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OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: ELISA CHAN, ET AL., Petitioners V. KOREAN AIR
LINES, LTD.

CASE NO: 87-1055

PLACE: WASHINGTON, D.C.

DATE: December 7, 1988

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IN THE SUPREME COURT OF THE UNITED STATES

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ELISA CHAN, ET AL., :
 Petitioners, :
 V. : No. 87-1055
KOREAN AIR LINES, LTD., :
-----x

Washington, D.C.
Wednesday, December 7, 1988

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:01 a.m.

APPEARANCES:

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 on behalf of the Petitioners.
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 Amicus Curiae, supporting petitioners.
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 on behalf of Respondent.

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P R O C E E D I N G S

(10:01 a.m.)

CHIEF JUSTICE REHNQUIST: We will hear argument first this morning in Number 87-1055, *Elisa Chan versus Korean Air Lines, Limited.*

Mr. Sincoff, you may proceed.

ORAL ARGUMENT OF MILTON G. SINCOFF

ON BEHALF OF THE PETITIONERS

MR. SINCOFF: Mr. Chief Justice, and may I please the Court:

In 1969, fourteen years before the Korean Air Lines airplane disaster, Korean Air Lines was warned by the existing state of the law that it would be liable under the circumstances claimed before this court for actual compensatory damages sustained by the families of the deceased passengers.

At that time the state of the law had been articulated by three appellate court decisions of the federal circuits and one of the high court of one state.

In addition, the United States government through the Solicitor General, in *Lisi* against *Alitalia Airlines* in which the Second Circuit held the airline liable for failing to give the passenger adequate notice of the damage limitation, this court equally divided and therefore affirmed, Justice Marshall not participating.

1 The rationale of the appellate court decisions
2 existing at the time Korean Airlines in 1969 signed the
3 Montreal Agreement and obligated itself to certain
4 responsibilities, the state of the law at that time was
5 rather clear. It held that both the language, the
6 literal language of the Warsaw Treaty required adequate
7 notice by the airline to each passenger of the damage
8 limitation. At that time the Warsaw Treaty provided for
9 a \$10,000 damage limitation for each passenger.

10 In order to obtain the benefit of that limit,
11 these courts uniformly held that there must be adequate
12 notice warning the passenger of the limitation so that
13 each passenger would have choices. A passenger could
14 choose to obtain protection by insurance. Some
15 passenger might choose not to fly. The choice was to be
16 given to each passenger.

17 In addition, these cases uniformly held that
18 the history, the drafting history of the treaty
19 corroborated the language of the history in dictating
20 that result. And those cases were Lisi against Alitalia
21 Airlines, Warren and Mertens against Flying Tiger
22 Airline, involving the Ninth Circuit and the Second
23 Circuit, and --

24 QUESTION: Mr. Sincoff, may I inquire of you
25 whether you agree that Article 3 of the Warsaw

1 Convention is operative here.

2 MR. SINCOFF: Yes, Your Honor.

3 QUESTION: And under that article it seems to
4 indicate that the sanction of removing the liability
5 limit applies only if the ticket hasn't been delivered
6 at all. Apparently there are other countries who are
7 parties to that convention that have taken that view.

8 MR. SINCOFF: Justice --

9 QUESTION: Now, why should we take a different
10 view?

11 MR. SINCOFF: I believe that Article 3, the
12 first paragraph, must be read together with Article 3,
13 the second paragraph, to which you have just referred.

14 The combination of those two operative
15 sentences together dictate that for there to be a
16 "ticket" delivered, that document is only a ticket when
17 it contains the required particulars because --

18 QUESTION: Well, I mean, you would take the
19 position that if there are some typographical error on
20 date or place of destination or origin on the ticket
21 that the liability limited is forfeited?

22 MR. SINCOFF: Well, my position would be and
23 is that that is precisely what the drafters intended,
24 mainly, if the date was omitted or one of the itinerary
25 stopping places, destination -- I should say ultimate

1 destination or originating place -- if any of those
2 required particulars specified by the first paragraph of
3 Article 3 were omitted, that is what the drafters
4 intended.

5 They considered -- I might not, the Court
6 might not consider the date to be very substantive, but
7 in terms of --

8 QUESTION: I think there's confusion in the
9 drafting history as to whether any of those things were
10 sufficient to cause removal of the liability limit.
11 That is not at all clear.

12 MR. SINCOFF: The drafting history, we submit,
13 makes it clear that these particulars, each one of them,
14 and especially the one that's involved in the case at
15 bar, the statement warning of the damage limitation,
16 they were characterized by the drafters as mandatory and
17 invoking the sanction as they put it of losing the
18 damage limitation.

19 And if I might respectfully refer the Court to
20 our brief, Appendix A-86 --

21 QUESTION: A-86?

22 MR. SINCOFF: A-86.

23 QUESTION: The large appendix?

24 MR. SINCOFF: In our brief.

25 QUESTION: Oh, in your brief.

1 MR. SINCOFF: Yes. The blue covered brief,
2 A-86.

3 There is a passage on that page. It is part
4 of the report of Mr. Henry De Vos, the "reporter" -- the
5 reporter was the person in charge of the drafting
6 committee, its work. And on page A-86 under Section 1,
7 passenger ticket, the third paragraph makes it clear, I
8 believe, that the sanction and throughout the history
9 the sanction is the loss of the damage limitation, was
10 linked to the delivery of the ticket without a statement
11 or the nondelivery of a ticket to the forfeiture of the
12 damage limitation, as they put it.

13 And that same principle applied whether we
14 dealt with a passenger ticket, a baggage check or cargo
15 involving an air waybill.

16 QUESTION: Well, the provisions for the
17 baggage check are more specific, are they not?

18 MR. SINCOFF: Yes. And the reason for that,
19 Justice O'Connor, is that when it came to baggage checks
20 and air waybills for cargo, the drafters, unlike the
21 passenger ticket, considered some of those provisions to
22 be compulsory, mandatory, invoking the sanction, whereas
23 other provisions, the mere form that would be
24 nonsubstantive, were not considered to be compulsory
25 and, consequently, the language used in drafting the

1 terms, Article 4 and 8 and 9 for the cargo and baggage,
2 made the distinction between the important document
3 requirements and the unimportant ones.

4 And there the statement that's the subject of
5 this appeal is commonly considered to be a very
6 important one. It's the only one that is common to all
7 of the documents. Each of the three documents have
8 individual items that are peculiar to the passenger or
9 the baggage or the cargo, but the one common ingredient
10 for all of the documents, including the passenger
11 ticket, is the warning statement.

12 And throughout the history, a large part of
13 the debate focused about these noncompulsory items.
14 There never was any argument or debate controverting the
15 significance of the statement. The statement was always
16 considered to be the essential ingredient for the
17 airline to gain the benefit of the limitation --

18 QUESTION: Well, of course, there is a
19 statement here. It was just in eight point type. I
20 mean, there is a statement.

21 MR. SINCOFF: Yes, there is a statement.

22 QUESTION: Perfectly readable.

23 MR. SINCOFF: Well, we could debate.

24 QUESTION: Well, we have copies here in our
25 material. I mean --

1 MR. SINCOFF: We could debate --

2 QUESTION: -- there is no mistake what the
3 statement says.

4 MR. SINCOFF: We concede that a statement was
5 delivered.

6 We say and urge the position, because we think
7 it's sound, that to a passenger -- as distinguished from
8 attorneys who may be knowledgeable in the area -- to a
9 passenger the statement must be a reasonable one.

10 Now, when -- before the Montreal Agreement was
11 signed --

12 QUESTION: Mr. Sincoff, I don't understand
13 that. Do you think the difference between the skills of
14 attorneys and non-attorneys is that attorneys can read
15 smaller print, is that --

16 (Laughter)

17 MR. SINCOFF: No, Justice Scalia. What we say
18 is that the statement has to be considered in
19 relationship to the person who the warning is being
20 given to.

21 QUESTION: Right. And you think if it's given
22 to a non-attorney, it has to be in bigger print?

23 MR. SINCOFF: No. What I -- we say is that
24 the statement to a layperson, a passenger, must be a
25 reasonable statement if --

1 QUESTION: But how does that depend on the
2 type size, the reasonableness of it?

3 MR. SINCOFF: The reasonableness is -- depends
4 upon the type size in this case because in 1969 Korean
5 Air Lines said, "We will comply with the regulation. we
6 will give a reasonable notice considered to be at least
7 10 point type in size."

8 QUESTION: I can see how you can argue that
9 the convention says 10 point type and there is no way of
10 getting around it. But to say that it requires
11 something reasonable and the difference between
12 reasonable and unreasonable is two points of type size
13 doesn't make any sense at all to me.

14 MR. SINCOFF: Well, we think that the United
15 States government articulated the -- the line. It set a
16 standard, a minimum standard. This was not a maximum
17 standard. This was a minimum standard.

18 QUESTION: Well, then why talk about
19 reasonableness.

20 MR. SINCOFF: Well, because we believe the
21 Lisl cases and those that follow it use the term
22 "adequate notice," which means reasonable notice. I
23 think they're interchangeable.

24 When the United States government determined
25 that airlines were giving Lilliputian print or small

1 sized print and this was not warning passengers of the
2 damage limitation, the United States government
3 promulgated a regulation which set the standard at a
4 minimum of 10 point type and then Korean Air Lines,
5 among all the other international airlines, they signed
6 an agreement in which they accepted their obligation and
7 affirmatively asserted their obligation to give the
8 passenger warning of the limitation, then \$75,000, in a
9 minimum of 10 point type.

10 Now, the line that was drawn, we could
11 question whether it was a reasonable and an adequate
12 line. From the passenger's point of view, larger than
13 10 point type was --

14 QUESTION: If we say that it is adequate, it's
15 inadequate, will that -- you be satisfied without us
16 saying it's also unreasonable?

17 MR. SINCOFF: Yes, Your Honor.

18 QUESTION: Would you be satisfied?

19 MR. SINCOFF: Absolutely because the
20 consequence of that would be --

21 QUESTION: [Inaudible] -- would belong.

22 MR. SINCOFF: Inadequate is acceptable, and
23 that's certainly the language used by the Lisi case. It
24 used adequate notice as the concept. And we think that
25 when you fail to give adequate notice as you have

1 obligated yourself to do by giving less than the minimum
2 notice, then, the consequence is you lose the damage
3 limitation, airline, because you failed to follow what
4 you obligated yourself to do.

5 QUESTION: Mr. Sincoff, the obligation you
6 assert is an obligation under the treaty?

7 MR. SINCOFF: Both the treaty as supplemented
8 by the contractual obligation as supplemented by the
9 regulation.

10 QUESTION: Well, now, I don't understand how
11 that obligation gets supplemented. The treaty is
12 binding as a matter of law --

13 MR. SINCOFF: Yes.

14 QUESTION: -- right?

15 Now, the contractual arrangement with other
16 airlines, I assume your clients are strangers to that
17 contract. How does that contractual agreement become
18 binding upon the defendant here vis-a-vis your clients?

19 MR. SINCOFF: Because the treaty itself
20 contemplates promulgation of agreements called special
21 contracts. It authorizes airlines to enter into special
22 contracts for the benefit of passengers. Article 22 so
23 provides.

24 And consequently when Korean Air Lines signed
25 this contract, it was a special contract authorized by

1 the treaty, Article 22, and the beneficiary, the only
2 beneficiary, of that contract, authorized by the treaty,
3 was each passenger who was delivered a ticket.

4 QUESTION: And that contract --

5 MR. SINCOFF: And that --

6 QUESTION: -- said it should be 10 point
7 type --

8 MR. SINCOFF: Minimum.

9 QUESTION: Right, minimum of 10 point type,
10 and it gets read back into the treaty because you say if
11 the -- If the ticket doesn't contain that, the treaty
12 provides that there's no liability.

13 Explain to me --

14 MR. SINCOFF: Yes, Your Honor.

15 QUESTION: -- one more thing. In Section --
16 in Article 3 of the second paragraph, what is the
17 meaning of the word "irregularity"? If the second
18 paragraph of Article 3 simply read, "The absence or loss
19 of the passenger ticket shall not affect the existence
20 of the validity of the contract which will nonetheless
21 be subject to the rules of this convention," I would
22 understand your position. But it says, "The absence,
23 irregularity or loss of the passenger ticket."

24 What does "irregularity" mean unless it means
25 something like the passenger liability is in eight point

1 type instead of ten point.

2 MR. SINCOFF: Irregularity, Justice Scalia, is
3 modified by the following words, reading it together:
4 "The irregularity of the ticket shall not affect the
5 existence or validity of the contract,"

6 This case does not involve a challenge to the
7 existence or validity of the contract. Just the
8 opposite. We affirmatively assert the existence and
9 validity of the contract, the Montreal Agreement, and
10 the ticket.

11 QUESTION: You want to continue? "Which shall
12 nonetheless be subject to the rules of this
13 convention" --

14 MR. SINCOFF: Yes.

15 QUESTION: -- one of which rules is the
16 limitation on damages.

17 MR. SINCOFF: And one of the rules was if you
18 don't give the statement -- if you don't give the
19 statement, you don't get the benefit of the damage
20 limitation.

21 QUESTION: That's the very irregularity we're
22 talking about.

23 MR. SINCOFF: Well --

24 QUESTION: I mean, you've gone a complete
25 circle.

1 MR. SINCOFF: We believe that --

2 QUESTION: When you refer to Irregularity,
3 you're obviously referring to not having there something
4 that should be there, right?

5 MR. SINCOFF: Yes, Your Honor.

6 QUESTION: So, not having in the ticket
7 something that should be in the ticket shall not affect
8 the validity of the contract which shall nonetheless be
9 subject to the rules of this convention --

10 MR. SINCOFF: It's very --

11 QUESTION: -- including the rule that the
12 Irregularity is no good? That makes the sentence
13 meaningless.

14 MR. SINCOFF: Well --

15 QUESTION: You go back to the beginning of the
16 sentence and cancel it out.

17 MR. SINCOFF: With respect, Justice Scalia, we
18 believe that the rule of the convention is that if you
19 do not give a statement -- If you do not give a
20 statement, you are not entitled to the damage
21 limitation. That's the provision of the treaty that's
22 operative.

23 Korean Airlines then said we're going to give
24 a statement in ten point type, a minimum of ten point
25 type.

1 QUESTION: What about failing to state the
2 place and date of issue? How does that -- how does
3 paragraph 2 of Article 3 affect that? That's an
4 irregularity. It fails to state the place and date of
5 issue.

6 MR. SINCOFF: The drafters did not consider
7 that to be --

8 QUESTION: An irregularity.

9 MR. SINCOFF: -- an irregularity. The
10 drafters said that when we put each of these five items
11 as required by the ticket, we consider those five items
12 to be substantive, mandatory, compulsory -- those were
13 the terms used -- which invoke the sanction.

14 And the reason that they articulated and
15 someone else might not subscribe to the reasonableness
16 of that position of the drafters, but nonetheless it is
17 there, they claim that each of these particulars was
18 necessary to invoke the jurisdictional requirements
19 which turn on the ticket itinerary, the jurisdictional
20 requirements which turn on the place of issue, which
21 turn on the carrier, all of those five items the
22 drafters said were compulsory because they went to the
23 jurisdiction of invoking the treaty in a particular
24 litigation.

25 QUESTION: I am sure of that. But what does

1 irregularity of a ticket mean unless it means the
2 failure of the ticket to contain one of the things that
3 are required. Surely it doesn't mean an irregular
4 shape. What does -- it must mean it's irregular in that
5 it does not contain something it's supposed to contain.
6 And the only thing that the treaty says it must contain
7 are those five items in paragraph 3.

8 MR. SINCOFF: And they were not considered to
9 be within the realm of irregularity.

10 QUESTION: What would be?

11 MR. SINCOFF: They were sacrosanct in the view
12 of the drafters.

13 QUESTION: Give me an example of what's
14 referred to by irregularity, then. What --

15 MR. SINCOFF: Well, I think you -- if you read
16 it in the context of loss or irregularity, obviously in
17 an airplane crash, the ticket carried by the passenger
18 might be destroyed.

19 QUESTION: That's loss.

20 MR. SINCOFF: A ticket in the -- retrieved
21 from the crash which was partially destroyed but not
22 entirely or in printing -- in filling out -- in filling
23 out the ticket, if they misspelled the client's, the
24 passenger's name, that would be an irregularity. In
25 other words, irregularity was devoted to nonsignificant

1 -- as the drafters view what was significant.

2 They said if you lose the ticket but it still
3 was delivered, the contract still exists, and the damage
4 limitation rules apply.

5 If you put in the wrong passenger's name or
6 misspell it or perhaps they conceived although it's not
7 discussed, if you put in the wrong date. But they made
8 it clear that the -- the drafters made it clear -- and
9 I'm not responsible for accepting or rejecting their
10 view -- but they made it clear that each one of these
11 five elements, particularly the statement --

12 QUESTION: You're now cutting into colleague's
13 time, Mr. Sincoff.

14 MR. SINCOFF: Thank you, Your Honor.

15 QUESTION: Mr. Lazarus.

16 ORAL ARGUMENT OF RICHARD J. LAZARUS

17 AMICUS CURIAE IN SUPPORT OF PETITIONERS

18 MR. LAZARUS: Thank you, Mr. Chief Justice,
19 and may it please the Court:

20 Respondent's reading of the Warsaw Convention
21 rests on two untenable propositions: First, that the
22 parties to the convention went out of their way to
23 impose a sanction on an air carrier for failing to
24 deliver a ticket to the passenger. Then they didn't
25 care whether that ticket, once delivered, was

1 essentially a blank piece of paper; and, second, that
2 the parties to the convention concluded that its
3 liability limitations should not apply in the absence of
4 notice of them on a banker's check or airway bill, but
5 concluded that they should apply in the absence of such
6 notice on a passenger ticket.

7 QUESTION: Mr. Lazarus, Japan offered an
8 amendment at the time of the Warsaw Convention to make
9 this position clear, and it was not adopted.

10 MR. LAZARUS: No, the Japanese amendment was
11 adopted. The Japanese amendment was proposed -- was to
12 list the liability limitation notice which had
13 previously been in a separate paragraph and not listed
14 as one of the listed particulars as A, B, C, or D;
15 listed among those particulars to make it clear that the
16 liability limitation would apply.

17 The Japanese amendment was proposed basically
18 parallel to the Greek amendment, and it was adopted, and
19 it had ironically the unattended consequent of creating
20 the negative implication upon which respondents rely
21 here. But the Japanese amendment was adopted, and that
22 was to lift the two up, which was done in Article 3 --

23 QUESTION: I thought that --

24 MR. LAZARUS: -- and Article 4.

25 QUESTION: -- Article 3 was to clarify the

1 forfeiture of the limitation, liability limitation was
2 not adopted.

3 MR. LAZARUS: No, I believe it was adopted.
4 The amendment --

5 QUESTION: Then show it to me in Article 3,
6 because I don't find it in the language.

7 MR. LAZARUS: What happened, Justice O'Connor,
8 is the purpose -- the amendment -- when the Japanese
9 proposed the amendment and drafted it, it was the time
10 before the Greek amendment. It was done in parallel to
11 it.

12 And they thought that by lifting that separate
13 requirement of liability limitation notice and listing
14 it specifically as a particular, as particular E, that
15 that would make it clearer that the liability limitation
16 would apply in the absence of a particular being on a
17 ticket. And that's exactly what the convention --
18 particular to the convention did.

19 QUESTION: What was the purpose of the
20 amendment by the government of Greece which was
21 specifically to take away the sanction?

22 MR. LAZARUS: That's right. But the Greek
23 amendment was proposed at the time that the liability
24 limitation notice was not separately listed under A, B,
25 C or D.

1 And we can look to page 116-A in the appendix
2 to our brief, and you can see the precise --

3 QUESTION: Well, what happened was Japan was
4 amending a section which no longer had a sanction in it.

5 MR. LAZARUS: No, it still did have a sanction
6 in it, and that was the sanction --

7 QUESTION: Well, it had the watered down
8 sanction after the Greece amendment.

9 MR. LAZARUS: Well, basically what you have is
10 if you look at the language of Article 3, you can see
11 that there's a sanction failing to deliver a ticket. We
12 believe that Article 3 then defines what a ticket is
13 stating that certain information must be on it to be a
14 ticket.

15 Now, Article 3 on its face would suggest that
16 not having any of those there would trigger the
17 liability limitation. If you then look further --

18 QUESTION: Well, then, how do you deal with
19 the irregularity word?

20 MR. LAZARUS: I really -- I think the
21 irregularity point which led the District Court astray
22 is a complete red herring. That provision provides that
23 the -- not that the liability limitations of the
24 convention shall apply notwithstanding irregularity, it
25 provides that the rules of the convention including the

1 sanctions shall apply, even given an irregularity.

2 In other words, an airline may not avoid the
3 rules of the convention in its sanctions simply by not
4 issuing a ticket or by issuing a ticket with an
5 irregularity. And this point is made repeatedly,
6 Justice Scalia, throughout the treaty drafting history
7 to make sure that it wouldn't be thought to have that
8 intent.

9 If you look at Footnote 9 of our brief, we
10 describe all the different citations.

11 QUESTION: The word "loss" is not consonant
12 with that meaning. When you say the loss of the ticket
13 won't affect anything, you obviously are saying not just
14 the sanctions of the convention, but any of the rights
15 of the contention.

16 MR. LAZARUS: Well, not --

17 QUESTION: I mean, you're not just trying to
18 say, you know, despite the fact that the airlines
19 doesn't do what it's supposed to, it's going to be
20 liable. You also are talking about the rights of the
21 passenger because it isn't the airline that's going to
22 have lost the passenger ticket. It's the passenger.

23 MR. LAZARUS: Right. But it means that the
24 rules of the convention -- the passenger won't lose his
25 rights and the airlines won't lose its right. But it's

1 limited -- the rules of the convention include the
2 sanctions themselves, and the fact that that same
3 language --

4 QUESTION: But they don't include the
5 limitation on liability. Why wouldn't the rules include
6 that?

7 MR. LAZARUS: It includes the limitation on
8 liability, conditioned upon the sanction. The same
9 sentence, Justice Scalia, the absence regularly appears
10 in Article 4 dealing with baggage checks. It appears in
11 Articles 8 and 9 dealing with air waybills. It wasn't
12 intended to be inconsistent with the sanction
13 provisions. And this point is really made quite clear
14 in the drafting history.

15 The meaning of the provision is that the rules
16 of the convention, including its sanctions, apply,
17 notwithstanding irregularity or loss or absence of the
18 ticket. But not -- the airline could avoid the rules of
19 the convention, end its sanctions simply by issuing a
20 ticket with an irregularity.

21 QUESTION: Well --

22 QUESTION: Well, how does the word
23 "nevertheless" beginning the next sentence fit in with
24 your interpretation?

25 MR. LAZARUS: Basically that it shall,

1 nevertheless, that even though -- that there will be a
2 contract and notwithstanding the absence of a ticket,
3 the loss of a ticket, an irregularity of the ticket, it
4 shall nonetheless remain subject to the rules of the
5 convention. And one of those rules of the convention is
6 that there will be a sanction under certain
7 circumstances.

8 And that same provision applies, Article 3,
9 Article 4, Articles 8 and 9. And during the
10 negotiations there were several parties who were
11 concerned about just this happening, and they said no,
12 it won't. It will not happen.

13 If you look basically at Footnote 9 of our
14 brief, it gives all the citations.

15 QUESTION: Okay, Mr. Lazarus. I hate to have
16 to chase around legislative history. This thing seems
17 to me written very clearly, as the Chief Justice
18 suggests; the nevertheless thought is inconsistent with
19 the meaning you've just given us. It says
20 "nevertheless" which means although you might have read
21 the preceding sentence to exclude some liability
22 limitation, it doesn't exclude a liability limitation if
23 the carrier accepted it and so forth.

24 MR. LAZARUS: No, the "nevertheless" remains
25 subject to the rules of the convention. And the rules

1 of the convention, Justice Scalia, include the sanctions
2 for not meeting certain points.

3 The second -- there are basically two
4 arguments in front of their position, and the second
5 depends upon the comparing of the language of Article 3
6 and Article 4. There, too, we believe that if you look
7 at the history of the treaty's drafting, it's apparent
8 that the wording, the difference in wording between
9 Articles 3 and 4 was bottomed on two amendments to
10 Article 3 adopted at the convention itself, the Greek
11 and the Japanese amendment, neither of which was
12 intended to allow the liability limitation to apply in
13 the absence of notice.

14 The second question presented by this case,
15 even assuming that sanction applies, concerns the
16 accuracy of the notice that, in fact, appeared on the
17 passenger tickets in this case. We agree there with
18 petitioners that type size is relevant to that inquiry
19 and that the notice given on respondent's ticket was
20 inadequate to the extent that it was only eight point
21 notice, eight point type.

22 The executive branch long ago announced its
23 view that ten point type notice was required on airline
24 passenger tickets to give the public adequate notice of
25 a liability limitation.

1 Now, we recognize that the selection of any
2 one type size obviously contains some elements of
3 arbitrariness.

4 The problem is that individuals, individual
5 human beings, don't react to varying type size the way
6 that chemical compounds such as water react to varying
7 temperatures. There are no clear threshold points.

8 But the necessity of such inevitable
9 uncertainty, the fact that it will exist, does not cause
10 us to shy away in other areas of the law to come up with
11 a clear standard, and we don't believe it should here
12 either. It's an adequate standard, it's a good
13 standard, it's been known for a long time, it's an --

14 QUESTION: Is this a standard generally
15 enforced by all the Warsaw people, the ten point type
16 size?

17 MR. LAZARUS: As far as I know, I don't know
18 the answer to that question. In the Montreal Agreement
19 it is.

20 And there's really no unfairness in its
21 application. They've known it for a long time. Indeed,
22 the airlines agreed to adhere to the ten point standard
23 in 1966 in order to persuade the United States continued
24 to adhere to the Warsaw Convention.

25 The airlines should not now be allowed to

1 disavow that standard while depending on its benefits.

2 QUESTION: Thank you, Mr. Lazarus.

3 Mr. Tompkins, we'll hear now from you.

4 ORAL ARGUMENT OF GEORGE N. TOMPKINS, JR.

5 ON BEHALF OF THE RESPONDENT

6 MR. TOMPKINS: Thank you, Mr. Chief Justice,
7 and may it please the Court:

8 If I could pick up on one of the questions,
9 Chief Justice Rehnquist, that you asked Mr. Lazarus, the
10 ten point type size is a USA requirement only. There is
11 no other party to the Warsaw Convention that requires
12 any type size or, in fact, recognizes that the Warsaw
13 Convention as drafted in 1929 requires any notice for
14 the limitation of liability to apply. So, it is a
15 peculiar U.S. requirement.

16 In answer to Justice O'Connor's question --

17 QUESTION: No other party recognizes the
18 necessity of giving notice?

19 MR. TOMPKINS: That is correct under the
20 original 1929 Warsaw Convention.

21 Under the 1955 Hague Protocol to which many
22 nations are parties, notice is required specifically,
23 because that was one of the amendments insisted upon
24 by --

25 QUESTION: That's what we're operating on.

1 That's what this case is subject to.

2 MR. TOMPKINS: No, this case is not subject to
3 the Hague Protocol. This case is subject to --

4 QUESTION: Is this the original?

5 MR. TOMPKINS: The original 1929 treaty
6 unamended by any provision.

7 Justice O'Connor asked about or suggested that
8 perhaps there was some confusion in the drafting history
9 of the Warsaw Convention, and I submit, Your Honor, with
10 respect that the drafting history is absolutely clear,
11 that the parties in Warsaw in 1929 deliberately
12 considered imposing a sanction for the absence of any of
13 the particulars in Article 3(1) including the
14 statement. They adopted the Greek proposal. The
15 Japanese proposal became academic. The sanction was
16 specifically limited to the failure to deliver a ticket
17 at all. And as the Greek proposal was adopted, the
18 Japanese proposal to impose the sanction -- to remove
19 the sanction for clerical errors became academic.

20 Now, what has changed, if the Court please, in
21 the 20 years since I stood before this court and urged
22 the reversal of the Lisi case as judicial treaty making,
23 the only thing that has changed in 20 years is that for
24 the first time a lower court has refused to blindly
25 follow the Lisi rationale of cases and has stepped back

1 and taken a fresh look at what this treaty was intended
2 to accomplish, has taken a fresh look at the language of
3 the treaty, has given the language of the treaty its
4 clear and plain meaning, has taken a fresh look at the
5 context in which the treaty language is used, has taken
6 a fresh look at what the United States has been striving
7 to achieve since 1953, without success, to amend the
8 treaty.

9 QUESTION: How did you accomplish it? How did
10 you accomplish it?

11 [Laughter]

12 MR. TOMPKINS: Perhaps -- if Your Honor
13 please, perhaps I was more persuasive there than I was
14 here 20 years ago.

15 [Laughter]

16 MR. TOMPKINS: And the Court also recognized
17 in that 20 years at least seven or eight nations had
18 expressed disagreement with the Lisi case, including the
19 Supreme Court of Canada.

20 And what the court held was that the concept
21 of notice is not a part of the Warsaw Convention, so
22 that the treaty limitation does not apply without notice.

23 QUESTION: Mr. Tompkins, can I interrupt you?

24 There is a sanction that applies if no ticket
25 at all is delivered.

1 MR. TOMPKINS: That is correct, Your Honor.

2 QUESTION: What is the purpose of applying
3 that sanction for that? Why is delivering no ticket at
4 all any different from delivering a ticket that doesn't
5 contain the information that passenger would like to
6 have?

7 MR. TOMPKINS: The history reveals, if Your
8 Honor please, that in 1925 when the draft convention was
9 first put together, it included forms of transportation
10 documents which the parties were going to consider
11 making mandatory in the treaty. Those forms were
12 abandoned.

13 The purpose of the ticket was to give the
14 passenger evidence upon the basis of which he could
15 establish that this new regime of liability rules which
16 were new and which gave the passenger substantial rights
17 in 1929 -- we may scoff at that today, but in 1929 when
18 this treaty was drawn up, air carriers could exclude
19 liability by contract simply by putting a provision in
20 the contract of transportation that if we injure you or
21 kill you, we shall not be liable. And those provisions
22 were upheld in the continental countries which drew up
23 the convention.

24 So, the purpose of the ticket was to give the
25 passenger evidence so that he would be able to establish

1 that he was subject to this new regime of liability,
2 that the uniform liability rules would --

3 QUESTION: Wouldn't he have been -- have had
4 all those rights even if he didn't have the ticket as
5 long as he was a passenger on the plane?

6 MR. TOMPKINS: He would not be in a position
7 unless he was able to obtain the carriers' copy of the
8 contract to establish his rights, and in order to
9 ensure --

10 QUESTION: I don't understand that.

11 MR. TOMPKINS: Well, the parties --

12 QUESTION: Why not?

13 MR. TOMPKINS: -- the history seems to
14 indicate --

15 QUESTION: Didn't they all use uniform
16 tickets, standard forms?

17 MR. TOMPKINS: No, they abandoned the idea of
18 using a standard form, and the idea that the drafters
19 adopted was that we would like the airline industry to
20 develop its own form of ticketing. We only ask that the
21 tickets be uniform, and, of course, that has happened.
22 The uniform tickets were adopted by the industry and
23 remain today.

24 The sanctions --

25 QUESTION: You mean, you're telling me -- I

1 just want to be sure I understand what you're saying --
2 you're saying that the reason it was important to give
3 the passenger the ticket was so the passenger could
4 prove that the airline had agreed to be subject to the
5 Warsaw -- all the convention's requirements?

6 MR. TOMPKINS: No, it's more than that, Your
7 Honor.

8 QUESTION: Sounds absurd to me.

9 MR. TOMPKINS: It's to put the passenger who's
10 on the aircraft in a position to establish himself as a
11 passenger traveling in international transportation so
12 that his rights and the airline's liabilities would be
13 determined by this uniform international law rather than
14 local or domestic law that might otherwise apply,
15 depending upon where the event occurred. That was the
16 purpose.

17 And to make it -- it was made mandatory for
18 the airlines, compulsory to deliver a ticket by imposing
19 the sanction in Article 3(2), that if you accept a
20 person as a passenger without a ticket having been
21 delivered, then you shall not be entitled to limit or
22 exclusion for liability.

23 QUESTION: And how should the passenger prove
24 that if he didn't have a ticket?

25 MR. TOMPKINS: From --

1 QUESTION: That sounds crazy to me.

2 MR. TOMPKINS: Well, the contract of
3 transportation, if Your Honor please, could be a
4 completely separate document. The contract of
5 transportation could be oral.

6 QUESTION: It couldn't and comply with the
7 treaty.

8 MR. TOMPKINS: Yes, it could, if Your Honor
9 please, as long as you have a contract of
10 transportation. We're dealing in the treaty with a
11 contract right of action, not a tort right of action. A
12 contract right of action.

13 QUESTION: But you just told me that the
14 carrier could not exonerate itself from liability by
15 putting something in that contract that would be
16 exculpatory.

17 MR. TOMPKINS: That's what this treaty
18 accomplished.

19 QUESTION: But you're saying that --

20 MR. TOMPKINS: That's what this treaty changed.

21 QUESTION: -- If the carrier did that, it
22 could get away with it if it didn't deliver a ticket?

23 MR. TOMPKINS: No, it could not, because
24 there's another provision in this treaty that provides
25 that any provision in the contract which tends to alter

1 these liability rules is null and void. So, the carrier
2 could not do that in the contract.

3 QUESTION: I see.

4 MR. TOMPKINS: And this whole concept --

5 QUESTION: I fail to understand -- I just -- maybe
6 I'm just dumb, but I don't understand why the passenger
7 needed the ticket to establish his rights if he could
8 prove he was a passenger on that flight.

9 MR. TOMPKINS: It gave him evidence of his
10 contract of transportation. That I can only suggest,
11 Your Honor, is all that the history reveals.

12 QUESTION: If he's among the -- well --

13 QUESTION: Why punish him for not having
14 evidence? I mean, that's its own punishment, you're
15 saying, since it's going to be hard for you to prove
16 that you're a passenger, we are furthermore going to
17 deprive you of your rights, even if you do prove you're
18 a passenger. That doesn't make any sense. I agree with
19 Justice Stevens.

20 MR. TOMPKINS: Obviously I would be a
21 passenger, if Your Honor please, if I've been injured or
22 killed on your airplane. I was on there in some
23 capacity. I wasn't a crew member.

24 Now, in order to establish -- I wasn't a
25 stowaway, so I am a passenger. I am being flown from

1 London to Paris on your airplane. And now a claim
2 arises and either myself, if I survive, or my heirs if I
3 don't, want to sue the airline. And this law -- this
4 treaty was designed to provide a uniform International
5 law for that very right of action.

6 QUESTION: Was there some worry, perhaps,
7 about people being flown without tickets for some -- was
8 it considered some form of unfair competition or maybe
9 was there worry about people being flown into countries
10 without -- without proper documentation or anything of
11 that sort? That might explain it.

12 MR. TOMPKINS: The history of the drafting of
13 the treaty does not reflect any concern of that nature,
14 if Your Honor please. It might have been there. There
15 might have been instances where passengers rushed up to
16 an airplane in the 1925-1926 era and the airline said go
17 ahead and get on and I'll take you to Paris. But
18 there's no reflection in the history whether that was a
19 concern.

20 QUESTION: Mr. Tompkins, Korea signed the
21 Montreal Agreement, is that correct?

22 MR. TOMPKINS: Korean Air Lines signed a
23 counterpart to the Montreal Agreement, yes.

24 QUESTION: Would you mind telling me why they
25 don't print the tickets in ten point type as they agreed

1 to do?

2 MR. TOMPKINS: I wish -- I wish I had the
3 answer to that, Your Honor, and it's not an uncommon
4 occurrence. It's not limited just to Korean Air Lines.

5 I can offer this explanation as to how it
6 happened. Korea is a party to the Hague Protocol
7 amending the Warsaw Convention. The Hague Protocol
8 requires a specific notice that the convention applies
9 and limits the carrier's liability. The Hague Protocol
10 provides that if you do not give that notice, the
11 sanction in Article 3(2) will apply.

12 The international carriers through the
13 International Transport Association agreed that that
14 notice would be printed in eight point type. And
15 throughout the world, those tickets are printed in eight
16 point type with Korean Air Lines having their tickets
17 printed outside of the United States, even though they
18 are committed to issue a Montreal advice in ten point
19 type, it is quite possible that the printer uses the
20 same type size for the Hague notice, which is a separate
21 part of the ticket, and the Montreal advice. I can
22 offer no explanation other than that.

23 It is not a deliberate course of conduct. If
24 it were a deliberate course of conduct on the part of
25 any foreign air carrier flying to this country, as Chief

1 Judge Robinson in the District Court suggested and the
2 Civil Aeronautics Board, now the Department of
3 Transportation, has ample authority to revoke the permit
4 or to take other enforcement action.

5 The Montreal Agreement, if Your Honor please,
6 does not amend the Warsaw Convention. The Montreal
7 Agreement supplemented the limit of liability and was a
8 compromise which was arrived at at the insistence of the
9 United States as a condition to its remaining a party to
10 the Warsaw Convention.

11 The United States sought to have the world
12 community agree to a minimum of \$100,000 limit of
13 liability in 1965-66 or, alternatively, no limit.

14 The Warsaw Convention is a treaty to which the
15 United States has adhered for some 54 years and
16 continues to urge adherence to the treaty. In fact, the
17 Senate next year will be called upon to consider again
18 the most recent protocols, Montreal protocols 3 and 4,
19 to further amend the treaty.

20 QUESTION: Didn't it come -- didn't the U.S.
21 come pretty close to pulling out in the sixties?

22 MR. TOMPKINS: Yes, in 1965, if Your Honor
23 please, the United States served a notice of
24 denunciation of the Warsaw Convention effective in May
25 of 1966 as a direct result and as the sole reason, the

1 limit of liability. The United States sought to get the
2 rest of the community party to the convention to agree
3 to a much higher limit of liability.

4 That didn't work. The emergency meeting
5 called in Montreal by the International Civil Aviation
6 Organization in January and February of 1966 was a total
7 failure. The rest of the world there were now in the
8 United States adhered to the Warsaw Convention. There
9 were perhaps 30 countries parties. In 1965 there were
10 perhaps 75 or 85 countries, and the rest of the world
11 wasn't concerned about the tort, escalation of awards in
12 tort cases in the United States. They were concerned
13 about this International treaty. So, they would not
14 agree to a higher limit.

15 At the eleventh hour through the thought and
16 the genius of our State Department, and the gentleman
17 responsible is here in the room today, brought up this
18 idea of a special contract under Article 22(1).

19 Let's get the airlines. Forget the
20 countries. Let's get the airlines to agree to this
21 higher limit of \$75,000 and in order to ensure speedy
22 and adequate, adequately perceived recovery, we'll have
23 them waive their defenses under Article 20, by which you
24 can avoid all liability under the convention as an air
25 carrier. And that was done.

1 And the airlines readily agreed. The United
2 States accepted that as an interim arrangement, an
3 interim compromise pending continuing negotiations to
4 amend the treaty to achieve even a higher limit of
5 liability.

6 And as a result of that, the United States
7 withdrew its notice of denunciation the day before it
8 would have become effective.

9 QUESTION: What if there were one point type
10 in the printed notice instead of eight point? Have they
11 included the required statement under Article 3 of the
12 Warsaw Convention?

13 MR. TOMPKINS: According to the Lisi case,
14 Your Honor, that would be an issue of fact for a jury.
15 However, it is our position reading the treaty that no
16 notice is required. So that if there's nothing in the
17 ticket, the situation is the same, whether it's one
18 point type or twenty point type --

19 QUESTION: Or nothing?

20 MR. TOMPKINS: Nothing.

21 QUESTION: Or no notice at all?

22 MR. TOMPKINS: Because if you go, go right to
23 the treaty language, if Your Honor please, even the
24 statement in Article 3(1)(3) is only a statement that
25 the liability rules of the Warsaw Convention apply to

1 the transportation. It doesn't mention anything about a
2 limit of liability. And you would have to search long
3 and far to find out what the limit of liability might be
4 that applies to you. And if you go to the treaty,
5 you'll find it's in French francs and then you'll have
6 to go somewhere else to find out what that means in
7 dollars to me, and then you'll have to go somewhere else
8 to find out if -- was this a Hague amendment case? Is
9 this a Warsaw case? Is this a Montreal case? Which
10 limit applies to me?

11 So, it's very clear from the drafting history
12 of the treaty and from the language of the treaty itself
13 that notice is not a concept that is permitted under the
14 treaty as a precondition to the application of the
15 limitation of liability.

16 This concept of notice is a tort concept, and
17 it evolved in this country in the fifties and the
18 sixties and seventies and is continuing to evolve. The
19 imposition of tort concepts on contract causes of action.

20 QUESTION: Well, certainly the concept of
21 notice was terribly important to this country for its
22 decision to continue to adhere to the convention.

23 MR. TOMPKINS: With respect, Your Honor, it
24 was not. And let me give you the history on that.

25 In 1953, as a result, I submit, of the famous

1 Jane Froman case, arising out of the USO tour accident
2 in Lisbon in 1943, in 19 -- which resulted in litigation
3 ending in 1949 where Jane Froman, who had been with the
4 USO troupe recovered the sum of \$8,300 for her
5 substantial injuries.

6 The United States suddenly became aware at the
7 government level there's something wrong here because
8 she never saw her ticket, she never agreed to a
9 limitation on liability, and she didn't even know she
10 was going to Lisbon.

11 Now, in 1953 the United States decided to take
12 steps at the diplomatic level to amend the treaty, and
13 one of those steps was to require notice of the
14 limitation of liability in the convention amount,
15 specifically in the notice, in contrasting color, in a
16 minimum type size. And in 1955 the United States was
17 able to persuade the rest of the international community
18 to agree to the notice, but not the color, not the type
19 size, and not the amount, just the notice, in the Hague
20 Protocol.

21 QUESTION: They didn't sign?

22 MR. TOMPKINS: Finally when the Senate acted
23 upon that in 1965, the Senate said it would give advice
24 and consent if it was complementary Congressional
25 legislation adding an additional amount of \$50,000 per

1 passenger. That legislation was to have been acted upon
2 within that Congress. It didn't, and the United States
3 served notice of denunciation from the Warsaw Convention.

4 But the important thing is: The United States
5 signed the Hague Protocol in 1956. It went to the
6 Senate in 1959 and nothing happened.

7 And so in 1963 the Civil Aeronautics Board
8 took it upon itself, acting in the public interest,
9 under its statutory authority to require carriers
10 operating to, from, or through the United States as a
11 matter of regulation to give the Hague notice. And that
12 was the origin of what ultimately became the Montreal
13 advice because --

14 QUESTION: Certainly Section 1(3) of Article 3
15 of the convention requires a statement that the
16 transportation is subject to the rules relating to
17 liability?

18 MR. TOMPKINS: That is correct. And that is
19 in all the tickets. It's in three times in tickets.
20 It's in in the Montreal advice. It's in in the Hague
21 advice, and it's in in the Warsaw advice.

22 QUESTION: Well, did the ticket in this case
23 contain that sort of statement?

24 MR. TOMPKINS: Yes, it did.

25 QUESTION: But in -- in what, eight point type?

1 MR. TOMPKINS: Well, it was in various sizes.
2 In the Montreal advice the statement was eight point
3 type. In the Hague statement, I believe, it was eight
4 point type, and in the Warsaw statement it might have
5 even been smaller. I'm not sure. But the statement was
6 in the ticket. There's no question about that.

7 But the important thing is that even if it
8 weren't there, even if it weren't there, the intent of
9 the parties to the treaty is absolutely clear through 55
10 years that the application of the limitation of
11 liability does not depend upon the carrier -- the
12 passenger having notice of the limitation of liability
13 either express or implied.

14 QUESTION: But that is not necessarily clear
15 from a reading of Article 3, is it?

16 MR. TOMPKINS: Well, it is, if Your Honor
17 please, it is to me. When I read Article 3.

18 QUESTION: Well, your case --

19 MR. TOMPKINS: Particularly when I read
20 Article 3 in the context of Articles 4, 8 and 9.

21 QUESTION: Well, I was going to say, your case
22 would be much different, would it not, if the language
23 in Articles 4 and Articles -- and the other articles on
24 waybills were not there. Then we'd have a very
25 different case, would we not?

1 MR. TOMPKINS: It would not be as clear from
2 the plain language of the treaty. We would then have to
3 depend more upon the history of the drafting as to why
4 that came about. I agree with you, yes.

5 QUESTION: Is there any reason that you can
6 divine for having the statement in baggage and waybill
7 portions of the ticket but not the passenger ticket?

8 MR. TOMPKINS: The history indicates that the
9 only reason that this decision was taken was that the
10 parties considered it too severe to impose unlimited
11 liability and absolute liability because your defenses
12 are stripped as well for an error in the ticket, for the
13 omission of one of the particulars in the ticket. And
14 putting that passenger in the same category with respect
15 to the airline as if the airline were guilty of wilful
16 misconduct.

17 The only other circumstance in the treaty
18 where the limit can be broken and the very situation
19 that confronts the people in this unfortunate disaster
20 would happen, the situation that the parties did not
21 want to happen.

22 QUESTION: Why was that too severe for people
23 but it wasn't too severe for baggage? I think that's
24 the question that Justice Kennedy is asking.

25 MR. TOMPKINS: The understanding, as I gather

1 it from the history, if Your Honor please, is that with
2 baggage and with cargo, the users of air transportation
3 would be more used to taking out insurance and
4 protecting themselves individually. Now, this is all I
5 can gather from the history.

6 There was a distinction made. It's difficult
7 to understand why --

8 QUESTION: Well, that would seem to work the
9 other way around.

10 MR. TOMPKINS: It is difficult to understand
11 why the human passenger, the human life was treated
12 differently than baggage and cargo, but the fact is it
13 was.

14 QUESTION: Well, is this history that you
15 refer to really part of the amendment offered by Greece
16 or is it in some other part of the negotiations or is it
17 just an inference?

18 MR. TOMPKINS: No, it's, I submit, in the
19 minutes of the Warsaw Conference in 1929, which we have
20 cited repeatedly in our brief in the English translation
21 by Mr. Horner. The original French minutes are quite
22 clear as well.

23 The discussion which is reported by Mr. De Vos
24 in 1929 revolved around the Greek proposal which had
25 been made before the conference was convened that this

1 would be too severe a sanction for a mere clerical error.

2 QUESTION: Well, Mr. --

3 MR. TOMPKINS: A passenger with a defective
4 ticket --

5 QUESTION: Mr. De Vos' statement, though,
6 supports the petitioners here.

7 MR. TOMPKINS: I don't read Mr. De Vos'
8 statement that way, if Your Honor please. I read it
9 exactly the opposite.

10 QUESTION: Well, let's look at it again.

11 I thought he said at page A-86 in the
12 petitioners' brief that the sanction provided for
13 carriage of passengers without a ticket or with a ticket
14 not conforming to the convention is identical to that
15 provided for the carriage of baggage and goods.

16 MR. TOMPKINS: This, if Your Honor please, is
17 the opening report of Mr. De Vos to the conference
18 describing the draft convention which had been prepared
19 in Paris in 1925, which the countries were meeting to
20 discuss. This is not the final draft that was adopted
21 at the conference in 1925.

22 And if I could refer you, if Your Honor
23 please, and I will refer specifically to the French
24 minutes at pages 100-101 and Mr. Horner's book at page
25 150-151, where Mr. De Vos --

1 QUESTION: Is that something before us here?
2 Can you refer us to anything --

3 MR. TOMPKINS: Yes.

4 QUESTION: -- in our set of briefs?

5 MR. TOMPKINS: I refer you to the full
6 discussion of the development of that draft on pages
7 12-19 of the respondent's brief. There is a full
8 discussion with the references there as to exactly how
9 Article 3 paragraph 2 came to be what it is today, what
10 it was in 1929 and what it is today.

11 And what Mr. De Vos reported after the
12 drafting committee had dealt with the 1925 draft in
13 light of the Greek suggestion, what he reported to the
14 conference when Article 3 was adopted was -- the
15 drafting committee has deleted from the draft the
16 sanction, the following words on the last line of
17 Article 3(2): "or if the ticket does not contain the
18 particulars indicated above." Those words which were in
19 the draft were stricken before the article was adopted,
20 and that was what the parties did. And yet, the
21 petitioners and the government argue now well, it's been
22 there all along anyway.

23 In conclusion, if Your Honors please, the
24 trend of judicial treaty writing to find new ways to
25 avoid what is considered to be distasteful,

1 anachronistic and inadequate limitation of liability in
2 this treaty was arrested by the decision of the court
3 below. I submit that that decision is a correct
4 interpretation of the treaty. It is consistent with the
5 wording of the treaty. It is consistent with the
6 history of the treaty. In fact, both mandate that
7 decision.

8 The United States is considering further
9 amendments to the treaty to perpetuate its existence as
10 the supreme law of this land, and I submit that it is
11 very important for the rest of the world to know that
12 when the United States commits itself to a treaty, it
13 will be applied as intended by the lower courts of this
14 country. And I urge for that reason that the judgment
15 of the court below be affirmed. Thank you.

16 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
17 Tompkins. The case is submitted.

18 (Whereupon, at 10:58 o'clock a.m., the case in
19 the above-entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

No. 87-1055 - ELISA CHAN, ET AL., Petitioners V. KOREAN AIR LINES, LTD.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY alan friedman

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