

HUMAN RIGHTS IN CHINA

In November last year, Chris Sidoti, a Commissioner with the Australian Law Reform Commission, travelled to China as a member of the Australian Human Rights Delegation. For a country long criticised for human rights abuses, China has been at pains to justify its treatment of the demonstrators in Tiananmen Square and its record generally. In this article Chris Sidoti explains how the process of dialogue came about and is cautiously optimistic about changing Chinese attitudes to human rights.

The Chinese Government was quite surprised at the nature and the strength of the international response to the massacre at Tiananmen Square in June 1989. It felt on the one hand that it had not acted improperly. As far

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as it was concerned the centre of the national capital city was at times occupied by half a million people or even more. The attitude was 'We had to do something about it, what did you expect us to do?' The rest of the world felt that the Chinese Government should not have responded with guns blazing and tanks rolling but at the time that fact seemed to be lost on it.

Part of the Chinese reaction to the response from the West was a desire to understand what we mean by human rights — to have some feeling of our perception of the subject. They also wanted us to see human rights from their perspective. Their starting point is always that the most important human right is the right to live. By that criterion, they say, they have to their credit a truly momentous human rights accomplishment, successfully

feeding 22% of the world's population and providing them with shelter, clothing and so on. And for the majority of the population that is no doubt true. The Chinese Government considered that it could be proud of its record and wanted to convince others of its achievements.

The Delegation

The initiative for the delegation's visit first came from the Chinese Government to the Australian Government. When the Australian Foreign Minister, Senator Gareth Evans, went to Beijing in April 1991 to meet the Chinese Foreign Minister, Qian Qichen, he received a formal invitation for an Australian delegation to visit China to discuss human rights. The Delegation made its first visit in July 1991 and, when a second visit was agreed to in

November 1992, the Minister was of the view that it should be, as nearly as possible, the same people.

The Delegation on both occasions consisted of three members of Parliament, one from each of the three major parties. It was led by Senator Chris Schacht who is chair of the Joint Committee on Foreign Affairs, Defence and Trade and also chair of the Human Rights Sub-Committee which has

been established by that Committee. On the first occasion the Liberal Party representative was David Connolly and on the second occasion Michael



*L to r Stephen Huang, Ian Russell, Vicki Bourne, Michael Mackellar, Dilber Thwaites
Tiananmen Square, Beijing*

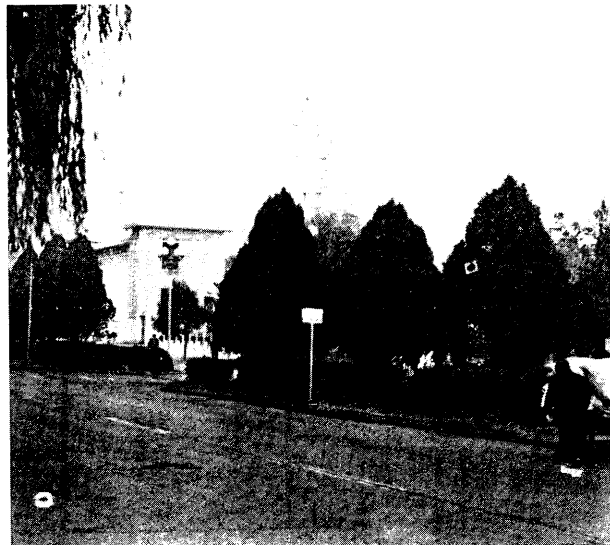
Mackellar, both of them being at the time Deputy Chair of the same Committee. Senator Vicki Bourne went on both occasions, as the Australian Democrats spokesperson on human rights and foreign policy matters. As well as the three MPs the Delegation contained a number of people with particular expertise relating to the Chinese legal and political systems, human rights and international law, and human rights in Australia. At the time of the first visit I was Secretary of the Human Rights and Equal Opportunity Commission; Senator Evans requested and the Attorney General agreed that I participate this time as well because of the desire that the delegation remain substantially the same.

Other international human rights delegations

Ours was not the only international human rights delegation to China. Delegations have gone from the United States, Canada, France, Switzerland, the United Kingdom and one or two other European countries. I must say that, from the information we have received from those other visits, ours seems to have been the most successful. We seemed to have been able to penetrate the Chinese system much more than the other delegations and to travel to places the other delegations had not visited and inspected. We were also very careful to ensure that on each occasion the Delegation included people who could speak the local languages. We had a number of Mandarin speakers and a Tibetan speaker on both visits and a Uighur speaker when we travelled to Uighur areas on the second visit. So we were always able to talk at meetings and in unofficial contacts without having to rely on official interpreters. We had an enormous capacity to make contact and pursue matters away from the official meeting environment.

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Australia is well placed, as a small nation within the Asia Pacific region, to have a significant influence on China on these issues. The Chinese Government seems to appreciate that Australia's interest in human rights matters is genuine and not part of any ideological struggle or superpower conflict. Our advocacy of human rights has been consistent. The Australian Government, for example, takes up the issue of the death penalty with all countries that execute people, including most notably the United States. The Delegation was able to say to Chinese officials when we questioned them about the death penalty that it's a matter we raise consistently, including with our principal ally. Also Australia has not been a colonial power in Asia. It seems that we can do more than most to advance the human rights dialogue with China.



Kashgar Street scene

What did we want to accomplish?

When dealing with China we have to be in it for the long haul. It's unlikely that we are going to see very rapid democratisation or very rapid improvement in the human rights situation in China. It is possible, for China is a society that is capable of quite amazing leaps almost overnight. But I don't think that likely. The more probable development will be gradual change in the Chinese system, catalysed by economic development. The process in which the Australian Human Rights Delegation has been involved is one way in which we seek to have some influence on the direction of change. Through the Delegation we endeavour to provide some support for those within the Chinese system who are advocating a more acceptable human rights performance. We seek to explain to Chinese officials the international expectation that China lift its game in this area. Those we have met certainly aren't all die-hard human rights advocates. To the contrary, many of them would be die-hard conservatives. But we have met a large number of officials who are more sympathetic to the reform movement that is underway in China and want to encourage these efforts by our visits.

Key human rights areas

In its meetings with Chinese officials the Delegation concentrated mainly on civil and political rights, such as the right of people to a fair hearing and due process before the courts; the right of people to proper treatment in prison or in detention, especially to be free from torture and mistreatment; freedom of assembly, association and religion; freedom of expression. That's not to say that we ignored questions of economic, social and cultural rights. The Chinese point of view relating to the right to live through the provision of adequate food is a very important one. We talked at some length about

that. We also dealt with questions of education; the rights of nationalities within China to maintain their own cultural identity and pursue their own cultural development; and human rights issues arising from family planning programs.

China's various nationalities

The issue of the treatment of non-Han nationality people in China has been an important one on both visits. Their situations are similar to the position of the Aboriginal and Torres Strait Islander peoples in Australia. On the first visit the Delegation travelled to Tibet. As a result of



Kindergarten for Minority Nationalities, Kashgar

the comments in our report we were not permitted to return to Tibet on the second visit. On that occasion we travelled to the far west of China, to the Uighur nationality areas in the Xinjiang Autonomous Region in Central Asia.

Most of the people of Xinjiang are of minority nationalities. The region borders many of the new Central Asian republics where people of similar ethnic origins have won their independence after decades of Russian domination. These events will clearly have an impact on the situation in Xinjiang. Already there have been many small scale incidents, in which people have been killed, as local unrest increases. Our visit enabled us to acquire first hand impressions and information on what the present situation is and on what may develop.

As far as Tibet is concerned, there was no subject more sensitive on both visits. It certainly provoked the most heated exchanges. The Chinese Government is deeply suspicious of people who raise Tibetan human rights issues. Chinese officials frequently equate these human rights concerns with what they call 'splittism', support for the separation from China of Tibet or any part of today's China. They certainly see Tibet as an integral part of

China even if a significant number of Tibetan people — perhaps most Tibetan people — see the future of Tibet as being an independent or semi-independent State. As a Delegation we did not raise or advocate Tibetan independence. Our concern has been about the way in which the Tibetan people today are treated by the Chinese authorities. The Australian Government accepts and recognises China's authority over Tibet and does not support Tibetan independence. The Australian Government, however, has also been very strong in its advocacy of human rights in Tibet as in other parts of China. The Delegation pressed these issues and concerns.

The importance of reciprocity

On each occasion the Delegation invited those it met to ask any questions or make any comments they wanted to on human rights issues in Australia. Invariably, they broached the question of our treatment of Aboriginal and Torres Strait Islander peoples. We see this element of reciprocity as being very important. We have said to the Chinese authorities each time that Australia considers its human rights record as being open to international scrutiny. We do not say that we have a blameless record. On the contrary, we accept responsibility for human rights violations that have occurred in the past and for a human rights performance that leaves a lot to be

desired even today.

The Delegation, on behalf of the Australian Government, extended to the Chinese Government an invitation to send a similar delegation to Australia to continue this dialogue here and to give them an opportunity to inspect our performance. After our first visit we were not very hopeful that that invitation would be accepted but the meetings on our second visit made us more optimistic about a possible reciprocal arrangement.

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That would be very important

because it would indicate a degree of acceptance by the Chinese authorities of the process of dialogue as a two-way process which is a legitimate part of our bilateral and international relationships.

Signs of change

The process of change is underway in China. It was clear to us on our second visit that there was already an improvement in the atmosphere in China. We encountered a much greater willingness on the part of

the Chinese officials to accept that there is legitimate international interest in China's human rights record and to start looking at ways in which human rights can be improved within China. This is not being done, in any sense, in the context of lessening the power of the Chinese Communist Party. At this stage the Chinese are not prepared even to countenance any suggestion that



Kashgar Street scene

the leadership role of the Party should be diminished or that China should move away from its current system. But the system is being liberalised. That is principally being driven by the need for economic development but it is flowing over into the political realm and therefore into the general human rights situation. There is willingness to accept a greater degree of diversity, lessening of control, and increasing scope for dissent and contrary views.

An example of this is the change taking place within the Chinese legal system. There is pressure on the courts to play a more independent role — not because of any commitment to due process but because of the commitment to economic development. When foreign investors look at China they ask: 'What is the law under which we are going to be governed? How can we be sure that, when disputes arise between us and our Chinese partners, they are decided properly according to the law by an independent court and not just according to the dictates of the Party?' I saw recently a statement from the President of the Supreme People's Court that Chinese courts should seek to determine cases on the basis of the facts and not on the basis of political direction. That statement alone marks a milestone. The President of the Supreme People's Court is not an independent chief justice such as we have. He is very much a political appointee who owes his position and allegiance to the Chinese Communist Party. It is very significant for someone who has come through the system and reached a very senior level to be arguing the case for independent courts. If the courts are more independent in economic matters they will start being more independent in criminal matters and therefore in human rights matters as well.

Was it worthwhile?

We always have to question our effectiveness when dealing with China on human rights. It is certainly possible to be effective in dealing with China on trading issues. China is committed to economic development and advantageous trading arrangements can be negotiated. But the Chinese Government (or the Chinese Communist Party) does not have a commitment to human rights development. That being the case, the fact that we are talking to China about these issues certainly gives rise to questions of how effective we can be. There were, so far as we are aware, no political prisoners released as a result of either of our visits. We cannot point to particular areas in which human rights improved overnight. In fact we are dealing with a government and a regime that is a very serious violator of human rights. In those circumstances the very fact of involvement and dialogue with China raises questions about whether or not this is the right thing to do.

I have come very strongly to the view that the only way to deal with China is on this basis. The situation in China is not analogous to that in South Africa, a country which could be isolated because of the extent of international opinion against the apartheid regime. It is possible to apply some degree of sanction against China immediately after events like Tiananmen. But in the

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long term international sanctions are not feasible. We're talking about 22% of the world's population. China is a country which is a major influence internationally. It is one of the five permanent members of the Security Council. Dealing with China is more complicated than dealing with South Africa and the approach to China, if it is to be successful, has to be more sophisticated than the approach it was possible to take, quite successfully, with the South African Government.

The only effective way to deal with China is through a process of dialogue, of engaging China in human rights debate. There will be times, of course, such as after the events of Tiananmen, when a harder response will be both warranted and necessary. And that harder response can have some positive effect, provided that it does not become an entrenched position. The isolation of China from 1949 to 1972 certainly did nothing to promote a better human rights performance by China. On the contrary the opening up of China since 1978 has done much more to achieving progress in human rights than anything beforehand. While I share the concerns of critics of human rights delegations (critics such as journalist Yvonne Preston of the *Sydney Morning*

Herald) I consider that, ultimately, a policy of isolation will not succeed improving in human rights in China. We have to accept that there will not be a steady path

towards improvement but a rather more erratic progress of maybe three steps forward and two steps back. But promoting that advance should be our major objective.



L to r Chris Sidoti, Ian Russell, Kashgar police, Kashgar

