR therefore contemplates only one permissible limitation on the right to enter one's own country, namely that states may impose exile as lawful punishment for a crime—a sanction unknown to Canadian law and nearly unheard of in other states even in 1964. In particular, the treaty parties clearly intended to prohibit deprivation of entry rights on national security or public order grounds, for had such grounds been considered permissible limits on the right to enter, the structure of art. 12 would differ. Article 12 would have set out the three mobility rights in paragraphs (1), (2) and (3), then set out the limitation provision as art. 12(4), making it applicable to all three rights.

C. Application of these principles to the present appeal

18. The appellant seeks to have declared unconstitutional ss. 10(1)(a) and 10(2)(a) of the *International Transfer of Offenders Act* SC 2004 c. 21 (the "Act") which empowered the Minister to refuse his application to be transferred from a US to a Canadian correctional facility.

Is the Charter engaged?

19. By conferring a discretion upon the Minister to permit or refuse Canadians entry to Canada under the Act, Parliament has enacted legislation to which the Charter applies.[18]

Significance of ICCPR art. 12(4) in the constitutional analysis

20. The *Alberta Reference*'s presumption of minimum protection should be the starting-point for this Court's interpretation of the meaning and scope of s. 6(1) of the Charter. This Court has previously noted the similarities between Charter s. 6 and mobility rights provisions in international human rights instruments binding on Canada.[19]

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[17] UN Human Rights Committee, *General Comment No. 27: Freedom of movement*, CCPR/C/21/Rev.1/Add.9 (2 Nov. 1999).
[18] Hogg, *Constitutional Law of Canada*, 5th ed. at p. 37-13 ("Because s. 32 makes the Charter of Rights applicable to the federal Parliament and the provincial Legislatures, the Parliament and Legislatures have lost the power to enact laws that are inconsistent with the Charter of Rights.")
[19] *Canadian Egg Marketing Agency v. Richardson* [1998] 3 SCR 157 at para. 58. See also *Godbout v. Longueuil (City)* [1997] 3 SCR 844 at para. 69, where ICCPR art. 12(1) was considered in interpreting *Charter* s. 7.

21. In defence of the impugned provisions, the respondent relies on Canada's international prisoner transfer agreements, which grant both the sending and the receiving states a power to refuse a prisoner's transfer request.[20] The parties to these agreements appear to regard their effect as to delay the exercise of an offender's right to enter rather than to deprive him arbitrarily of that right contrary to art. 12(4). Review of the preparatory work to art. 12(4) suggests that prisoner transfers were not in the contemplation of the ICCPR's parties. While art. 12(4) clearly governs (and forbids) state actions that entirely deprive persons of their right of entry, it does not directly address the lawfulness of state decisions to delay the re-entry of prisoners to their own countries by state refusals of their requests for transfer to their country's correctional facilities.

22. If the effect of international prison transfer agreements, and the Canadian legislation that implements them, is to delay rather than wholly deprive prisoners of their art. 12(4) right to enter their own countries, this characterization does not negate the ICCPR's importance to this Court's analysis. ICCPR art. 12(4), and art. 12 generally, remain legal obligations binding on Canada in international law. Moreover, as explained below, the international illegality of exile and the express rejection of national security and public order concerns as grounds for restricting the right to enter one's own country are significant to the Court's review of the meaning of Charter s. 6(1) and whether the impugned provisions reasonably limit that right.

The Act infringes the right of offenders to enter Canada

23. The impugned provisions of the Act grant the Minister power to delay a Canadian offender's right to enter Canada by denying his request for transfer from a foreign to a Canadian correctional facility. The offender's right to enter Canada is not removed by the Minister's decision, but its exercise is suspended until the offender has completed his foreign sentence.

24. Section 6(1) of the Charter gives Canadian citizens an unqualified right to enter Canada. If any limitation of that right is permissible, it is not due to any internal limitation in the right itself but arises by virtue of s. 1. By granting the Minister a power to delay a Canadian offender's right to enter Canada, the impugned provisions clearly infringe s. 6(1). The plain meaning of s. 6(1) is supported by ICCPR art. 12(4), where it is clear that the drafters considered that the right to enter one's own country permits of no limitation save where states impose exile as lawful

[20] For a review of these treaties, see the respondent's factum at para. 19 notes 10-12.

punishment for a crime. Insofar at they permit the Minister to delay a Canadian offender's right to enter Canada or temporarily refuse a Canadian citizen entry to Canada, the impugned provisions constitute an infringement of s. 6(1).

Section 1 analysis of the infringing provisions

25. Whether the impugned provisions are justifiable infringements of s. 6(1) depends on their proper interpretation. Section 10(1)(a) requires the Minister to consider "whether the offender's return to Canada would constitute a threat to the security of Canada". Section 10(2)(a) requires the Minister to consider "whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence". Both these provisions appear to permit the Minister to consider whether the offender will threaten Canadian security not only while serving the balance of his or her sentence in Canada but also after being released upon completion of that sentence.

26. Whether the impugned provisions, so interpreted, are a justifiable infringement of s. 6(1) must be considered in the light of Canada's international human rights obligations, as Dickson C.J. explained in *Slaight Communications*. ICCPR art. 12 informs the s. 1 analysis in two ways.

27. First, and as explained above, the impugned provisions must be subjected to special scrutiny in light of art. 12's rejection of national security and public order limitations of the right to enter one's own country. The BCCLA submits that, read in conjunction with s. 8(1), ss. 10(1)(a) and 10(2)(a) permit the Minister to limit the right of a Canadian citizen to enter Canada on the basis of the protection of national security and public order, and that the reasonableness of such limits is cast into doubt by Canada's international human rights obligations.

28. Second, the constitutionality of the impugned provisions must be scrutinized against the backdrop of the international law of exile. Canada has no power to keep a Canadian out of Canada even in cases where it has a well-founded fear that the Canadian in question will threaten Canadian security while present here. Citizens—even bad ones—cannot be exiled based on government fears of what they may do if allowed into the country. That does not, of course, mean that governments must sit on their hands; states are entitled to take internationally lawful means of protecting their security. But exile is not such a means. Fear of what a Canadian

offender may do after serving his sentence is therefore not a permissible grounds for refusing (even temporarily) his entry.

29. The implication of the prohibition on exile for this s. 1 analysis is that even if it is accepted that the objective of the impugned provisions is to protect Canada's security and that this is a pressing and substantial objective, ss. 10(1)(a) and 10(2)(a) are not rationally connected to the extent that they permit the Minister to consider whether an offender will threaten Canadian security after being released. Permitting the Minister to consider the threat posed by the offender after he has served his sentence and is at liberty to return to Canada would only be rationally connected to the objective of protecting Canada's security if Canada had an ability to exile its citizens, which it does not.

30. The impugned provisions are therefore also not minimally impairing. The impugned provisions go beyond what is needed to protect Canada's national security, and beyond what is permissible under both international and Canadian law given the unlimited right of Canadian ex-convicts to enter Canada upon the completion of their foreign sentences.

31. Due regard to ICCPR art. 12 suggests that the duration of the offender's proposed incarceration in Canada is the only relevant period. In other words, permitting the Minister to refuse a transfer request on the basis of an offender's threat to national security *while serving* the balance of his sentence *in Canada*, or the risk that a transferred offender may commit terrorism or criminal organization offences *while serving* the balance of his sentence *in Canada* would be constitutionally justifiable.

32. If the correct interpretation of the impugned provisions is that they are not limited to the duration of the offender's sentence, they must be found to fail the *Oakes* analysis. If not read down to limit the Minister's considerations to ones arising directly from the offender's proposed transfer to Canada, in light of the international law prohibition of exile and the prohibition on national security and public order limitations of that right in ICCPR art. 12, ss. 10(1)(a) and 10(2)(a) must be regarded as unjustified infringements of the right of Canadian citizens to enter Canada.

Conclusion

33. National security is not, in itself, an invalid consideration for the Minister when deciding whether to consent to international prisoner transfers. That consideration must, however, be applied in conformity with international human rights law. Canada has no power to exile its citizens, whether on national security grounds or any other. Thus while the Minister is entitled to consider the national security consequences (if any) of a given offender serving the balance of his sentence in Canada, the Minister's fears for what the offender may do after having served his sentence are irrelevant to this determination.

PART IV – COSTS

34. The intervener seeks no order for costs and asks that none be made against it.

PART V – NATURE OF ORDER SOUGHT

35. The intervener seeks no order from the Court but invites it to consider the legal questions at issue in light of its submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Vancouver, BC, this 7th day of February, 2013.

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PART VII – LEGISLATON AT ISSUE (INCLUDING TREATIES)

Charter s. 6(1)

Every citizen of Canada has the right to enter, remain in and leave Canada.	Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

Charter s. 1

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.	La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

International Covenant on Civil and Political Rights 1966 [1976] CanTS no. 47 art. 12(4)

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.	1. Quiconque se trouve légalement sur le territoire d'un Etat a le droit d'y circuler librement et d'y choisir librement sa résidence.
2. Everyone shall be free to leave any country, including his own.	2. Toute personne est libre de quitter n'importe quel pays, y compris le sien.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.	3. Les droits mentionnés ci-dessus ne peuvent être l'objet de restrictions que si celles-ci sont prévues par la loi, nécessaires pour protéger la sécurité nationale, l'ordre public, la santé ou la moralité publiques, ou les droits et libertés d'autrui, et compatibles avec les autres droits reconnus par le présent Pacte.
4. No one shall be arbitrarily deprived of the right to enter his own country.	4. Nul ne peut être arbitrairement privé du droit d'entrer dans son propre pays.

Vienna Convention on the Law of Treaties 1969 [1980] CanTS no. 37.

Article 31	Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32

Supplementary means of interpretation

Règle générale d'interprétation

1. Un traité doit être interprété de bonne foi suivant le sens ordinaire à attribuer aux termes du traité dans leur contexte et à la lumière de son objet et de son but.

2. Aux fins de l'interprétation d'un traité, le contexte comprend, outre le texte, préambule et annexes inclus :

a) Tout accord ayant rapport au traité et qui est intervenu entre toutes les parties à l'occasion de la conclusion du traité;

b) Tout instrument établi par une ou plusieurs parties à l'occasion de la conclusion du traité et accepté par les autres parties en tant qu'instrument ayant rapport au traité.

3. Il sera tenu compte, en même temps que du contexte :

a) De tout accord ultérieur intervenu entre les parties au sujet de l'interprétation du traité ou de l'application de ses dispositions;

b) De toute pratique ultérieurement suivie dans l'application du traité par laquelle est établi l'accord des parties à l'égard de l'interprétation du traité;

c) De toute règle pertinente de droit international applicable dans les relations entre les parties.

4. Un terme sera entendu dans un sens particulier s'il est établi que telle était l'intention des parties.

Article 32

Moyens complémentaires d'interprétation

Il peut être fait appel à des moyens complémentaires d'interprétation, et

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

notamment aux travaux préparatoires et aux circonstances dans lesquelles le traité a été conclu, en vue, soit de confirmer le sens résultant de l'application de l'article 31, soit de déterminer le sens lorsque l'interprétation donnée conformément à l'article 31 :

a) Laisse le sens ambigu ou obscur; ou

b) Conduit à un résultat qui est manifestement absurde ou déraisonnable.