Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

EL AL ISRAEL AIRLINES, LTD. *v.* TSUI YUAN TSENG

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 97–475. Argued November 10, 1998– Decided January 12, 1999

Before plaintiff/respondent Tseng boarded an El Al Israel Airlines flight from New York to Tel Aviv, El Al subjected her to an intrusive security search. Tseng sued El Al for damages in a New York state court, asserting a state-law personal injury claim for, *inter alia*, assault and false imprisonment, but alleging no bodily injury. El Al removed the case to the Federal District Court, which dismissed the claim on the basis of the treaty popularly known as the Warsaw Convention. Key Convention provisions declare that the treaty "appl[ies] to all international transportation of persons, baggage, or goods performed by aircraft for hire," Ch. I, Art. 1(1); describe three areas of air carrier liability, Ch. III, Arts. 17 (bodily injuries suffered as a result of an "accident . . . on board the aircraft or in the course of any of the operations of embarking or disembarking"), 18 (baggage or goods destruction, loss, or damage), and 19 (damage caused by delay); and instruct that "cases covered by article 17" "can only be brought subject to the conditions and limits set out in th[e] [C]onvention," Art. 24. Tseng's claim was not compensable under Article 17, the District Court stated, because Tseng sustained no bodily injury as a result of the search, and the Convention does not permit recovery for solely psychic or psychosomatic injury (citing *Eastern Airlines, Inc.* v. *Floyd*, 499 U. S. 530, 552). That court further concluded that Tseng could not pursue her claim, alternately, under New York tort law because Article 24 shields the carrier from liability for personal injuries not compensable under Article 17. Reversing in relevant part, the Second Circuit concluded first that no "accident" within Article 17's compass had occurred. In that court's view, the Convention drafters did not aim to impose close to absolute liability for an individual's personal reaction to "routine operating procedures," which, although incon-

venient and embarrassing, are the price passengers pay for airline safety. The court next concluded that the Convention does not shield the same routine operating procedures from assessment under the diverse laws of signatory nations (and, in the case of the United States, States within one Nation) governing assault and false imprisonment. Article 24, the court said, precludes resort to local law only where the incident is "covered" by Article 17, *i.e.*, where there has been an accident, either on the plane or in the course of embarking or disembarking, which led to bodily injury. The court found support in the drafting history of the Convention, which it construed to indicate that national law was intended to provide the passenger's remedy where the Convention did not expressly apply. In rejecting the argument that allowance of state-law claims when the Convention does not permit recovery would contravene the treaty's goal of uniformity, the Second Circuit read *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217, to instruct specifically that the Convention expresses no compelling interest in uniformity that would warrant supplanting an otherwise applicable body of law.

Held: The Warsaw Convention precludes a passenger from maintaining an action for personal injury damages under local law when her claim does not satisfy the conditions for liability under the Convention. Pp. 8–19.

(a) The Court's inquiry begins with Article 24, which provides that "cases covered by article 17"– in the governing French text, "les cas prévus à l'article 17"– may only be brought subject to the Convention's conditions and limits. The specific words of a treaty must be given a meaning consistent with the contracting parties' shared expectations. *Air France* v. *Saks*, 470 U. S. 392, 399. Moreover, the Court has traditionally considered as aids to a treaty's interpretation its negotiating and drafting history *(travaux préparatoires)* and the postratification understanding of the contracting parties. *Zicherman*, 516 U. S., at 226. El Al and the United States, as *amicus curiae*, urge that the Article 24 words, "les cas prévus à l'article 17," refer generically to all personal injury cases stemming from occurrences on board an aircraft or in embarking or disembarking, and serve to distinguish that class of cases (Article 17 cases) from cases which Articles 18 (baggage claims) and 19 (delay claims) address. So read, Article 24 precludes a passenger from asserting any air transit personal injury claims under local law, including claims that fail to satisfy Article 17's liability conditions, notably, because the injury did not result from an "accident," see *Saks*, 470 U. S., at 405, or because the "accident" did not result in physical injury or physical manifestation of injury, see *Floyd*, 499 U. S., at 552. The reasonable view of the Executive Branch concerning the meaning of an international treaty ordi-

narily merits respect, see *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U. S. 176, 184–185, and in this case is most faithful to the Convention's text, purpose, and overall structure. Pp. 8–10.

(b) Recourse to local law would undermine the uniform regulation of international air carrier liability that the Convention was designed to foster. See, *e.g.*, *Floyd*, 499 U. S., at 552. The Convention's signatories, in the treaty's preamble, specifically recognized the advantage of regulating carrier liability in a uniform manner. To provide the desired uniformity, Chapter III sets out an array of liability rules applicable to all international air transportation of persons, baggage, and goods. These rules delineate the three areas of carrier liability (Articles 17, 18, and 19), the conditions exempting carriers from liability (Article 20), the monetary limits of liability (Article 22), and the circumstances in which carriers may not limit liability (Articles 23 and 25). Given the Convention's comprehensive scheme of liability rules and its textual emphasis on uniformity, the Court would be hard put to conclude that the Warsaw delegates meant to subject air carriers to the distinct, nonuniform liability rules of the individual signatory nations. The Second Circuit misperceived the meaning of *Zicherman*, which acknowledged the Convention's central endeavor to foster uniformity in the law of international air travel. See 516 U. S., at 230. *Zicherman* determined that Warsaw drafters intended to resolve *whether there is liability*, but to leave to domestic law (the local law identified by the forum under its choice of law rules or approaches) determination of the compensatory damages available to the suitor. See *id.*, at 231.

Articles 17, 22, and 24 of the Convention are also designed as a compromise between the interests of passengers seeking recovery for personal injuries, and the interests of air carriers seeking to limit potential liability. See, *e.g.*, *Floyd*, 499 U. S., at 546. In Article 17, carriers are denied the contractual prerogative to exclude or limit their liability for personal injury. In Articles 22 and 24, passengers are limited in the amount of damages they may recover, and are restricted in the claims they may pursue by the Convention's conditions and limits. Construing the Convention, as did the Second Circuit, to allow passengers to pursue claims under local law when the Convention does not permit recovery could produce several anomalies. Carriers might be exposed to unlimited liability under diverse legal regimes, but would be prevented, under the treaty, from contracting out of such liability. Passengers injured physically in an emergency landing might be subject to the liability caps of the Convention, while those merely traumatized in the same mishap would be free to sue outside of the Convention for potentially unlimited damages. The Second Circuit's construction would encourage artful pleading by

plaintiffs seeking to opt out of the Convention's liability scheme when local law promised recovery in excess of that prescribed by the treaty. Such a reading would scarcely advance the predictability that adherence to the treaty has achieved worldwide.

The Second Circuit feared that a reading of Article 17 to exclude relief outside the Convention for Tseng would deprive a passenger injured by a malfunctioning escalator in the airline's terminal of recourse against the airline, even if the airline recklessly disregarded its duty to keep the escalator in proper repair. The Convention's preemptive effect on local law, however, extends no further than the Convention's own substantive scope. A carrier, therefore, is subject to liability under local law for passenger injuries occurring before "any of the operations of embarking or disembarking," Art. 17. Tseng raised the concern that carriers will escape liability for their intentional torts if passengers are not permitted to pursue personal injury claims outside of the Convention's terms. But this Court has already cautioned that the definition of "accident" under Article 17 is an "unusual event . . . *external to the passenger*," and that "[t]his definition should be flexibly applied." *Saks*, 470 U. S., at 405 (emphasis added). The parties chose not to pursue here the question whether an "accident" occurred, for an affirmative answer would still leave Tseng unable to recover under the treaty; she sustained no "bodily injury" and could not gain compensation under Article 17 for her solely psychic or psychosomatic injuries. Pp. 10–14.

(c) The Article 17 drafting history is consistent with this Court's understanding of the preemptive effect of the Convention. Although a preliminary draft of the Convention made carriers liable "'in the case of death, wounding, or any other bodily injury suffered by a traveler,'" *Saks*, 470 U. S., at 401, the later draft that prescribed what is now Article 17 narrowed airline liability to encompass only bodily injury caused by an "accident." It is improbable that, at the same time the drafters narrowed the conditions of liability in Article 17, they intended, in Article 24, to permit passengers to skirt those conditions by pursuing claims under local law. Inspecting the drafting history, the Second Circuit stressed a proposal by the Czechoslovak delegation to state in the treaty that, in the absence of a stipulation in the Convention itself, the provisions of laws and national rules relative to carriage in each signatory state would apply. That proposal was withdrawn upon amendment of the Convention's title to read "CONVENTION FOR THE UNIFICATION OF *CERTAIN* RULES RELATING TO INTERNATIONAL TRANSPORTATION BY AIR." (Emphasis added.) The British House of Lords found this drafting history inconclusive, reasoning that the inclusion of the word "certain" in the Convention's title indicated that the Convention was concerned with cer-

Syllabus

tain rules only, not with all the rules relating to international carriage by air; that the Convention is a partial harmonization, directed to the particular issues with which it deals, including a carrier's liability to passengers for personal injury; and that, given the Convention's overall objective to ensure uniformity, the Czechoslovak delegation may have meant only to underscore that national law controlled chapters of law relating to international air carriage with which the Convention was not attempting to deal. In light of the Lords' exposition, the withdrawn Czechoslovak proposal will not bear the weight the Second Circuit placed on it. Pp. 14–16.

(d) Montreal Protocol No. 4, to which the United States has recently subscribed, amends Article 24 to provide, in relevant part: "In the carriage of passengers . . . , any action for damages . . . can only be brought subject to the conditions and limits set out in this Convention . . . ." Under amended Article 24, Tseng and El Al agree, the Convention's preemptive effect is clear: The treaty precludes passengers from bringing actions under local law when they cannot establish air carrier liability under the treaty. Revised Article 24 merely clarifies, it does not alter, the Convention's rule of exclusivity. Supporting the position that revised Article 24 provides for preemption not earlier established, Tseng urges that federal preemption of state law is disfavored generally, and particularly when matters of health and safety are at stake. Tseng overlooks in this regard that the nation-state, not subdivisions within one nation, is the focus of the Convention and the perspective of the treaty partners. The Court's home-centered preemption analysis, therefore, should not be applied, mechanically, in construing this country's international obligations. Decisions of the courts of other Convention signatories, including the House of Lords opinion already noted, corroborate the Court's understanding of the Convention's preemptive effect. Such decisions are entitled to considerable weight. *Saks*, 470 U. S., at 404. Pp. 16–19.

122 F. 3d 99, reversed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion.