

# The Recognition of the Chinese Government and the Convention on International Civil Aviation

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## Abstract

This article traces the membership and representation of China in the International Civil Aviation Organization. It examines which of the two governments claiming to represent China, the Government of the Republic of China (ROC) or the Government of the People's Republic of China (PRC), has, at any one time, been regarded as competent to exercise China's membership rights under the Convention on International Civil Aviation (Chicago Convention). In particular, the article asks which government can today validly designate "customs airports" in China, including Taiwan, and exercise the various other rights in respect of non-scheduled and scheduled flights referred to in Articles 5 and 6 of the Chicago Convention. It explains why airlines can operate direct international air services to non-designated airports in Taiwan without the special permission or other authorization of the Government of the PRC, despite the latter being regarded as having complete and exclusive sovereignty over the airspace above Taiwan.

## I. Introduction

1. The Republic of China (ROC) was established in 1912 and was governed by the Chinese Nationalist Party (Kuomintang). Fighting in the Chinese civil war between the Chinese Nationalist Party and the Chinese Communist Party ended in 1949 with the victory of the Communist Party, and the retreat of the Nationalists to the island of Taiwan and some smaller outlying islands. On 1 October 1949, the People's Republic of China (PRC) was proclaimed and has exercised control over the Chinese mainland ever since. Within four months, the Central People's Government of the PRC was recognized *de jure* as the Government of China by all Eastern bloc countries and also

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by several other States, including India, Switzerland and the UK.<sup>1</sup> The majority of (Western) States, on the other hand, continued to recognize the Government of the ROC during the early years of the Cold War, despite the fact that the latter governed only Taiwan and outlying islands. Owing to the number of States continuing to recognize it and the support of the United States, the Government of the ROC was also allowed to represent China in the UN.

2. On 25 October 1971, the UN General Assembly adopted Resolution 2758 (XXVI) on the “Restoration of the Lawful Rights of the People’s Republic of China in the United Nations”. In this resolution, the General Assembly recognized the representatives of the Government of the PRC as the only lawful representatives of the State of China to the UN and expelled the representatives of the Government of the ROC “from the place which they unlawfully occupy at the United Nations and in all organizations related to it”.<sup>2</sup>

3. In line with the “one China” policy formally adhered to by both the PRC and the ROC, and acknowledged by the international community, there is only one State of “China”, whose territory comprises both the Chinese mainland (including Hong Kong and Macau) and the island of Taiwan and outlying islands. In the case of China, the question is thus not one of recognition of States but of recognition of the government entitled to represent the State of China in international relations. Since the 1970s, most States, including all major Western States, have recognized the Government of the PRC as the Government of China. For example, a joint communiqué establishing diplomatic relations between Australia and the PRC was signed in Paris on 22 December 1972. This provides in the relevant part:

The Australian Government recognizes the Government of the People’s Republic of China as the sole legal Government of China; acknowledges the position of the Chinese Government that Taiwan is a province of the People’s Republic of China and has decided to remove its official representation from Taiwan before 25 January 1973.<sup>3</sup>

Similar communiqués were signed with numerous other States in the 1970s.<sup>4</sup> Recognition of the Government of the PRC automatically meant de-recognition of the

1 USSR (2 October 1949); Bulgaria, Romania (3 October 1949); Poland, Hungary, Czechoslovakia (4 October 1949); Yugoslavia (5 October 1949); Albania (23 November 1949); East Germany, Mongolia, North Korea, Burma (9 December 1949); India (30 December 1949); Pakistan (4 January 1950); UK, Ceylon, Norway, Denmark, Finland, Sweden, Switzerland, Israel (6 January 1950); Afghanistan (13 January 1950).

2 A/RES/2758 (XXVI) of 25 October 1971, para 3.

3 R. Miller, *Australian Practice in International Law 1970–1973*, Australian YBIL 1970–1973 (1975), 136–152, 149–150.

4 For the Joint Communiqué with Canada, see J.-G. Castel, *International Law. Chiefly as Interpreted and Applied in Canada* (3rd edn, 1976), 92–93; with Italy, 46 *Peking Rev.* (1970), 6;

Government of the ROC “as the Government of all China”.<sup>5</sup> As of 1 July 2008, only 23 States still recognize the ROC Government and maintain diplomatic relations with it.<sup>6</sup>

## II. China’s membership of the International Civil Aviation Organization

4. The International Civil Aviation Organization (ICAO) is one of the specialized agencies within the UN system, i.e. one of the “organizations related to it”. Its headquarters are located in Montreal, Canada.<sup>7</sup> The ICAO was established by Part II of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention).<sup>8</sup> The Convention entered into force on 4 April 1947. As of 1 July 2008, it has 190 contracting States and thus has reached near universality.<sup>9</sup>

5. China, represented by the Government of the ROC, became a party to the Chicago Convention, and a member of the ICAO, on 20 February 1946.<sup>10</sup> The Government of the ROC denounced the Convention and withdrew from the ICAO with effect from 31 May 1951,<sup>11</sup> in the words of its Delegation, “primarily because of her difficulties in fulfilling her financial obligations”.<sup>12</sup> However, on 2 December 1953,

with Japan, 17 Japanese AIL (1973), 81; with Spain, Keesings (1973), 25824C; with Thailand, Keesings (1975), 27335.

- 5 See the statement of the Canadian Secretary of State for External Affairs in January 1969, reproduced in J.-G. Castel, above n.4, 90.
- 6 The States are Vatican City, Burkina Faso, Gambia, São Tomé and Príncipe, Swaziland, Kiribati, Marshall Islands, Nauru, Palau, Solomon Islands, Tuvalu, Belize, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines.
- 7 On ICAO, see e.g. H. Volger, ICAO – International Civil Aviation Organization, in: H. Volger (ed.), *A Concise Encyclopedia of the United Nations* (2002), 274–275; K. Hailbronner, *International Civil Aviation Organization*, in: R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Vol. II (1995), 1070–1074.
- 8 15 UNTS 295. For the most recent version, including amendments, see ICAO Doc. 7300/9 (9th edn, 2006).
- 9 For a list of contracting States, see [www.icao.int/icao/en/leb/chicago.pdf](http://www.icao.int/icao/en/leb/chicago.pdf).
- 10 The Government of the ROC had signed the Chicago Convention on 7 December 1944 and deposited its instrument of ratification on 20 February 1946.
- 11 The decision to withdraw from the Chicago Convention was notified by the Government of the ROC in a note addressed to the Government of the United States on 28 May 1950 (ICAO Doc. 8900/2, 1977, Art. 95-1). In accordance with Art. 95(b) of the Chicago Convention, it took effect one year after the receipt of the notification. See also Annual Report of the Council to the Assembly for 1950, ICAO Doc. 7148, A5-P/1, 79, 121; Annual Report of the Council to the Assembly for 1951, ICAO Doc. 7270, A6-P/1, 69.
- 12 ICAO Assembly, 7th Session, 1953, ICAO Doc. 7490, A7-P/2, 35. On the denunciation of the Convention by the Government of the ROC, see J. Schenkman, *International Civil Aviation Organization* (1955), 130–132; N. Singh, *Termination of Membership of International Organizations* (1958), 147–149.

the Government of the ROC re-ratified the Chicago Convention, and China's re-entry into the Organization became effective on 1 January 1954.<sup>13</sup>

6. The notice of denunciation was contested by several contracting States of the Chicago Convention that had recognized the Government of the PRC on the ground that the ROC Government was no longer entitled to act on behalf of China.<sup>14</sup> The Indian delegation stated, for instance: "The Government of India do not [...] subscribe to the view that the Convention ceased to be in effect with respect to China on the 31st May, 1951."<sup>15</sup> For those contracting States, the re-ratification of the Convention by the ROC Government in 1953 was equally invalid. The British Government stated:

The Government of the United Kingdom do not recognize the act of the Chinese Nationalist authorities, in depositing another instrument of ratification [...], as having any validity or as in any way affecting the status of China as a party to the Convention.<sup>16</sup>

States that no longer recognized the Government of the ROC continued to record 20 February 1946 in their national treaty compilations as the date on which China ratified the Chicago Convention.<sup>17</sup>

7. This view, however, did not prevail at the time. Both the denunciation and the re-ratification of the Chicago Convention by the ROC Government were treated as valid. The ICAO Council informed the Assembly in 1951 that "the membership of the Organization was reduced by one during the year, when the withdrawal of the Government of the Republic of China from the Convention on International Civil Aviation took effect on 31 May".<sup>18</sup> When the Government of the ROC re-ratified the Convention, the seating and participation of its delegation in the 1954 Assembly were not challenged.<sup>19</sup> The ICAO listed China as having ratified the Chicago Convention on 2

13 See Annual Report of the Council to the Assembly for 1953, ICAO Doc. 7456, A8-P/2, 50; Annual Report of the Council to the Assembly for 1954, ICAO Doc. 7564, A9-P/2, 55. See also ICAO Council, 20th Session, 1953, ICAO Doc. 7418-C/865, 146.

14 See Report of the Council, ICAO Doc. 7148, A5-P/1, 79. The withdrawal was not recognized by India, Norway, Pakistan and the UK.

15 B. Cheng, *The Law of International Air Transport* (1962), 603, n.4.

16 Cheng, n.15 above, 603, n.5. See also the entry in the UK Treaty Series: "The ratification by the Chinese Nationalist Government is not recognized by the Government of the United Kingdom, since the withdrawal by the former on May 31, 1950, was not recognized by Her Majesty's Government (see TS No. 8 (1953), Cmd 8742)." (UKTS No. 78 (1954), Cmd. 9401, 2). See further the statement of the British delegate in the ICAO Council, 19th Session, 1953, ICAO Doc. 7390-C/861, 51.

17 It is also of interest to note in this connection that the German Government lists both "China (Taiwan)" and "China" as parties to the Chicago Convention. For the former, the date of entry into force of the Convention is recorded as 1 January 1954, while for the latter, the date is 4 April 1947, the date when the Convention entered into force; see Bundesministerium der Justiz (ed.), *Fundstellennachweis B* (2006), 295.

18 Annual Report of the Council to the Assembly for 1951, ICAO Doc. 7270, A6-P/1, 69.

19 See ICAO Assembly, 8th Session, 1954, ICAO Doc. 7505, A8-P/10, 16.

December 1953.<sup>20</sup> As Thomas Burgenthal pointed out, the States challenging the legality of the denunciation and re-ratification were strategically in a disadvantageous position, as the US Government as the depository of the Chicago Convention continued to recognize the Government of the ROC as the Government of China.<sup>21</sup>

8. Following the re-ratification of the Chicago Convention, several unsuccessful attempts were made to unseat the Government of the ROC in the ICAO.<sup>22</sup> It was only on 19 November 1971 that the ICAO Council, following the lead of the UN General Assembly, decided, “for matters within its competence, to recognize the representatives of the Government of the People’s Republic of China as the only legitimate representatives of China to the International Civil Aviation Organization”, and requested the Secretary General to communicate its decision immediately to all contracting States.<sup>23</sup> As from 19 November 1971, China has thus been represented within the ICAO by the Government of the PRC.<sup>24</sup> A delegation from the PRC participated for the first time in a session of the ICAO Assembly in September 1974.<sup>25</sup>

- 20 See e.g. Annual Report of the Council – 1971, ICAO Doc. 8982, A19-P/1, 101; Annual Report of the Council to the Assembly for 1964, ICAO Doc. 8475, A15-P/3, 111.
- 21 T. Buergenthal, *Law-Making in the International Civil Aviation Organization* (1969), 37–38. The United States recognized the Government of the PRC “as the sole legal Government of China” only on 1 January 1979; see the Joint Sino–US Communiqué of 15 December 1978, 18 ILM (1979), 274.
- 22 See ICAO Assembly, 10th Session, 1956, ICAO Doc. 7708, A10-P/17, 8; 12th Session, 1959, ICAO Doc. 7996, A12-P/2, 29–30; 13th Session (Extraordinary), 1961, ICAO Doc. 8167, A13-P/2, 23–24, 14th Session, 1962, ICAO Doc. 8269, A14-P/21, 57–59, 97–99; 15th Session, 1965, ICAO Doc. 8516, A15-P/5, 63–65; 16th Session, 1968, ICAO Doc. 8775, A16-Min. P/1-19, 85–88; 17th Session (Extraordinary), 1970, ICAO Doc. 8893, A17-Min. P/1-7, 11–14; 17th Session (Extraordinary), 1971, ICAO Doc. 8931, A17-A P/7, 23–25; 18th Session, 1971, ICAO Doc. 8963, A18-Min. P/1-6, 167–169. See also Action of the Council, Seventy-second Session, 1971, ICAO Doc. 8985-C/1002, 38–40, for the unsuccessful motion to invite the PRC Government to the 18th Session of the Assembly as an “observer”.
- 23 Action of the Council, Seventy-fourth Session, ICAO Doc. 8987-C/1004, 47–49. The decision on “Representation of China in ICAO” was adopted by 20 votes to 2 (Nicaragua, United States) with 5 abstentions (Argentina, Australia, Brazil, Columbia, Japan). See also Annual Report of the Council – 1971, ICAO Doc. 8982, A10-P/1, 83, 88. On the Council decision, see also R.H. Mankiewicz, *Organisation de l’aviation civile*, AFDI 18 (1972), 804–835, at 804–807.
- 24 Annual Report of the Council – 1971, ICAO Doc. 8982, A10-P/1, 129, n.2 (“Representation by the Republic of China up to 18 November 1971”). The Minister of Foreign Affairs of the PRC notified the Secretary General of the ICAO by a note dated 15 February 1974, that “the Government of the People’s Republic of China has decided to recognize the Convention on International Civil Aviation which the then Government of China signed in Chicago on December 9 [sic], 1944, and of which an instrument of ratification was deposited by it on February 20, 1946 [...]. The Government of the People’s Republic of China has also decided to participate in the activities of the International Civil Aviation Organization as from this date.” ([www.state.gov/documents/organization/22698.rtf](http://www.state.gov/documents/organization/22698.rtf)).
- 25 See Minutes of the Plenary Meetings, Assembly – 21st Session, ICAO Doc. 9119, A21-Min. P/1-12, 65. Ordinary sessions of the Assembly were held only every three years; the last ordinary session had been in June–July 1971, that is prior to the change in representation.

9. With the change in representation, the question arose as to the date from which China had become a party to the Chicago Convention and a member of the ICAO. By a note, dated 15 February 1974, the Minister of Foreign Affairs of the PRC notified the Secretary-General of the ICAO that:

the Government of the People's Republic of China has decided to recognize the Convention on International Civil Aviation which the then Government of China signed in Chicago on December 9 [sic], 1944, and of which an instrument of ratification was deposited by it on February 20, 1946 [...]. The Government of the People's Republic of China has also decided to participate in the activities of the International Civil Aviation Organization as from this date.<sup>26</sup>

This was in line with the PRC Government's position that since 1 October 1949, it had been the Government of China. As early as May 1950, a note was addressed to "officials of ICAO" in which the Government of the PRC asserted that it was the only legal government representing the Chinese people and asked that the members of the Chinese Nationalist Delegation be "driven out" of the ICAO.<sup>27</sup> Since 1974, both the United States as depository of the Chicago Convention and the ICAO have no longer taken account of the denunciation and re-ratification of the Convention by the Government of the ROC and list China as having deposited its instrument of ratification on 20 February 1946.<sup>28</sup>

10. A diplomatic conference on Air Law, held from 28 September to 1 October 1998, adopted the authentic Chinese text of the Chicago Convention. The original Convention had been concluded in the English language only. The authentic French, Spanish, Russian and Arabic texts of the Convention were subsequently adopted.<sup>29</sup>

11. The Chicago Convention as an international treaty is only open to sovereign States.<sup>30</sup> In August 1998, the Director of the Legal Bureau of ICAO wrote:

26 [www.state.gov/documents/organization/22698.rtf](http://www.state.gov/documents/organization/22698.rtf). A copy of the note was transmitted by the Secretary-General of ICAO, by a communication dated 31 May 1974, to the United States as depository of the Chicago Convention. See also UKTS No. 101 (1978), Cmnd. 7398, 9.

27 Schenkman, above n.12, 131.

28 See Annual Report of the Council – 1974, ICAO Doc. 9127, 103. See also the list of contracting States of the Convention at [www.icao.int/icao/en/leb/chicago.pdf](http://www.icao.int/icao/en/leb/chicago.pdf).

29 ICAO News Release, PIO 11/98, 1 October 1998. See Protocol Relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Chinese Text] and Protocol on the Authentic Six-Language Text of the Convention on International Civil Aviation (Chicago 1944), signed at Montreal on 1 October 1998, ICAO Docs 9721 and 9722. As of 1 July 2008, the Protocols have not yet entered in force.

30 See e.g. Arts 1 ("contracting States"), 91, 92, 93, Chicago Convention. See also J. Erlner, *Rechtsfragen der ICAO. Die Internationale Zivilluftfahrtorganisation und ihre Mitgliedstaaten* (1967), 72.

As the UN, ICAO does not recognize Taiwan as a sovereign State, and is also cautious in refraining from any act, or from being associated with any act, which could be implied as such recognition.<sup>31</sup>

For the ICAO, there is thus only one State of China which includes Taiwan. Any attempt by the Government of the ROC to adhere to the Chicago Convention, and thereby become a member of the ICAO in its own right, must therefore be unsuccessful.<sup>32</sup>

12. Since Taiwan is regarded as a part of China, the Government of the PRC as the sole Government of China has “complete and exclusive sovereignty over the airspace” above Taiwan,<sup>33</sup> and the Chicago Convention applies to Taiwan as part of the territory of the contracting State of China.<sup>34</sup>

### III. Representation of China as reflected in the ICAO location indicators

13. The changing representation of China in the ICAO is reflected in the ICAO publication *Location Indicators*.<sup>35</sup> Location indicators are “assigned to identify those geographical locations throughout the world at which there is situated a station forming part of the aeronautical fixed service”, i.e. an airport or airfield.<sup>36</sup> Location indicators consist of four letters, the first two usually being nationality letters identifying a State or territory. “Location indicators are assigned by States”; the ICAO only checks their conformity with the rules on the formulation and assignment of location indicators.<sup>37</sup> On the inside of the front cover of *Location Indicators*, the following disclaimer may be found:

Nothing in the manner of presentation of information in this document or in the arrangement of data implies endorsement or acceptance by ICAO in matters affecting the status and boundaries of states and territories.<sup>38</sup>

While no conclusions may be drawn from *Location Indicators* as to the status and boundaries of States and territories, the publication reveals who is considered by the ICAO as entitled to represent the State or territory for the purposes of international civil aviation.

14. Until the July 1973 edition of *Location Indicators*, only airports in Taiwan and the outlying islands were listed under “China”. Not a single airport on the Chinese mainland under the control of the PRC was mentioned in the document. China had been

31 Letter from Dr Ludwig Weber, dated 31 August 1998, quoted in S. Talmon, *Kollektive Nichtanerkennung illegaler Staaten* (2006), 815, n.354.

32 See L. Weber, *International Civil Aviation Organization: An Introduction* (2007), 16–17.

33 See Art. 1 of the Chicago Convention.

34 See Art. 29 of the Vienna Convention on the Law of Treaties, 23 May 1969 (1155 UNTS 331).

35 ICAO Doc. 7910. The document is updated several times a year.

36 *Location Indicators*, ICAO Doc. 7910/15, July 1973, E.0–5.

37 *Ibid.*, E.0–5.

38 ICAO Doc. 7910.

allocated the nationality letters RC for its location indicators. In the July 1973 edition, 29 airports in Taiwan and the surrounding islands were listed under “RC – China”.<sup>39</sup>

15. By the November 1973 edition, the situation had changed. China was not listed at all in the index of nationality letters for location indicators and no airports were listed in China, either on the mainland or on Taiwan.<sup>40</sup>

16. In the February 1974 edition, China was again listed in the index of nationality letters with the country code RC.<sup>41</sup> This time, however, the number of airports listed under “RC – China” was reduced to 11 in Taiwan and the outlying islands.<sup>42</sup> There was also a note added to the entries under China which read:

The entries recorded in respect of China are as communicated to ICAO by the authorities representing China in ICAO at the time the information was sent.<sup>43</sup>

As neither the State of China nor airports in China were listed in the previous edition of *Location Indicators*, and as China had been represented in the ICAO by the Government of the PRC since November 1971, it must be concluded that the 11 airports in Taiwan had been communicated to the ICAO by the Government of the PRC. Surprisingly, however, no airports in mainland China were listed in *Location Indicators*. The situation of only 11 airports in Taiwan being listed under “RC – China” continued from the February 1974 to the September 1975 edition.<sup>44</sup>

17. In the February 1976 edition of *Location Indicators*, China was for the first time allocated several new nationality letters. In addition to RC, it was now using the letters ZB, ZG, ZH, ZL, ZP, ZS, ZU, ZW, ZY; i.e. all the Z letters apart from ZK, which is used for North Korea, and ZM, for Mongolia. While the same 11 airports in Taiwan continued to be listed under “RC – China”, 62 airports in mainland China were now listed under the letters starting with Z.<sup>45</sup>

18. That it is the Government of the PRC that assigns the location indicators for China, including Taiwan, and notifies the ICAO of any changes becomes clear from the October 1979 edition of *Location Indicators*. Until that date, the names of airports in China were romanized<sup>46</sup> using a modified version of the Wade–Giles system adopted as standard by the Government of the ROC, but from October 1979 onwards the

39 ICAO Doc. 7910/15, July 1973, 4-44.

40 ICAO Doc. 7910/16, November 1973, 2-1, 4-44, 4-56.

41 ICAO Doc. 7910/17, February 1974, 2-1.

42 The airports were Kangshan (RCAY), Taoyuan (RCGM), Kaohsiung (RCKH), Chiayi (RCKU), Taichung (RCLG), Kungkuan (RCMQ), Tainan (RCNN), Hsinchu (RCPO), Pingtung (RCSQ), Taipei (RCTP) and Hualien (RCYU).

43 ICAO Doc. 7910/17, February 1974, 4-44.

44 See ICAO Docs 7910/18, August 1974, 4-44; 7910/19, January 1975, 4-44; 7910/20, May 1975, 4-44; 7910/21, September 1975, 4-44.

45 ICAO Doc. 7910/22, February 1976, 2-1 and 4-44, 4-56.

46 In linguistics, romanization (or latinization) is the representation of a word or language with the Roman (Latin) alphabet, or a system for doing so, where the original word or language uses a



system used was Pinyin, the official and most widely used system in the PRC. Thus, for example, Taipei (the name used by the ROC) became Taibei (the name used by the PRC). A new airport was added, Taibei/Sungshan (ICAO location indicator: RCSS); Taipei/Intl Airport became Taibei/Taoyuan Airport (RCTP), while the old Taoyuan Airport (RCGM) was deleted from the list.<sup>47</sup> Since 1979, all airports in the ICAO *Location Indicators* have been listed using the romanization system adopted by the PRC for transcribing the names of places and airports.<sup>48</sup> The Government of the ROC, on the other hand, continues to use the Wade–Giles system in its English language aviation publications.<sup>49</sup> Over the last couple of years, the Government of the PRC has notified the ICAO of several new airports in Taiwan which have been added to the list of location indicators under “China”.<sup>50</sup> It also informed the ICAO of the name change of Taibei/Taoyuan Airport to Taibei City/Taibei Intl AP.<sup>51</sup>

#### IV. Designation of international airports

19. Aircraft used in international air services, as a rule, fly to and from a State’s international airports. The term “international airport” is defined in the International Standards and Recommended Practices on Facilitation, known as Annex 9 to the Chicago Convention, as follows:

Any airport designated by the Contracting State in whose territory it is situated as an airport of entry and departure for international air traffic, where the formalities incident to customs, immigration, public health, animal and plant quarantine and similar procedures are carried out.<sup>52</sup>

different writing system. Examples of languages to which this process is often applied are Chinese, Japanese and Korean.

- 47 ICAO Doc. 7910/29, October 1979, 4–36. The name change was triggered by the inauguration on 26 February 1979 of the new Chiang Kai-shek International Airport at Taoyuan and the relocation of all international flights from the old Taipei/Intl Airport to this airport. The old Taipei/Intl Airport became a domestic airport with a new name (Taipei Sungshan) and a new ICAO location indicator (RCSS), while the old location indicator for the international airport (RCTP) was transferred to the new Chiang Kai-shek International Airport.
- 48 The Government of the ROC continues to use the Wade–Giles system; see the list of airports in Taiwan on the website of the ROC, Ministry of Transportation and Communications, Civil Aeronautics Administration, [eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html](http://eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html).
- 49 See e.g. Civil Aeronautics Administration, Ministry of Transportation and Communications, Republic of China, Aeronautical Information Publication, Taiwan Flight Information Region, 3 July 2008, [eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html](http://eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html).
- 50 There are now 35 airports in Taiwan and outlying islands listed under “RC – China” in the latest Location Indicators, see ICAO Doc. 7910/127, March 2008, 4-50.
- 51 *Ibid.*, 4-50. The present list of airports in Taiwan has remained the same since at least January 1992; see ICAO Doc. 7910/67, June 1992, 4-34.
- 52 International Standards and Recommended Practices, Annex 9 to the Convention on International Civil Aviation, Facilitation (12th edn, July 2005), Chapter I.A.

An identical definition may be found in Annex 15 to the Chicago Convention.<sup>53</sup>

#### IV.A. Relevant domestic regulations

20. Articles 10 and 68 of the Chicago Convention provide that contracting States may adopt regulations requiring every aircraft which operates international air services into their territory to land at designated customs airports or at airports which such services may use.

21. According to the regulations of the PRC, every aircraft which enters its territory shall land at a designated customs airport. For example, Article 179 of the Civil Aviation Law of the PRC provides that a “foreign civil aircraft shall take off or land at a customs airport designated by the competent civil aviation authority under the State Council of the People’s Republic of China”.<sup>54</sup> The *Aeronautical Information Publication* (AIP) of the PRC (AIP China) also provides that “in the territory of the People’s Republic of China, a foreign civil aircraft is required to fly along the specified air routes, take off and land at the designated airports”.<sup>55</sup> “Territory of the People’s Republic of China” must be taken to include the whole territory of China, including Taiwan.<sup>56</sup> This becomes clear from another provision of the AIP China which expressly excludes Taiwan province from the territory of the PRC. The provision on “Aerodrome Charges” states: “Charges are applicable to aerodromes within the territory of the People’s Republic of China (*excluding [...] Taiwan province*) [...]”.<sup>57</sup>

22. An AIP contains aeronautical information essential to air navigation. It is a manual which includes details of regulations, procedures and other information pertinent to flying aircraft in the particular country to which it relates. In particular, it lists the airports and other facilities available to air navigation in a country. However, it no longer has to include information on the designation of an “aerodrome as a customs airport under Article 10 of the Convention on International Civil

53 International Standards and Recommended Practices, Annex 15 to the Convention on International Civil Aviation, *Aeronautical Information Services* (12th edn, 2004), Chapter 2.

54 Civil Aviation Law of the PRC, adopted at the 16th Meeting of the Standing Committee of the Eighth National People’s Congress on 30 October 1995, promulgated by Order No. 56 of the President of the PRC on 30 October 1995 and effective as of 1 March 1996, [bidding.ec.com.cn/pubnews/2004\\_03\\_29/200861/1005160.jsp](http://bidding.ec.com.cn/pubnews/2004_03_29/200861/1005160.jsp).

55 People’s Republic of China, *Aeronautical Information Publication*, 1 March 2008, GEN 1.2-1, para. 1.4. When confirming China’s adherence to the Chicago Convention in February 1974, the Chinese Minister of Foreign Affairs had also notified the ICAO that “any foreign civil aircraft engaged in non-scheduled flight that wishes to fly into Chinese territory [...] must observe the regulation of following the assigned route and landing at the designated airport.” ([www.state.gov/documents/organization/22698.rtf](http://www.state.gov/documents/organization/22698.rtf)).

56 Para. 9 of the Preamble of the Constitution of the PRC, adopted on 4 December 1982, provides: “Taiwan is part of the sacred territory of the People’s Republic of China.” The text of the Constitution may be found on the Chinese Government’s official web portal [english.gov.cn/2005-08/05/content\\_20813.htm](http://english.gov.cn/2005-08/05/content_20813.htm).

57 People’s Republic of China, *Aeronautical Information Publication*, 1 March 2008, GEN 4.1-1 (*italics added*).

Aviation”.<sup>58</sup> The AIP China does not include any designated airports in Taiwan in the list of location indicators or in the index to airports.<sup>59</sup> This may be explained by the fact that it provides in the Preface to Part I:

The Aeronautical Information Publication of the People’s Republic of China (abbreviated as AIP China) is published by the General Administration of Civil Aviation of China. Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Province of the People’s Republic of China are separately responsible for publishing the AIPs of the regions within their jurisdiction.<sup>60</sup>

However, it must be noted that neither the PRC Government nor the General Administration of Civil Aviation of China (CAAC) exercises control over Taiwan or the authorities there, and thus cannot determine the content of the AIP for “Taiwan Province”. *The Aeronautical Information Publication for the Taiwan Flight Information Region* (AIP Taiwan FIR)<sup>61</sup> is published independently by the Civil Aeronautics Administration of the Republic of China (CAA), an ROC government agency.<sup>62</sup> A proposal made by the CAAC in October 1981 to co-operate in compiling a new AIP for the whole of China was not acted upon.<sup>63</sup> Until October 1994, there were not even direct communication links between air traffic control centres in the Taiwan FIR and the FIRs in mainland China.<sup>64</sup> While the entry in the AIP China is in line with the PRC’s “one China” policy, it does not mean that the AIP Taiwan FIR publication is to be regarded as a publication of the PRC. The CAA is not a State organ of the PRC, nor is it under the direction or control of the Government of the PRC. It would also be difficult to argue that,

- 58 See Appendix 1 to Annex 15 of the Chicago Convention on the “Contents of Aeronautical Information Publication (AIP)”. In earlier editions of Appendix 1 to Annex 15, Section 2—Aerodromes (AGA), para. 2.1 on International Airports laid down that AIPs published by States should contain “Brief descriptions of international airports and heliports, including [. . .] designation of the aerodrome as a customs airport under Article 10 of the Convention on International Civil Aviation”. See ICAO, *Repertory – Guide to the Convention on International Civil Aviation*, ICAO Doc. 8900/2 (2nd edn, 1977), Art. 10-1.
- 59 See People’s Republic of China, *Aeronautical Information Publication*, 1 March 2008, GEN 2.4-1–7 and AD 1.3-1–3.
- 60 People’s Republic of China, *Aeronautical Information Publication*, 1 March 2008, GEN 0.1-1.
- 61 Civil Aeronautics Administration, Ministry of Transportation and Communications, Republic of China, *Aeronautical Information Publication, Taiwan Flight Information Region*, 3 July 2008, [eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html](http://eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html).
- 62 Civil Aeronautics Administration, Ministry of Transportation and Communications, Republic of China, *AIP Taipei FIR*, 3 July 2008, GEN 0.1.1, [eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html](http://eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html).
- 63 CAAC writes to civil aviation authorities in Taiwan, *Xinhua General News Service*, 7 October 1981. All newspaper articles are available at [www.lexisnexis.com/](http://www.lexisnexis.com/).
- 64 *Taiwan Clears Formation of Air Traffic Control Links with China*, 318 *Aviation Daily* (28 October 1994), 157.

by virtue of this entry in the preface to the AIP China alone, the Government of the PRC “acknowledges and adopts” the content of the AIP Taiwan FIR “as its own”.<sup>65</sup>

23. Like the regulations of the PRC, the regulations of the ROC also provide that every aircraft which enters the ROC’s territory shall land at a designated customs airport. Article 5 of the ROC Civil Aviation Act stipulates that the “first inbound landing of an aircraft originating from any point in a foreign country, or an outbound aircraft taking off from the ROC to another country, shall conduct such landing or takeoff at a designated international airport”.<sup>66</sup> The AIP Taiwan FIR identifies “Taipei/Taiwan Taoyuan International Aerodrome, Kaohsiung International Aerodrome, or other authorized aerodromes”, as designated international airports.<sup>67</sup> The CAA of the ROC has designated five other aerodromes as open to “international charter flights”: Kinmen (RCBS), Taitung/Fongnian (RCFN), Taichung/Cingcyuangang (RCMQ), Magong (RCQC), Hualien (RCYU).<sup>68</sup> However, as the Government of the ROC no longer represents China in the ICAO, the designation of airports in Taiwan and outlying islands by its government agency is not an internationally valid designation in ICAO terms.<sup>69</sup>

#### IV.B. Publication of designated international airports by the ICAO

24. Particulars of all designated airports are to be published by the contracting State and transmitted to the ICAO for communication to all other contracting States.<sup>70</sup> Since 1974, particulars of all designated customs airports in China, including Taiwan, have been transmitted to the ICAO by the Government of the PRC as “the authorities representing China in ICAO”.<sup>71</sup> The ICAO publishes particulars of all designated customs airports in *Aeronautical Information Services Provided by States* (AIS).<sup>72</sup>

65 See Art. 11 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts, 2001. The articles may be found in A/RES/56/83, 12 December 2001, Annex.

66 Civil Aviation Act of the ROC, promulgated on 30 May 1953 (last amended on 18 July 2007). For the text of the Act, see [www.caa.gov.tw/en/download/pliad/01-01A%20en.pdf](http://www.caa.gov.tw/en/download/pliad/01-01A%20en.pdf).

67 AIP Taipei FIR, above n.61, GEN 1.2.1. See also M. Ginsberg, *Airports International Directory* 1981 (1981), 449, 450, listing Kaohsiung (RCKH) and Taipei (RCTP) as the international airports in Taiwan.

68 AIP Taipei FIR, above n.61, AD 2 (Aerodromes). See also *ibid.*, GEN 1.2–2, para. 1.2.3: “In Taipei FIR, besides Taipei/Taiwan Taoyuan and Kaohsiung International Airports, Magong airport, Hualien airport, Taichung/Cingcyuangang airport, Taitung/Fongnian airport and Kinmen airport are also available for international passenger charter flights.”

69 It is also of interest to note that the AIP Taipei FIR lists location indicators for 46 airports, although the ICAO Location Indicators document only gives location indicators for 35 airports in Taiwan. Similarly, in the “Index to Aerodromes and Heliports”, there are five airports which are not listed in the ICAO Location Indicators document.

70 See Art. 10 Chicago Convention.

71 See ICAO Doc. 7910/17, February 1974, 4–44.

72 See ICAO, *Repertory – Guide to the Convention on International Civil Aviation*, ICAO Doc. 8900/2 (2nd edn, 1977), Art. 10-1.

25. In August 1962, the AIS publication included for the first time a new Part II on “International Airports”. The Explanatory Note provided:

The following tabulation lists international airports, i.e. airports of entry and departure for international air traffic, together with a brief indication of the type of traffic accepted at each airport and the clearances provided.

In the second column of the tabulation, it is shown whether “the airport has been designated under Article 10 of the Convention on International Civil Aviation” as a customs airport.<sup>73</sup>

26. From 1962 to June 1971, when China was represented in the ICAO by the Government of the ROC, only two airports were listed as customs airports under the heading “China (Taiwan)”. Taipei or Taipei/Intl Airport was listed as in regular use by international scheduled and non-scheduled air transport, and Tainan Airport was listed as an alternate aerodrome for restricted international traffic.<sup>74</sup> In December 1968, Tainan Airport was replaced by Kaohsiung Airport as the second alternate airport in Taiwan.<sup>75</sup>

27. After the change in China’s representation from the ROC to the PRC Government, no designated customs airports in China were listed in the AIS publication for three and a half years.<sup>76</sup> In fact, there were no entries for China at all. This only changed once the Government of the PRC started participating in the ICAO activities. In the September 1975 edition of AIS, for the first time seven airports in mainland China were listed under the heading “China, People’s Republic of”. However, none of these was listed as a “customs airport”, designated under Article 10 of the Chicago Convention.<sup>77</sup> As with *Location Indicators*, in the September 1979 edition of the AIS publication, the names of airports in China were changed, switching from Wade–Giles to Pinyin.<sup>78</sup> Over the next couple of years, several new airports were added to the list, and in May 1981, the heading was changed from “China, People’s Republic

73 Aeronautical Information Services Provided by States (11th edn, 1962), ICAO Doc. 7383-AIS/503/11, 2-1. In January 1980, a new Part II was added and the part on International Aerodromes became Part III; see ICAO Doc. 7383-AIS/503/50, January 1980. The latest edition available is No. 95, May 2007.

74 ICAO Doc. 7383-AIS/503/11 (11th edn, August 1962), 2–5. In February 1966, the name of Taipei airport was changed to Taipei/Intl (ICAO Doc. 7383-AIS/503/18, 2-6), but from June 1968, the name reverted to Taipei (ICAO Doc. 7383-AIS/503/21, 2-6).

75 ICAO Doc. 7383-AIS/503/22, December 1968, 2-6. This designation was made in anticipation of the opening of Kaohsiung airport for international cargo flights in April 1969. International passenger flights started in 1972, [www.kia.gov.tw/english/e\\_content/e\\_introduce-2-1.asp](http://www.kia.gov.tw/english/e_content/e_introduce-2-1.asp).

76 See ICAO Docs 7383-AIS/503/28, December 1971, 2-6; 7383-AIS/503/29, August 1972, 2-6; 7383-AIS/503/30, January 1973, 2-6; 7383-AIS/503/31, April 1973, 2-6; 7383-AIS/503/32, August 1973, 2-6; 7383-AIS/503/33, December 1973, 2-6; 7383-AIS/503/34, March 1974, 2-6; 7383-AIS/503/35, December 1974, 2-6; 7383-AIS/503/36, December 1974, 2-6; 7383-AIS/503/37, March 1975, 2-6; 7383-AIS/503/38, June 1975, 2-6.

77 ICAO Doc. 7383-AIS/503/39, September 1975, 2-6. The six airports were Canton/Paiyun, Hangchow/Chienchiao, Naning/Wuhsu, Peking/Capital, Shanghai/Hungchiao, Taiyuan/Wusu, Urumchi/Diwopu.

78 ICAO Doc. 7383-AIS/503/49, September 1979, 2-6.

of” to “China”.<sup>79</sup> In the September 1985 edition, four of the 15 airports listed under China were, for the first time, expressly named as “customs airports” designated under Article 10 of the Chicago Convention.<sup>80</sup> Today, 45 airports are listed under China, including six designated customs airports.<sup>81</sup> However, none of these is located outside the Chinese mainland. Since the December 1971 edition, no airport in Taiwan has been listed in the AIS publication as an “international airport”.

28. Designated international airports may also be identified by looking at the relevant regional air navigation plan (ANP). Regional ANPs set forth in detail the facilities, services and procedures required for international air navigation within a specified area, as approved by the ICAO Council for international civil aviation operations.<sup>82</sup> Part III of the ANPs—Aerodrome Operational Planning—contains details of the “International Aerodromes” required in the region.<sup>83</sup> It also specifies whether airports in the region have been designated for regular or alternate use by international scheduled (RS/AS) or non-scheduled air transport (RNS/ANS).<sup>84</sup>

29. The relevant Regional ANP for China was initially the “Air Navigation Plan – Middle East and South East Asia Regions”, followed by the “Air Navigation Plan – Middle East and Asia Regions”, and is now the “Air Navigation Plan: Asia and Pacific Regions”. Until the seventh edition of the *ANP for the Middle East and South East Asia Regions*, published in April 1973, only two airports were listed under the heading of “China” in the table of “Aerodromes Required for International Commercial Air Transport”, namely Kaohsiung and Taipei/Intl Airports.<sup>85</sup> Matters changed only in the April 1974 edition, after the Government of the PRC had started participating in the work of the ICAO, with the listing of nine airports under the heading of “China”, including Kaohsiung and Taipei/Intl Airports in Taiwan.<sup>86</sup> As with the

79 ICAO Doc. 7383-AIS/503/54, May 1981, 3-6.

80 ICAO Doc. 7383-AIS/503/65, September 1985, 3-10. The four airports were Beijing/Capital, Guangzhou/Baiyun, Shanghai/Hangqiao, Xiamen/Gaoqi.

81 ICAO Doc. 7383-AIS/503/95, May 2007, 3-10. The six airports were Beijing/Capital, Guangzhou/Baiyun, Shanghai/Hangqiao, Shanghai/Pudong, Weihai/Dashuipo, Xiamen/Gaoqi.

82 See ICAO, *Air Navigation Plan: Asia and Pacific Regions*, ICAO Doc. 9673, Vol. I, Basic ANP (1st edn, 2006), 0-1, para. 1, and 0-2, para. 14.

83 *Ibid.*, Vol. I, Part III, Appendix. See also Vol. II, FASID (1st edn 2006), III-1. The list of designated airports required for international air transport in a region is agreed between the contracting States in Regional Air Navigation Meetings.

84 *Ibid.*, Vol. I, III-A-1, and Vol. II, III-AOP 1-1.

85 ICAO, *Air Navigation Plan – Middle East and South East Asia Regions* (7th edn, April 1973), ICAO Doc. 8700/7, 1-1-14. It is of interest to note that until the May 1971 edition of the ANP, Kaohsiung airport was listed only as an alternate airport (ICAO Doc. 8700/5, 1-1-8); in the September 1972 edition, it was listed as a regular airport besides Taipei/Intl (ICAO Doc. 8700/6, 1-1-14).

86 ICAO, *Air Navigation Plan – Middle East and South East Asia Regions* (8th edn, April 1974), ICAO Doc. 8700/8, 1-1-16. The other airports were Canton/Paiyun, Hangchow/Chienchiao, Kunming, Nanning, Peking/Capital, Shanghai/Hungchiao, Tientsin.

*Location Indicators* and AIS publications, in the August 1982 edition of the ANP, the names of airports in China were changed, using the Pinyin romanization system favoured by the PRC Government.<sup>87</sup> In the 1985 edition of the ANP, a third airport in Taiwan—Taibei/Taoyuan—was added to the aerodromes in China required for regular international scheduled air transport, and Taibei/Sungshan airport was re-designated for alternate use only.<sup>88</sup> In the first edition of the ANP for the Asia and Pacific Regions, published in 2006, three airports in Taiwan are listed under the contracting State “China”: Taibei Intl (RCTP) and Gaoxiang (RCKH) Airports are designated for regular use by international scheduled air transport, and Songshan (RCSS) Airport is listed for alternate use by international scheduled air transport.<sup>89</sup> Scheduled air transport as the higher form of use includes international non-scheduled air transport, i.e. use for charter flight services.

#### IV.C. Flights to non-designated airports

##### *IV.C.i. International air traffic with mainland China*

30. The ICAO publication *Aeronautical Information Services Provided by States* and the Regional ANP show that, prior to the change in representation of China in the ICAO, the only two designated international airports in ICAO terms in China were located in Taiwan, and there were no such airports on the mainland. However, this did not prevent foreign airlines from operating international air services to airports in mainland China. The Soviet national flag carrier Aeroflot started daily flights from Moscow to Beijing in the 1950s.<sup>90</sup> Regular air services also existed with Burma (Myanmar), Cambodia, France, Indonesia, Pakistan, North Korea and North Vietnam.<sup>91</sup> With the exception of North Korea and North Vietnam, all these States were parties to the Chicago Convention. Airports in mainland China served by foreign airlines included Peking (Beijing/Capital—ZBAA), Canton (Guangzhou/Baiyun—ZGGG), Shanghai (Shanghai/Hongqiao—ZSSS), Shenyang (Shenyang/Dongta—ZYYY) and Kunming (Kunming/Wujiaba—ZPPP).

31. In all these cases, the establishment of regular air services was preceded by the recognition of the Government of the PRC as the sole legal Government of China and the conclusion of a government-to-government air services agreement with it.

87 ICAO, *Air Navigation Plan – Middle East and Asia Regions* (13th edn, August 1982), ICAO Doc. 8700/13, 1-1-7. Kaohsiung airport became Gaoxiang airport and Taipei/Sungshan became Taibei/Songshan.

88 *Ibid.*, 14th edn, ICAO Doc. 8700/14, 1-1-12 and 1-1-13.

89 ICAO, *Air Navigation Plan: Asia and Pacific Regions*, ICAO Doc. 9673, Vol. I, Basic ANP (1st edn, 2006), Vol. I, III-A-4, and Vol. II, III-AOP 1-9 and 1-11.

90 See Peking May Widen Air Links Abroad, *New York Times*, 26 June 1971, 65; Poland Launches Moscow Flights, *ibid.*, 9 April 1955, 27.

91 China's Shiny Airports Await Planes, *New York Times*, 12 May 1971, 4; Peking May Widen Air Links Abroad, *ibid.*, 26 June 1971, 65; French and Chinese to Discuss Air Link, *ibid.*, 5 May 1966, 74; Air Lines Discuss Routes to China, *ibid.*, 1 March 1964, S17.

For example, Pakistan, which on 4 January 1950 had accorded recognition,<sup>92</sup> signed a civil air agreement with the PRC on 29 August 1963.<sup>93</sup> Once weekly air services between Dacca in East Pakistan and Shanghai started on 29 April 1964,<sup>94</sup> flights to Kunming and Canton followed. On 27 January 1964, the French Government recognized the Government of the PRC and established diplomatic relations with it.<sup>95</sup> On 1 June 1966, the two governments signed an air services agreement, and in September 1966, regular scheduled flights started between Paris and Shanghai.<sup>96</sup> Although no British airline flew to mainland China, in October 1963 British Overseas Airways Corporation (BOAC) concluded an interline agreement with the PRC's CAAC, which enabled passengers in London and other cities covered by BOAC to buy air tickets direct to Beijing or other airports in China.<sup>97</sup> The fact that these airports were not designated international airports in ICAO terms does not seem to have been considered an obstacle to international flights.

#### *IV.C.ii. International air traffic with Taiwan*

32. Following the change in the representation of China in the ICAO, the question of international air services with non-designated airports arose equally with regard to the airports in Taiwan and outlying islands. While the Government of the PRC continued to list two airports in Taiwan as in regular use by international scheduled air transport, these were not the only airports that were taking international flights. With the increase in air traffic and the introduction of larger passenger aircraft, Taipei/Intl Airport located in Songshan District, Taipei City, became too small. When the new Chiang Kai-shek International Airport at Taoyuan was opened on 26 February 1979, all international flights were relocated from the old Taipei/Intl Airport to this airport. The old Taipei/Intl Airport became a domestic airport with a new name (Taipei Songshan) and a new ICAO location indicator (RCSS), while the old location indicator for Taipei/Intl Airport (RCTP) was transferred to the new Chiang Kai-shek International Airport (now Taipei/Taiwan Taoyuan International Airport). This relocation of international air services, however, was not reflected in the list of international airports in the ANP for the Middle East and Asia regions. There, Taipei/Songshan Airport (RCSS) continued to be listed as one of only two international airports in Taiwan, the other being Gaoxiung (Kaohsiung) Airport (RCKH). It was only in the 14th edition of

92 Karachi Accepts Peiping, *New York Times*, 5 January 1950, 19.

93 U.S. Suspends \$4M. Loan To Pakistan, *The Times*, 31 August 1963, 6; China's Air Links Stir U.S. Concern, *New York Times*, 1 May 1964, 3.

94 China Will Try to Catch Up Other Powers, *The Times*, 4 May 1964, 11.

95 De Gaulle Sets Up Tie to Red China; Keeps Taipei Link, *New York Times*, 28 January 1964, 1.

96 Route to China for French Airline, *The Times*, 2 June 1966, 8; New Air Service to China, *ibid.*, 17 September 1966, 10; Paris–Shanghai Air Service Opens, *ibid.*, 20 September 1966, 7; Air France Flight Reaches Shanghai, *ibid.*, 21 September 1966, 7; and Air France Is Given Paris–Shanghai Run, *New York Times*, 2 June 1966, 14.

97 B.O.A.C. Signs Pact with Chinese Reds, *New York Times*, 12 October 1963, 38.



the ANP, published in 1985, that this change on the ground was taken into account, and Taipei/Taoyuan Airport (RCTP) was listed as an airport in regular use by international scheduled air transport. At the same time, Taipei/Sungshan Airport (RCSS) was downgraded to an alternate airport.<sup>98</sup> Thus, for several years, the main international airport in Taiwan was not a formally designated international airport in ICAO terms.

33. Since the beginning of 2001, five other airports in Taiwan and the outlying islands which are not designated international airports in ICAO terms have been used for international charter flight services. For example, the official website of Hualien Airport (RCYU) in Eastern Taiwan provides the following information on the “About Us” page:

On April 27, 2001, it was officially certified by the Administrative Yuan that Japanese chartered planes would take off and land at this airport. It became the first type B airport that was allowed by the Civil Aviation Bureau to provide international service.<sup>99</sup>

While initially only chartered flights from Japan were allowed to land at Hualien Airport, on 14 April 2003 the CAA of the ROC opened it to fully-fledged international charter flight services. The airport has customs, immigration and quarantine, as well as other facilities needed for international flight services.<sup>100</sup> In August 2004, the first charter flight services between Hualien and Seoul in South Korea were inaugurated.<sup>101</sup> All charter flights from and to Hualien Airport are direct international flights without a first landing at, or final departure from, Taipei/Taoyuan or Gaoxiong (Kaohsiung) International Airports.

34. Taichung/Cingcyuangang (Chingchuankang) Airport (RCMQ) in central Taiwan, also referred to on the airport’s own website as “Central Taiwan International Airport”,<sup>102</sup> has been used for international air services since March 2004.<sup>103</sup>

98 ICAO, *Air Navigation Plan – Middle East and Asia Regions* (14th edn, 1985), ICAO Doc. 8700/14, 1-1-12 and 1-1-13.

99 [www.hualairport.gov.tw/eng/introduction.htm](http://www.hualairport.gov.tw/eng/introduction.htm). The first Japanese charter flight arrived at Hualien on 1 October 2001; see *The Investment Environment of the ROC on Taiwan*, Chapter 14, 56, [investintaiwan.nat.gov.tw/images/content/env2005en/c14\\_chpt\\_14.en.pdf](http://investintaiwan.nat.gov.tw/images/content/env2005en/c14_chpt_14.en.pdf).

100 *Trans Asia Airways to Inaugurate Hualien–Seoul Charter Flight*, August, Central News Agency—Taiwan, 6 August 2004.

101 *First Charter Flight Leaves Taiwan’s Hualien Airport for Korea, Asia Plus*, 9 August 2004; *Hualien Airport Introduces Charter Flights to South Korea*, Central News Agency—Taiwan, 8 August 2004. Prior to the flights to Korea, there had been 16 charter flights from Hualien Airport (*Taiwan Politician Wants Regular Air Charter Service to Korea, Asia Plus*, 20 July 2004). Between July 2004 and November 2005, there were 23 charter flights between Korea and Hualien; see *More Japanese Tourists to Visit Hualien*, Central News Agency—Taiwan, 13 November 2005.

102 See *Taichung Airport, Policies & Perspectives*, [www.tca.gov.tw/English/01\\_introduction/Policy\\_Perspective.htm](http://www.tca.gov.tw/English/01_introduction/Policy_Perspective.htm). Until March 2004, the airport was known as Shuinan or Shueinan airport.

103 See news report on the inauguration of the Taichung International Airport, *BBC Monitoring Asia Pacific—Political*, 5 March 2004. Between March 2004 and September 2005, there were only five international flights; see *Tainan County Chief Refutes Reports on Chen Anger*, *China Post*, 12 September 2005. However, since 2007, the charter flight business has been picking up with

Mandarin Airlines, a subsidiary of the Taiwan flag carrier China Airlines, and other Taiwan-based airlines have operated regular three-weekly charter flight services from Taichung Airport to Ho Chi Minh City, Vietnam.<sup>104</sup> Regular charter flights between Taichung and Seoul were inaugurated in October 2004.<sup>105</sup> In addition, the airport has been used for charter flights to Japan, South Korea, Indonesia and Thailand.<sup>106</sup> All are direct international flights without stop-over at the two designated international airports in Taiwan.

35. Since 10 January 2003, international charter flights have also been operated from Magong Airport in Penghu, also known as Makung Airport (RCQC).<sup>107</sup> Penghu's Makung Airport was the first airport on Taiwan's outlying islands to host international charter flights.<sup>108</sup> Two-way charter flights are operated between Makung Airport and airports in Japan, South Korea and Vietnam.<sup>109</sup> All international charter flights from Makung Airport are direct.

36. In March 2004, Shangi/Shangyi Airport in the outlying island of Kinmen/Jinmen, also known as Kinmen (Jinmen) Airport (RCBS), was approved for international charter flights.<sup>110</sup> The first charter flights to Singapore were initiated in December 2007, followed by charter flights to Japan in January 2008.<sup>111</sup> The last

“seven outbound charter flights leaving from Chingchuankang Airport each day” (Taichung airport expected to turn a profit: CAA, Central News Agency—Taiwan, 25 July 2007).

104 Mandarin Airlines to end flight services on Taipei–Taichung route, *Asia Pulse*, 12 April 2007; *Air Transport: Greater China News Review*, 26 September–3 October 2007, Part 3 of 4, *Chinese News Digest*, 4 October 2007 (“Taiwan’s Uni Airways opened on October 2, 2007, three weekly charter flights between Taichung Airport in Taiwan and the city of Ho Chi Minh in Vietnam”), Uni Air launches charter flights between Taiwan and Vietnam, *Airline Industry Information*, 7 October 2007; Briefing—Asia Aviation—3 October 2007, *Asia Pulse*, 3 October 2007.

105 Briefing—Asia Aviation—6 October 2004, *Asia Pulse*, 6 October 2004.

106 Taiwan’s Taichung Airport to Handle International Charter Flights, *Asia Pulse*, 12 April 2004; New Taichung Airport Draws Mixed Response, *China Post*, 7 March 2004; Local Airline Launches Taichung–Ho Chi Minh City Charter Flights, Central News Agency—Taiwan, 2 October 2007 (“Uni Air Started Charter Flights between Taichung and Japan in February”); CEPD Approves Expansion Plan for Taichung Airport, Central News Agency—Taiwan, 23 August 2005 (“Charter flights to Japan, South Korea, Bali and Phuket”).

107 Taiwan’s Makung Airport Prepares for International Flights, *Asia Pulse*, 23 January 2003; The Investment Environment of the ROC on Taiwan, Chapter 14, 56, [investintaiwan.nat.gov.tw/images/content/env2005en/c14\\_chpt\\_14.en.pdf](http://investintaiwan.nat.gov.tw/images/content/env2005en/c14_chpt_14.en.pdf).

108 Maiden Penghu, Taiwan–Macau Charter Flight Fully Booked, *Asia Pulse*, 10 August 2004; First International Charter Flight to Take Off from Penghu, 10 August, Central News Agency—Taiwan, 27 July 2004.

109 New Taiwan, Japan Charter Flight Service Launched, *Asia Pulse*, 24 August 2005 (to Osaka and Okinawa). See also the website of the ROC Department of Investment Services, Invest in Taiwan, Air: “Makung Airport offers flights to Japan, Korea, Hong Kong, Macao, and Vietnam” ([investintaiwan.nat.gov.tw/en/env/infr/transport/air.html](http://investintaiwan.nat.gov.tw/en/env/infr/transport/air.html)).

110 Kinmen hopes for tourism take-off with international charter flights, Central News Agency—Taiwan, 14 May 2004.

111 Mandarin Launches Kinmen–Hokkaido Maiden Charter Flight, Central News Agency—Taiwan, 24 January 2008. See also the website of the ROC Department of Investment Services, Invest in

airport to be opened to international charter flights was Taitung/Fongnian (Taidong/Fengnian), also known as Feng Nien Airport or Taitung Airport (RCFN).<sup>112</sup> On 1 May 2008, two-way charter flights started between Taitung Airport and Hokkaido's Obihiro Airport in Japan.<sup>113</sup>

37. None of these five airports has been designated by the Government of the PRC as a customs airport or been listed in the ANP for Asia and the Pacific regions as in use for international scheduled or non-scheduled air transport. Nevertheless, Indonesia, Japan, Singapore, South Korea, Thailand and Vietnam—all contracting States of the Chicago Convention that do not recognize Taiwan as a separate State—did not see any obstacles to the approval of international air services with these airports.

#### IV.D. Flights to non-designated airports and the Chicago Convention

38. Against the backdrop of regular scheduled and non-scheduled flights to non-designated airports, both on the Chinese mainland (prior to 1974) and on Taiwan (1974–present), the question must be asked whether international air services with non-designated airports are compatible with the Chicago Convention.

39. The Convention does not exclude international air services with airports not listed as international airports in the ICAO's Regional ANPs. These plans set forth in detail only the airports which a contracting State is obliged to provide in its territory pursuant to Article 28 of the Chicago Convention.<sup>114</sup> They contain the minimum facilities, services and procedures approved by the ICAO Council and required for international air navigation in a specified area.<sup>115</sup> The introduction to the various ANPs provides:

It should be noted that the plan does not list all facilities and services existing in the region but only those required as approved by the Council for international civil aviation operations. Aeronautical information publications, NOTAM and other State documents should be consulted for information on additional facilities and services for operational information in general.<sup>116</sup>

Taiwan, Air: "Jinmen Airport offers flights to Macao and Singapore" ([investintaiwan.nat.gov.tw/en/env/infr/transport/air.html](http://investintaiwan.nat.gov.tw/en/env/infr/transport/air.html)).

112 Taiwan's Taitung Airport Upgrade Completed, *Aviation Daily*, 22 April 2004.

113 Taiwan Commences Two-way Taitung–Hokkaido Charter Flights, *Asia Pulse*, 2 May 2008; Two-way Taitung–Hokkaido Charter Flights Begin, *Central News Agency—Taiwan*, 1 May 2008.

114 See ICAO, *Air Navigation Plan: Asia and Pacific Regions*, ICAO Doc. 9673, Vol. I, Basic ANP (1st edn, 2006), 0–2, para. 9.

115 *Ibid.*, 0–1, para. 1.

116 *Ibid.*, 0–2, para. 14. See also ICAO, *Air Navigation Plan – Middle East and South East Asia Regions* (6th edn, September 1972), ICAO Doc. 8700/6, E. 0–6.

The non-designated airports in China, first on the mainland and now on Taiwan, may thus be considered “additional facilities” for international air navigation in the Asia region.

40. International air services with non-designated airports in Taiwan do not violate the right of the Government of the PRC to designate airports in the whole territory of China, including Taiwan, as “customs airports” in accordance with Article 10 of the Chicago Convention. Treaty rights which require control over the State’s territory are suspended for the time and to the extent that the State’s government has lost control over that territory. This may be explained by the supervening impossibility of performing the treaty. If a requirement which is indispensable for the exercise of a treaty right—in this case territorial control—is missing, it is materially impossible for the party to exercise that right. As Paul Reuter put it: “Impossibility to perform a treaty leads by definition to non-application”.<sup>117</sup> This rule also finds expression in Article 61(1) of the Vienna Convention on the Law of Treaties and the doctrine of *force majeure*.<sup>118</sup>

41. The mere designation of airports in Taiwan as “customs airport” does not require any action by the Government of the PRC in Taiwan and thus does not require any control over that territory. All the Government of the contracting State has to do, according to Article 10 of the Chicago Convention, is to publish the particulars of all designated customs airports and transmit these particulars to the ICAO for communication to all other contracting States. Neither publication nor transmission of the particulars of the designated airports requires any control over Taiwan. The Government of the PRC may thus continue to exercise this right with regard to airports on Taiwan. This view is shared by the ICAO, which only publishes particulars of designated airports transmitted by the Government of the PRC.

42. However, the question of whether an aircraft shall land only at a designated airport depends on the “regulations” of the contracting State. Article 10 of the Chicago Convention provides that:

every aircraft which enters the territory of a contracting State shall, *if the regulations of that State so require*, land at an airport designated by that State for the purpose of customs and other examination.<sup>119</sup>

The requirement that a “foreign civil aircraft shall take off or land at a customs airport designated by the competent civil aviation authority under the State Council of the People’s Republic of China” is laid down in the laws of the PRC, namely Article 179 of the Civil Aviation Law of the PRC.<sup>120</sup>

43. The question of whether aircraft must actually land only at those airports depends on the legislative authority of the Government of the PRC with regard to

117 Paul Reuter, *Introduction to the Law of Treaties* (1995), 185, para. 282.

118 Reuter, above n.117, 185–187. See also Art. 23 of the ILC Articles on State Responsibility.

119 Emphasis added.

120 See above n.51.

the territory removed from its control. A *de facto* authority which exercises effective control over State territory is, by virtue of its effective territorial control, generally regarded as competent to exercise legislative authority in so far as its control of territory extends.<sup>121</sup> This is evidenced by the fact that foreign courts have regularly applied the laws of *de facto* authorities with respect to matters under their effective control.<sup>122</sup> The courts of some States have—for domestic, not international law reasons—required that the *de facto* authority has (at least implicitly) been recognized *de facto* by the government of the forum.<sup>123</sup> This, however, does not affect the legislative authority of a *de facto* authority under international law. A *de facto* authority, as a rule, is competent for all matters under its effective control, even if there continues to be an internationally recognized government.<sup>124</sup> This view is also supported by the decision in *Civil Air Transport Incorporated v. Claire Lee Chenault and Others* (1950), where the Supreme Court of Hong Kong held that:

His Majesty's Government recognized that the Central People's Government was the *de facto* government of various parts of China [. . .]. It follows that *any acts* done by the Nationalist Government [which at the relevant time was still recognized by the British Government as the Government of all China] as regards that part of China under *de facto* control of the Central People's Government are to be regarded as mere nullity in that area.<sup>125</sup>

According to Article 10 of the Chicago Convention, a contracting State may require aircraft to land at a designated airport “for the purpose of customs and other examination”. As with the regulation of air traffic, the examination of aircraft for customs and other purposes requires control over the airports where such examination is to take place. Owing to its lack of control over the airports in Taiwan, the Government of the PRC does not have legislative authority to regulate these matters.

44. While the Government of the PRC remains competent to designate customs airports with regard to the whole of China it has, owing to its lack of control, lost its legislative authority to require aircraft to land only at designated airports in Taiwan. The approval of international air services with airports in Taiwan that have not been designated as international airports in ICAO terms by the Government of the PRC thus does not violate the Chicago Convention.

121 See R. Jennings and A. Watts, *Oppenheim's International Law* (9th edn, 1992), 167–168; G. Sauser-Hall, *L'occupation de guerre et les droit privés*, 1 *Schweizerisches Jahrbuch für internationales Recht* (1944), 58–125 at 70; J. Spiropoulos, *Die de facto-Regierung im Völkerrecht* (1926), 79–87.

122 See S. Talmon, *Recognition of Governments in International Law* (1998), 227–228, with further references.

123 *Ibid.*, 228.

124 *Ibid.*, 228–229, with further references.

125 HKLR 34 (1950), 386–414 at 412 (italics added).

## V. Authorization of international air services

45. Article 6 of the Chicago Convention provides that “no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization”. The AIP China also provides in Part I, GEN 1.2 on the “Entry, Transit and Departure of Aircraft”:

1.1 A foreign civil aircraft may enter or leave the airspace of the People’s Republic of China, and operate or land in the territory of the People’s Republic of China only in accordance with the air transport agreement concluded between the Government of the People’s Republic of China and the government of the State in which the aircraft nationality is registered, or in accordance with the approval or clearance of the General Administration of Civil Aviation of China.<sup>126</sup>

As explained above, the territory of the PRC must be taken to include the whole territory of China, including Taiwan.<sup>127</sup>

46. This raises the question of whether scheduled international air services with Taiwan require the “special permission or other authorization” of the PRC’s CAAC. In its White Paper of August 1993 on “The Taiwan Question and Reunification of China”, the Government of the PRC expressed the following opinion:

Airspace is an inalienable part of a country’s territory. The 1919 Paris Aviation Convention and the 1944 Chicago Convention affirm the principle of complete and exclusive sovereignty of each country over its airspace. Therefore, the opening of aviation services with Taiwan by any airlines, including privately-operated ones, of countries having diplomatic relations with China is a political issue affecting China’s sovereignty and cannot be regarded as a non-political transaction. State-run airlines of countries having diplomatic relations with China certainly must not operate air services to Taiwan. Privately-operated airlines must seek China’s consent through consultations between their government and the Chinese Government before they can start reciprocal air services with privately-operated airlines of Taiwan. As a matter of fact, according to the afore-said principle the Chinese Government has consented to such services between

126 People’s Republic of China, Aeronautical Information Publication, 1 March 2008, GEN 1.2-1 (italics added). See also para. 2.1.1: “A foreign civil aircraft is permitted to operate scheduled services and additional flights in the territory of the People’s Republic of China in accordance with the air transport agreement concluded between the Government of the People’s Republic of China and the Government of the State concerned on routes specified in the agreement.” (Ibid., GEN 1.2-3). See also Art. 174 of the Civil Aviation Law of the PRC.

127 See text above nn.56, 57.

privately-operated airlines of Britain, Germany, Canada, etc. and their counterparts in Taiwan.<sup>128</sup>

47. While the Government of the PRC has consented to certain scheduled international air services with Taiwan, and some States have started such services only after consultation with the Government of the PRC,<sup>129</sup> it is argued that under the Chicago Convention such consent is not required. Consultations with the Government of the PRC may be explained by a State's "overriding foreign policy considerations and the protection of extensive [...] transport and economic interests" in the PRC.<sup>130</sup> Several States have allowed air services with Taiwan without prior consultation with the Government of the PRC.<sup>131</sup> Especially in the 1970s and 1980s when routes to Taiwan were financially more lucrative for foreign airlines than routes to mainland China, such services were started without deference to the view of the PRC Government.<sup>132</sup> For example, in 1983, the United States did not consult with, or seek permission of, the Government of the PRC with regard to the opening of air services between Tokyo and Taipei by Pan American World Airlines.<sup>133</sup> On the contrary, such flights were approved by the US Government despite strong protests by the Government of the PRC.<sup>134</sup> Similarly, in April 1983, the Dutch Government approved flights to Taiwan without the prior consent of the Government of the

128 People's Republic of China, Taiwan Affairs Office and the Information Office of the State Council, *The Taiwan Question and Reunification of China*, August 1993, reprinted in J.-M. Henckaerts (ed.), *The International Status of Taiwan in the New World Order* (1996), 267–278 at 276–277.

129 States that consulted with the PRC Government include Australia, Germany, France and the UK; see S. Talmon, *Luftverkehr mit nicht anerkannten Staaten: Der Fall Nordzypern*, 43 *Archiv des Völkerrechts* (2005), 1–42 at 38.

130 See the replies on behalf of the government to questions in the German Parliament: *Bundestag-Plenarprotokolle*, 11/196, 14 February 1990, 15095; *ibid.*, 12/50, 17 October 1991, 4206; *Bundestag-Drucksache* 11/8546, 19 December 1990, 39.

131 See also E. Ting-Lun Huang, *The Modern Concept of Sovereignty, Statehood and Recognition: A Case Study of Taiwan*, 16 *New York ILR* (2003), 99–190 at 167; C. Atix, *Between the Devil and the Deep Blue Sea: Are Taiwan's Trading Partners Implying Recognition of Taiwanese Statehood?*, 25 *California Western ILJ* (1995), 357–386 at 382–383.

132 Cf. *Foreign Airlines Vying to Fly ROC's Golden Sky*, *Central News Agency—Taiwan*, 24 November 1986.

133 See A.R. Beane, *Aviation Relations Between the United States and China: Are Open Skies on the Horizon?*, 72 *Journal of Air Law and Commerce* (2007), 803–833 at 820–821. See also *Flights to China*, *The Globe and Mail*, 11 April 1984; *Pan Am Stirrs Taiwan Tempest*; *Air Route to China Imperilled*, *United Press International*, 25 June 1983 ("China's main objection is that it was not consulted before the Pan Am decision was announced and subsequently approved by the U.S. Civil Aeronautics Board. A Chinese official said Peking requested consultations last month but that Washington 'failed to respond.'").

134 *Pan Am Taiwan Flight Draws Protest*, *Facts on File World News Digest*, 5 August 1983; *Why China Can't Clip Pan Am's Wings*, *Business Week*, 4 July 1983; *China Protests Flights to Taiwan*, *Washington Post*, 21 May 1983, G10.

PRC.<sup>135</sup> This practice may be explained by the fact that the right under Article 6 of the Chicago Convention to authorize the operation of scheduled international air services over or into the territory of a contracting State by necessity requires control over that territory. Any special permission or other authorization granted by a government not in effective control of the territory would be ineffective and would constitute nothing but an empty promise. The *de facto* authorities in Taiwan are not bound by an approval or clearance given by the CAAC. The right of the Government of the PRC under Article 6 of the Chicago Convention must thus be considered suspended for as long as it does not exercise effective control over Taiwan.

48. Flights to airports in Taiwan require the approval of the ROC's CAA.<sup>136</sup> Such approval is normally given in bilateral air transport or air services agreements. According to the AIP Taiwan FRI, "scheduled flights landing in and departing from the territory of the Republic of China shall be carried out in accordance with the Air transport or Agreement for Exchange of Traffic Rights".<sup>137</sup> Since such agreements can only be concluded between States, the Government of the ROC can conclude them only with the small number of States that still recognize it as the Government of China.<sup>138</sup> With other States, reciprocal traffic rights and other conditions of scheduled air services are laid down not in international treaties but in what are formally private law contracts concluded either between the airlines or airports involved,<sup>139</sup> or between private legal persons established by the ROC and the foreign State in question.<sup>140</sup> For example, in order to re-establish scheduled air services with Japan in September 1975, the Government of the ROC formed the "East Asia Relationship Association" and, through it, negotiated a bilateral agreement with "Japan Asian Airways", a wholly owned subsidiary formed by the Japanese flag carrier Japan Air Lines to serve Taiwan.<sup>141</sup> Scheduled air services between the UK and Taiwan were made possible by an agreement signed by EVA Airways and British Asia Airways. The Department of Transport stated at the

135 China "Strongly Condemns" Netherlands-Taiwan Air Link, BBC Summary of World Broadcasts, FE/7301/A1/2, 7 April 1983; "People's Daily" Condemns Dutch Approval of Airline Flights to Taiwan, Xinhua General News Service, 6 April 1983.

136 Civil Aeronautics Administration, Ministry of Transportation and Communications, Republic of China, AIP Taipei FIR, GEN 1.2, paras 1.2.2 and 1.2.3, [eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html](http://eaip.caa.gov.tw/eaip/history/2008-07-03/html/RC-frameset-en-TW.html).

137 *Ibid.*, GEN 1.2.2, para. 1.

138 See Taiwan, Palau Reach Consensus on Aviation Pact, Central News Agency—Taiwan, 3 April 1997.

139 In the case of air services with Belgium, the aviation accord was signed between the ROC's Chiang Kai-shek International Airport and Belgium's Brussels International Airport; see Taiwan, Belgium Reach Agreement on Direct Airlinks, Central News Agency—Taiwan, 7 February 1995.

140 For details of such contracts, see Talmon, above n.31, 387–388, 817; Attix, above n.131, 382, especially nn.209, 213.

141 Donald E. Fink, Diplomatic Status Poses ICAO Dilemma, *Aviation Week & Space Technology*, 3 July 1978, 35.



time that the air services would be operated under “a purely commercial arrangement”.<sup>142</sup>

49. No approval, special permission or other authorization is required for non-scheduled international air services to Taiwan, either by the Government of the PRC or that of the ROC. Article 5 of the Chicago Convention provides that “aircraft not engaged in scheduled international air services shall have the right [...] to make flights into or in transit non-stop across its territory [...] without the necessity of obtaining prior permission”. Such aircraft also have “the privilege of taking on or discharging passengers, cargo, or mail”. The right of other contracting States to operate non-scheduled passenger and cargo flights to airports in Taiwan thus exists by virtue of Article 5 of the Chicago Convention. It was granted generally on 20 February 1946 when China became a party to the Chicago Convention and can only be withdrawn by denouncing the Convention in accordance with its Article 95. As long as the Government of the PRC does not denounce the Convention, aircraft of other contracting States may operate non-scheduled international air services with Taiwan without requiring any permission from the Government of the PRC.<sup>143</sup>

## VI. Conclusions

50. China has been a contracting State of the Chicago Convention since 20 February 1946. The Convention applies to the whole territory of China, including Taiwan and its outlying islands. The denunciation and subsequent re-ratification by the Government of the ROC are treated without any effect. As from 19 November 1971, China has been represented within the ICAO by the Government of the PRC, which, in principle, may exercise the rights under the Chicago Convention also with regard to Taiwan. However, rights derived from the Convention that require control over territory are suspended with regard to Taiwan. While the Government of the PRC remains competent to assign location indicators to airports in Taiwan and to designate airports throughout Taiwan as customs airports in accordance with Article 10 of the Chicago Convention it has, owing to its lack of territorial control, lost its legislative competence to require aircraft to land only at such designated customs airports. The right under Article 6 of the Chicago Convention to grant special permission or other authorization to operate scheduled air services also requires control over territory and is thus suspended with regard to Taiwan. Non-scheduled air services operated by aircraft of other contracting States do not require any special permission, either by the Government of the PRC or by that of the ROC.

142 EVA Airways Begins New London Service, *Aviation Week & Space Technology*, Vol. 138, No. 14, 5 April 1993, 35.

143 What constitutes “non-scheduled international air services”, however, is not always a clear-cut issue. In practice, there are regular charter services which are classified as “non-scheduled” but are subject to regulation by the State of landing, including prior approval. Moreover, even “non-scheduled” flights require the filing of flight plans with the competent authorities.