CANADIAN GLOBAL AFFAIRS INSTITUTE
INSTITUT CANADIEN DES AFFAIRES MONDIALES

How Can Canada Help Facilitate Taiwan's Meaningful Participation in the Montreal-based International Civil Aviation Organization?

by Scott Simon

March 2021

POLICY PERSPECTIVE

HOW CAN CANADA HELP FACILITATE TAIWAN'S MEANINGFUL PARTICIPATION IN THE MONTREAL-BASED INTERNATIONAL CIVIL AVIATION ORGANIZATION?

by Scott Simon

March 2021

CANADIAN GLOBAL AFFAIRS INSTITUTE
INSTITUT CANADIEN DES AFFAIRES MONDIALES

Prepared for the Canadian Global Affairs Institute
1800, 150 – 9th Avenue S.W., Calgary, AB T2P 3H9
www.cgai.ca

ISBN: 978-1-77397-178-0

The International Civil Aviation Organization (ICAO), under the initiative "No Country Left Behind", promises safe and reliable air transport for all states. Yet, participation is denied to Taiwan, which has a population of 24 million people and is classified by the International Monetary Fund among the world's 37 advanced economies. In 2018, Taoyuan International Airport ranked 11th in total international passenger traffic, eighth in air cargo and fifth in international air freight. In 2019, 28 direct weekly flights brought 136,651 passengers from Canada to Taiwan and took 125,474 in the other direction. The Taipei Flight Information Region (FIR) provided 1.85 million navigation services to aircraft carrying over 72.1 million passengers through 180,000 square nautical miles linking China, Japan and the Philippines. As awareness increases about aviation-related risks to public health and carbon emissions, Taiwan's absence from deliberations regarding aviation should be of concern to everyone, including China. What can Canada, which hosts ICAO headquarters in Montreal, do to bring Taiwan on board?

Background on ICAO

ICAO was formed to implement the Convention on International Civil Aviation (the Chicago Convention) signed by 52 states on December 7, 1944, amid the darkest days of the Second World War. The preamble declared that post-war civil aviation would "create and preserve friendship and understanding among the nations and peoples of the world … on the basis of equality of opportunity." Its core function is to co-ordinate diplomacy and research on civil aviation policies and standards in order to enhance aviation safety. ICAO also provides auditing, training and capacity-building services. Membership is open to UN members, but industry and civil society groups can be invited to attend the triannual assembly or other meetings as judged necessary. In 1946, Montreal was selected as ICAO's permanent headquarters. After Qatar failed a bid to move ICAO headquarters, ICAO renewed its agreement with Canada in 2016 for another 20 years. ICAO has 193 state members.

The Republic of China (ROC) was a founding member. For over two decades, the ROC represented China at ICAO, even though it did not manage airports or airspace under Communist control after 1949. Cold War exclusion of Communist China ended after the People's Republic of China (PRC) replaced the ROC as China's representative to the United Nations (UN) in 1971 and at ICAO in 1974.

Where does this leave Taiwan? Expelling the ROC from ICAO did not change the fact that Taiwan's Civil Aeronautics Administration (CAA) and the Chinese Civil Aviation Authority (CAAC) still maintained autonomy over their respective airspaces, airports and commercial airlines. Even today, both aviation authorities autonomously negotiate international agreements. In 2003, the Quebec Superior Court determined that, for the purposes of an aviation-related lawsuit, Taiwan is a state and Taiwan's CAA enjoys state immunity. The main issue is not only that China does not manage the Taipei FIR or the CAA and thus cannot represent Taiwan in ICAO; but also that it

obstructs Taiwan from representing itself, thus subordinating aviation safety to its own geo-political aspirations.

Taiwan's Exclusion

Taiwan abides by the Chicago Convention, revises laws to conform to changing ICAO regulations and shares information through friendly countries, usually the United States. Despite best efforts, management of the CAA and the Taipei FIR encounter difficulties due to untimely or incomplete information, system incompatibility and inconsistency of security audits. In 2013, the president of the ICAO Council invited Taiwan to attend the triannual ICAO Assembly as a guest called Chinese Taipei CAA. The invitation was not extended in 2016 or 2019.

Taiwan's exclusion takes Orwellian dimensions. In 2016, two journalists, including one Canadian citizen, were refused permission to cover the ICAO Assembly because they worked for Taiwanese media. In 2020, when COVID-19 heightened concerns about health security, ICAO blocked academics and journalists who made technical queries on Twitter, drawing rebuttal from the U.S. State Department. Taiwanese passport holders are even barred from visiting ICAO's museum. The data gaps are serious. The ICAO COVID-19 Air Traffic Dashboard, which lists "Taiwan, Province of China", does not include information on international flights involving Taiwan.

There is international support for inviting Taiwan to participate in ICAO meetings. In 2019, G7 foreign ministers issued a joint communiqué stating they "support the substantive participation of all active members of the international aviation community in ICAO forums [and that] excluding some of its members for political purposes compromises aviation safety and security." Global Affairs Canada explained to *Globe and Mail* journalists: "Canada supports Taiwan's meaningful participation in international organizations where there is a practical imperative and where Taiwan's absence is detrimental to global interests." Some Canadian MPs have explicitly expressed support for Taiwan's entry into ICAO.

China's Core Interests and Regional Red Lines

Since about 2003, China has revealed its long-term hidden agenda to define Taiwan among its "core interests" not subject to negotiation or compromise and to justify the use of force to defend them. ICAO, as defined in the convention, was formed to recognize "complete and exclusive sovereignty" of states over airspace above their land and territorial waters. The convention excludes military flights over other states without special agreement or permission. In order to avoid the "flags of convenience" common in maritime transport, all aircraft must be registered in only one state, and must bear appropriate nationality marks. China cannot accept ROC state accession to ICAO without abandoning its claims over Taiwan.

China forces Taiwan to make difficult concessions. Four Taiwanese airlines are registered with ICAO as "Taiwan, Province of China." Taiwanese airlines had to accept this legal fiction in order to gain permission to fly internationally and to China with the ROC flag marked on the fuselage. China classifies flights between China and Taiwan as domestic flights. Taiwan calls them "cross-strait flights" and requires PRC citizens to clear immigration and customs as non-citizens. In 2019, CAA statistics reveal that 69,068 cross-strait flights carried nearly 11 million passengers between the two sides. These flights are important to business and to the prosperity of both sides.

In spite of the pragmatic benefits of co-operation, China has been increasingly aggressive. When China agreed to Taiwan's 2013 ICAO invitation, made by then-council president Olumuyiwa Benard Aliu, the measure was intended to deepen relations with Taiwan. Since 2016, when President Tsai Ing-wen (Democratic Progressive Party) was elected, China has been less willing to place pragmatic considerations over politics and has accelerated its strategy to reduce any legitimacy of Taiwan in international relations.

China's exclusion of Taiwan from ICAO is part of a larger strategy. In 2020, China made at least 380 military incursions into Taiwan's airspace, in ways that would violate the Chicago Convention if Taiwan were a member. The goal of such grey-zone warfare, combined with international isolation, is to force Taiwan into accepting a negotiated annexation and to justify military intervention if other strategies fail. ICAO should not fail to note that China's military aggression destabilizes regional peace in violation of the spirit of the Chicago Convention.

China's strategy to annex Taiwan is not an internal Chinese matter. As Japanese State Minister of Defence Nakayama Yasuhide told Reuters, Taiwan is a "red line" that China must not cross. The larger balancing act is not between China and Taiwan, but between China which seeks territorial expansion and the U.S.-Japan alliance which protects the status quo. Since 1979, the U.S. has consistently passed legislation supportive of Taiwan, short of diplomatic recognition. The 2020 *Taiwan Assurance Act* defines Taiwan's meaningful participation at ICAO as U.S. policy. The *Taipei Act* of 2019 requires the U.S. to consider its relations with "nations that take serious or significant actions to undermine the security or prosperity of Taiwan."

Canada's Balancing Act

It is in Canada's best interests to advance aviation security for Air Canada, six China-based and two Taiwan-based passenger airlines, and cargo carriers that fly between our regions. WestJet also has a code-share agreement with Taiwan-based China Airlines, as well as two Chinese airlines. Canada manages aviation relations through a bilateral treaty with China and, absent formal diplomatic relations, through an MOU between the Canadian Transportation Agency and Taiwan's CAA. As international aviation accelerates after COVID-19, Taiwan's CAA can best assure the safety of flights to and through their airspace by participating directly in ICAO information sharing, audits and policy deliberations. Canada-Taiwan flights are important not

only for Canadians travelling to Taiwan, but also for those connecting to South and Southeast Asia.

Canada's actions should accord with our own "one China" policy, which intentionally refrains from taking a position on Taiwan's status. Our 1970 joint communiqué states: "The Chinese Government reaffirms that Taiwan is an inalienable part of the territory of the People's Republic of China. The Canadian Government takes note of this position of the Chinese Government." Then-secretary of state for External Affairs Mitchell Sharp explained to Parliament: "The Canadian Government does not consider it appropriate either to endorse or to challenge the Chinese Government's position on the status of Taiwan."

In order to avoid challenging China, Canada signs treaties with China and MOUs with Taiwan. Following this protocol, Canada supports Taiwan's "meaningful" entry into international institutions rather than state membership. Such compromises are possible as long as China refrains from aggression toward Taiwan, and Taiwan avoids crossing China's so-called red lines.

As we consider our alternatives, we should remember that the stakes transcend bilateral Canada-China relations. Our relationship with Taiwan, an important trade partner and like-minded democracy, is important on its own merits. And the signals we send, intentionally or not, have implications for relations with Japan and the United States.

Canada's Options

Canada has a number of options which are not necessarily mutually exclusive. Among them are:

1. Canada could break ranks with the G7 and stop supporting Taiwan's effective participation in ICAO and in other international institutions. China would welcome this move, and it could contribute to a temporary warming of Canada-China relations, but it would be a departure from the protocol of not endorsing China's position on Taiwan's status. The risk is high, as it would send signals to Taiwan, Japan and the U.S. that Canada is unreliable.

2. Canada could strengthen its public statements, building on previous comments by Global Affairs Canada, Prime Minister Justin Trudeau and then-Foreign Affairs minister Chrystia Freeland about Taiwan's participation in the World Health Assembly (WHA) and international institutions. This would be more effective if the Transport minister explicitly supported Taiwan in ICAO and helped Taiwan access more international civil aviation forums.

3. Canada could use its clout as ICAO host to support action taken by member states in support of Taiwan. Mindful of Canada's desire to keep ICAO in Montreal after 2036, Canada does not need to take the lead. Canadian diplomats have the skills to phrase our support appropriately. Focusing on pragmatic considerations and invited status (as Taiwan's CAA enjoyed in 2013) remains consistent with Canadian guidelines to neither

endorse nor challenge China's claims to Taiwan. Taiwan is unlikely to get a fair hearing as long as Fang Liu from China is ICAO secretary general. Nonetheless, even raising the issue strengthens the argument that Taiwan's status is an international issue to be resolved peacefully. Canada's diplomats can support Taiwan's diplomatic allies, mostly in Oceania and Central America, who press even more boldly for Taiwan's inclusion in international organizations.

4. Parliament could propose legislation to demonstrate support for Taiwan, as the U.S. has done since the 1979 *Taiwan Relations Act*. In 2005, Canada's House of Commons deliberated a private member's *Taiwan Affairs Act*, which supported Taiwan's entry into international organizations. The advantage of legislation is that it subjects Canada-Taiwan relations to public scrutiny and multi-party debate in Parliament. Since legislation would stop short of formal diplomatic recognition, diplomats could use it to assuage China's concerns and to encourage China to refrain from aggression until a peaceful diplomatic solution is possible. The immediate risks are that it could attract even greater Chinese interference in Canadian domestic politics. If the opposition proposed it, Parliament could polemicize and reject it.

5. Canada could work discretely behind the scenes to find a solution. This would include ongoing communication with the U.S., Japan and Taiwan. Two-track diplomacy with these countries and China would involve dialogue among government, academics and the private sector. This would give us time to smooth over relations with China, but we would eventually have to take a public stance.

In conclusion, pragmatic considerations of aviation security suggest that Taiwan's participation in ICAO is in Canada's best interests, and accords with Canadian values of democracy and rule of law. Taking a stance generates signals that impact bilateral relations with China, which continues to claim Taiwan and opposes any upgrading of Taiwan's international status. Yet, Taiwan's international space is also a priority for the U.S., Japan and other states seeking to maintain the status quo, which means that our position toward Taiwan is part of relations with third states. Public discussion of Taiwan's participation in international organizations keeps Taiwan's status in the spotlight as an international issue to be solved by diplomacy, rather than by unilateral use of Chinese military force. Canada can make a positive contribution to peacetime aviation by facilitating Taiwan's participation in ICAO. Finding a way to do so should be a priority for Canada in the coming years.

See also:

https://www.cips-cepi.ca/2020/03/03/time-to-end-the-exclusion-of-taiwan-from-the-international-civil-aviation-organization/

https://nationalpost.com/opinion/opinion-its-time-for-canada-to-support-taiwans-place-in-the-international-community

About the Author

Scott Simon (Ph.D., McGill University, 1998), Professor in the School of Sociological and Anthropological Studies and Co-holder of the Chair of Taiwan Studies at the University of Ottawa, has lived in Taiwan for ten years and returns annually for field research. His research interests include Indigenous rights, development, the contribution of Taiwan to the Indo-Pacific, Taiwan's international status, and Canada-Taiwan relations. He has written three books and numerous articles about Taiwan. He does policy-oriented research as member of the Centre for International Policy Studies and the Human Rights Research and Education Centre at the University of Ottawa, and as Senior Fellow at Ottawa's Macdonald-Laurier Institute.

Canadian Global Affairs Institute

The Canadian Global Affairs Institute focuses on the entire range of Canada's international relations in all its forms including (in partnership with the University of Calgary's School of Public Policy), trade investment and international capacity building. Successor to the Canadian Defence and Foreign Affairs Institute (CDFAI, which was established in 2001), the Institute works to inform Canadians about the importance of having a respected and influential voice in those parts of the globe where Canada has significant interests due to trade and investment, origins of Canada's population, geographic security (and especially security of North America in conjunction with the United States), social development, or the peace and freedom of allied nations. The Institute aims to demonstrate to Canadians the importance of comprehensive foreign, defence and trade policies which both express our values and represent our interests.

The Institute was created to bridge the gap between what Canadians need to know about Canadian international activities and what they do know. Historically Canadians have tended to look abroad out of a search for markets because Canada depends heavily on foreign trade. In the modern post-Cold War world, however, global security and stability have become the bedrocks of global commerce and the free movement of people, goods and ideas across international boundaries. Canada has striven to open the world since the 1930s and was a driving factor behind the adoption of the main structures which underpin globalization such as the International Monetary Fund, the World Bank, the World Trade Organization and emerging free trade networks connecting dozens of international economies. The Canadian Global Affairs Institute recognizes Canada's contribution to a globalized world and aims to inform Canadians about Canada's role in that process and the connection between globalization and security.

In all its activities the Institute is a charitable, non-partisan, non-advocacy organization that provides a platform for a variety of viewpoints. It is supported financially by the contributions of individuals, foundations, and corporations. Conclusions or opinions expressed in Institute publications and programs are those of the author(s) and do not necessarily reflect the views of Institute staff, fellows, directors, advisors or any individuals or organizations that provide financial support to, or collaborate with, the Institute.