



# TOPIC: THE PRC'S EXPLOITATION OF ICAO

(SPOTLIGHTING THE PRC'S USE OF INSTITUTIONAL LEGAL WARFARE)

## BLUF



- The People's Republic of China (PRC) uses its position in the International Civil Aviation Organization (ICAO) to channel influence and resources toward the PRC's national goals at the expense of the broader global community.

## WHY THIS MATTERS

- The International Civil Aviation Organization (ICAO) – a technical agency under the United Nations (U.N.) created by the International Convention on Civil Aviation in 1944 – has the broad mission of ensuring peaceful, global aviation in a safe and orderly manner.<sup>i</sup>
- The PRC has used its influence within ICAO to advance nationalist, strategic goals at the expense of the global air transport network, causing direct harm to Taiwan and an unknown number of countries affected by the ICAO cyber hack.
- Destabilizing and coopting international bodies that have served the global community threatens further eroding the rules based international order to the detriment of the international community.

## DETAILED DISCUSSION

- Institutional legal warfare is the purposeful creation of new domestic and international laws and institutions to achieve one's military or strategic goals. For a revisionist power such as the PRC, institutional legal warfare involves both the creation of domestic laws and the use of existing international bodies such as ICAO to achieve nationalistic goals, at the expense of the rules based international order.<sup>ii</sup>
- In a letter to the students of Central Conservatory of Music, written in February of 1964, Mao Zedong wrote "Make the Foreign serve China."<sup>iii</sup> This statement fundamentally encapsulates the PRC's strategy towards international organizations.
- While nations regularly act in their self-interest, most international organizations, especially those constituted under the United Nations, are typically chartered with specific mandates to support broader, global interests for the benefit of all States. ICAO's core mandate serves to build a global air transport network and to help States "achieve the highest possible degree of uniformity in civil aviation regulations, standards, procedures, and organization" to ensure safe and orderly global aviation.<sup>iv</sup> The co-opting of ICAO to serve the PRC's strategic interests is an example of its use of malign lawfare---as demonstrated by the following discussion.
- The PRC used ICAO to engage in a wide ranging campaign of pressure to isolate Taiwan from the international community.<sup>v</sup> This became clear in 2016 when the Taiwan delegation to ICAO was forced out by the PRC.<sup>vi</sup> This pattern of behavior continued during Fang Liu's (PRC) six year tenure as Secretary General, during which ICAO refused Taiwanese efforts to attend meetings as an observer, refused to share information about aviation operations as COVID-19 spread worldwide, and even forced the ICAO communications team to block Twitter accounts that criticized the Secretary's treatment of Taiwan.<sup>vii</sup> This behavior was so egregious during the onset of the COVID-19 Pandemic that a member of the U.S. Senate Foreign Relations Committee's Chair on the Subcommittee for Aviation and Space sent a letter to the Secretary General of ICAO calling on her to stop enacting the Chinese Communist Party's (CCP) agenda at the expense of the people on Taiwan.<sup>viii</sup>
- Despite the concerning legal strategy, the PRC's use of ICAO to marginalize Taiwan also has significant practical considerations, given that Taiwan's Taoyuan Airport was ranked the fifth busiest international cargo airport and



11th busiest for international passenger plane traffic by the Aviation Council International Ranking.<sup>ix</sup> By preventing Taiwan's participation in ICAO, the Secretary General creates safety risks borne not just by Taiwan, but by the larger global community.

- The PRC's abuse of ICAO is not limited to its behavior towards Taiwan. In 2016, ICAO was the victim of a cyber-attack by Emissary Panda (aka APT27), an espionage organization with direct ties to the Chinese government.<sup>x</sup> Under the Secretary's direction, this situation was initially concealed until outside actors learned of the breach.<sup>xi</sup> She then worked to cover-up several aspects of the investigation and harassed whistleblowers to the point that the United States withheld funding from ICAO in 2019.<sup>xii</sup>
- The extent and the number of States affected by the ICAO cyber-attack and cover-up is still unknown. What is known is that, none of the individuals involved were investigated or otherwise held accountable and that rather than address an almost decades long PRC intrusion into ICAO's network, the Secretary instead worked to sabotage whistleblower policies so she would not be held accountable for her actions against the whistleblower who disclosed the hack.<sup>xiii</sup>

## PROPOSED COUNTER-LAWFARE APPROACH

- The PRC's self-serving use of ICAO to pursue national objectives comes at the expense of other, less influential members of the organizations.
- The use of international entities to nakedly pursue nationalist goals that don't benefit and, in some cases, directly harm the broader global community is an abuse of international goodwill.
- The PRC has used its influence within ICAO to advance nationalist, strategic goals at the expense of the global air transport network, causing direct harm to Taiwan and an unknown number of countries affected by the ICAO cyber hack.
- Destabilizing and coopting international bodies that serve the global community threatens further eroding of the international rules-based order to the detriment of the international community.

<sup>i</sup> International Civil Aviation Organization, *The History of ICAO and the Chicago Convention*, available at <https://www.icao.int/about-icao/History/Pages/default.aspx> (last accessed on 30 Sept 2022).

<sup>ii</sup> Maj Gen Charles J. Dunlap, Jr., USAF (RET.), Commentary, *Lawfare Today: A Perspective*, Yale J. Int'l Aff., Winter 2008, at 146 (citation omitted)(defining "lawfare"); Michael Dressler, "Lawfare: Both an Existential Threat to the International Rule of Law and an Indispensable Tool of American Foreign Policy in the Twenty-First Century," Penn State Law Review, March 6, 2021, available at <https://www.pennstatelawreview.org/the-forum/lawfare-both-an-existential-threat-to-the-international-rule-of-law-and-an-indispensable-tool-of-american-foreign-policy-in-the-twenty-first-century/> (last accessed October 4, 2022); and Lt Col Charles J. Gartland, USAF, *Out to Sea with the CCP*.

<sup>iii</sup> Anne-Marie Brady, *Make the Foreign Serve China: Managing Foreigners in the People's Republic*, 2004, at p.253 (the quote is attributed to Mao Zedong and reflects how China will "make use of only what it needs from the outside world").

<sup>iv</sup> International Civil Aviation Organization, *The History of ICAO and the Chicago Convention*, available at <https://www.icao.int/about-icao/History/Pages/default.aspx> (last accessed on 30 Sept 2022).

<sup>v</sup> Brett D. Schaefer and Danielle Pletka, "International Civil Aviation Organization: United States Should Repair Chinese Damage and Focus the Organization on Its Core Mission," *Heritage Foundation*, June 22, 2021 available at <http://report.heritage.org/bg3632> (last accessed October 4, 2022); David Sutton, "International Civil Aviation Organization Shuts out Taiwan," *The Diplomat*, September 27, 2016, available at <https://thediplomat.com/2016/09/international-civil-aviation-organization-shuts-out-taiwan/> (last accessed October 4, 2022).

<sup>vi</sup> David Sutton, "International Civil Aviation Organization Shuts out Taiwan," *The Diplomat*, September 27, 2016, available at <https://thediplomat.com/2016/09/international-civil-aviation-organization-shuts-out-taiwan/> (last accessed October 4, 2022).

<sup>vii</sup> Brett D. Schaefer and Danielle Pletka, "International Civil Aviation Organization: United States Should Repair Chinese Damage and Focus the Organization on Its Core Mission," *Heritage Foundation*, June 22, 2021 available at <http://report.heritage.org/bg3632> (last accessed October 4, 2022).

<sup>viii</sup> United States Senator Ted Cruz, Letter to the Secretary General of the ICAO, available at <https://www.cruz.senate.gov/imo/media/doc/Letters/2020.2.6%20-%20ICAO%20Letter%2011.pdf> (last accessed October 4, 2022).

<sup>ix</sup> Wang Kwo-Tsai, "Why ICAO Needs Taiwan," *The Diplomat*, September 14, 2022, available at <https://thediplomat.com/2022/09/why-icao-needs-taiwan/> (last accessed October 4, 2022); and David Sutton, "International Civil Aviation Organization Shuts out Taiwan," *The Diplomat*, September 27, 2016, available at <https://thediplomat.com/2016/09/international-civil-aviation-organization-shuts-out-taiwan/> (last accessed October 4, 2022).

<sup>x</sup> Brett D. Schaefer and Danielle Pletka, "International Civil Aviation Organization: United States Should Repair Chinese Damage and Focus the Organization on Its Core Mission," *Heritage Foundation*, June 22, 2021 available at <http://report.heritage.org/bg3632> (last accessed October 4, 2022); and Debra Arbec, "Montreal Based UN Aviation Agency Tried to cover up 2016 Cyberattack Documents Show," *Canadian Broadcasting Corporation News*, February 27, 2019 available at [www.cbc.ca/news/canada/montreal/montreal-based-un-aviation-agency-tried-to-cover-up-2016-cyberattack-documents-show-1.5033733](http://www.cbc.ca/news/canada/montreal/montreal-based-un-aviation-agency-tried-to-cover-up-2016-cyberattack-documents-show-1.5033733) (last accessed October 4, 2022).

<sup>xi</sup> Debra Arbec, "Montreal Based UN Aviation Agency Tried to cover up 2016 Cyberattack Documents Show," *Canadian Broadcasting Corporation News*, February 27, 2019 available at [www.cbc.ca/news/canada/montreal/montreal-based-un-aviation-agency-tried-to-cover-up-2016-cyberattack-documents-show-1.5033733](http://www.cbc.ca/news/canada/montreal/montreal-based-un-aviation-agency-tried-to-cover-up-2016-cyberattack-documents-show-1.5033733) (last accessed October 4, 2022).

<sup>xii</sup> Brett D. Schaefer and Danielle Pletka, "International Civil Aviation Organization: United States Should Repair Chinese Damage and Focus the Organization on Its Core Mission," *Heritage Foundation*, June 22, 2021 available at <http://report.heritage.org/bg3632> (last accessed October 4, 2022); and Debra Arbec, "Montreal Based UN Aviation Agency Tried to cover up 2016 Cyberattack Documents Show," *Canadian Broadcasting Corporation News*, February 27, 2019 available at [www.cbc.ca/news/canada/montreal/montreal-based-un-aviation-agency-tried-to-cover-up-2016-cyberattack-documents-show-1.5033733](http://www.cbc.ca/news/canada/montreal/montreal-based-un-aviation-agency-tried-to-cover-up-2016-cyberattack-documents-show-1.5033733) (last accessed October 4, 2022).

<sup>xiii</sup> Debra Arbec, "Montreal Based UN Aviation Agency Tried to cover up 2016 Cyberattack Documents Show," *Canadian Broadcasting Corporation News*, February 27, 2019 available at [www.cbc.ca/news/canada/montreal/montreal-based-un-aviation-agency-tried-to-cover-up-2016-cyberattack-documents-show-1.5033733](http://www.cbc.ca/news/canada/montreal/montreal-based-un-aviation-agency-tried-to-cover-up-2016-cyberattack-documents-show-1.5033733) (last accessed October 4, 2022); and Government Accountability Project, "UN International Civil Aviation Organization Fires Cyber Security Whistleblower After U.S. Withdraws Millions over Whistleblower Retaliation Concerns," December 13, 2019 available at <https://whistleblower.org/press-release/press-release-un-international-civil-aviation-organization-fires-cyber-security-whistleblower-after-u-s-withdraws/> (last accessed October 4, 2022).