

Submission to the Senate Inquiry into Asylum and Protection Visas for Consular Officials

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Synopsis: The recent controversy in Australia surrounding the application of Chinese Consular official, Chen Yonglin, for asylum/protection is a function of the lack of independence of Australia's foreign policy as well as of the deterioration which has occurred in the Australian government's approach to human rights, whether international or domestic, since 2000.

I thank the Committee for the invitation to make a submission to the Inquiry.

My submission addresses the following terms of reference:

- a) The response of Department of Immigration Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade, Attorney-General's Department and their respective Ministers to Mr Chen Yonglin 's approaches or requests to the Australian Government for asylum and/or a protection visa;
- d) any related matters (Australia's foreign policy and its human rights policy);
and with passing reference to
- c) the involvement of the Department of Foreign Affairs and Trade and the Minister in the deportation, search for and discovery of Vivian Solon.

I am an international relations scholar specialising on China who has published work on China's foreign policy, Australia-China relations, China's human rights, Australia's human rights policy and the Australia-China human rights dialogue.² My

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² These include Ann Kent, *China, the United Nations and Human Rights: The Limits of Compliance* (Philadelphia, University of Pennsylvania Press, 1999); 'The Unpredictability of Liberal States: Australia and International Human Rights', *The International Journal of Human Rights* 6 (Autumn 2002), no. 3, pp. 55-84; 'Australia and the International Human Rights Regime', in James Cotton and John Ravenhill, eds., *The National Interest in a Global Era: Australia in World Affairs 1996-2000* (Melbourne, Oxford University Press, 2001), pp. 256-278; 'Australia and China, 1991-1995: Asymmetry and Congruence in the Post-Cold War Era', in James Cotton and John Ravenhill, eds., *Seeking Asian Engagement: Australia in World Affairs, 1991-1995* (Melbourne, Oxford University Press, 1997), pp. 170-190; 'States Monitoring States: the United States, Australia and China's Human Rights, 1990-2001', *Human Rights Quarterly* 23 (2001), no. 3, pp. 583-624; 'China and the

main interest in this matter is what it says about the independence and balance of Australia's foreign policy, one element of which should be a good relationship between Australia and China, and about the protection of human rights, both in Australia and in China. The terms of reference (a), (c) and (d) above speak to all these issues.

Australia has always had difficulty achieving an independent and balanced foreign policy. The tendency to depend on great and powerful friends, whether in defence or foreign policy, has long been an entrenched part of our political culture. Indeed, that we should locate our national identity in the Anzac spirit, which saw the death of countless Australian soldiers on Anzac Cove in a high-risk, British-led operation, is a telling symbol of that dependence. Our whole-hearted support for the United States in the Cold War, and our involvement in the Vietnam War are other indicators. Such dependence was also responsible for Australia's mistaken policy in the 1960s opposing China's bid to obtain a seat in the United Nations, a policy I criticised at the time.³ More recently, the government's participation in the war on Iraq, despite the opposition of the majority of the Australian people, similarly stemmed from the government's inability to conceive of our own self-interest as separate from that of our allies.

For some time, I have also been concerned about the deterioration of Australia's human rights and its international human rights policy. Having published a book on China, the United Nations and human rights in 1999, I was shocked in 2000 to hear the Australian government deriding UN human rights treaty committees in terms that China would never use. I have also noted over the past five years the increasing harshness of the government's treatment of asylum seekers, indigenous people, welfare recipients, disabled people and now Australian workers. That falling away has been facilitated and expedited by the hysteria about asylum seekers and the current war against terror, in which context I defer to the wisdom of Baroness Helena Kennedy, QC:

People are easily alarmed by the idea that barbarians are at every gate, including their own, in the form of asylum seekers and criminals. As a result they are prepared to sacrifice a significant level of freedom and privacy in exchange for

International Human Rights Regime: A Case Study of Multilateral Monitoring, 1989-1994', *Human Rights Quarterly* 17 (February 1995), no. 1, pp. 1-47; 'Human Rights: From Sanctions to Delegations to Dialogue', in Nick Thomas, ed., *Re-Orienting Australia-China Relations* (London, Ashgate Press, 2004), pp. 143-158; and 'Influences on National Participation in International Institutions: Liberal v Nonliberal States', in Hilary Charlesworth, Madelaine Chiam, Devika Hovell and George Williams, eds., *Fluid State: International Law and National Legal Systems* (Sydney, Federation Press, 2006 forthcoming). Recently my work has been cited in Michelle Grattan, 'Too Close to the Bone', *The Age*, 12 June 2005; and Andrew Clark, 'Between a Wok and a Hard Place', *Australian Financial Review*, 11 June 2005, 30.

³ Documented in Edmund S. K. Fung and Colin Mackerras, *From Fear to Friendship: Australia's Policies Towards the People's Republic of China, 1966-1982* (St Lucia, University of Queensland Press, 1985).

greater security. The temptation is for governments to read expressions of public fear and the willingness of citizens to make sacrifices as giving them *carte blanche* to rewrite underlying principles of law. Instead of making the political weather, devising policies for which they then seek public endorsement, governments increasingly see citizens as consumers, to be listened to through the marketing device of focus groups and to whom policy must be tailored, Government-as-product-supplier means pursuing market share, redesigning the brand and purveying policy on a ‘what works’ basis rather than principle...The move towards a market state may be unsettling but the move towards a market society, where all human interaction takes on a quasi-commercial spin, is even more alarming.⁴

It is in this wider context of a dependent foreign policy and a debasement of our policy on domestic and international human rights that the strange behaviour of the Australian government towards the application of Mr Chen for asylum/protection must be read.

The Prime Minister has assured Australian citizens that there is no possible clash between our strong ties with the United States and a thriving relationship with China. As a long-term observer of Australia-Chinese relations, I am sceptical of such claims. In fact, my impression is that both the government and the public service are also sceptical of them and for this reason responded with a mix of confusion, contradiction and denial when Mr Chen requested protection. Instead of being open with the Australian people and explaining the difficulty in granting political asylum to the citizen of a state with which we enjoy friendly relations, and then granting him a normal protection visa, government ministers appeared to try to side-step the whole issue. Fearful of incurring China’s wrath, and of opening up a contradiction between our relations with China and those with the US, ministers tried to pass the buck to each other. They not only appeared careless of Australia’s obligations under international law, which should have been immediately apparent,⁵ but also showed a lack of understanding of China’s own sophistication and ability to compartmentalise issues in its foreign policy. Such ignorance was not limited to politicians and public servants. Indeed, some members of the press were the worst panic-merchants, continually expressing fears that the controversy would undermine negotiations on the Australia-China Free Trade Agreement.

The unnecessary controversy created by Mr Chen’s application for asylum was therefore a symptom not only of the flaws inherent in our timorous foreign policy, but of the progressive deterioration of our attitude to human rights, both at home and abroad. I have in the past been critical of our human rights dialogue with China, in terms of its lack of transparency and effectiveness, although at the same time I have welcomed the value of our human rights technical assistance programme. Given the deterioration of Australia’s own human rights, I am now even more convinced of the anomaly of such dialogue. However, the issues surrounding the application by Mr

⁴ See Helena Kennedy, QC, *Just Law: The Changing Face of Justice and Why it Matters* (London, Vintage, 2004), p. 7.

⁵ These obligations are set out in the Submission from the UNHCR to this Committee.

Chen have now demonstrated Australia's willingness not only to downplay human rights in China but also to turn a blind eye to the rights of asylum-seekers in Australia and even to the rights of Australian citizens of Chinese descent. Like the related case of Vivian Solon, this matter has revealed a callousness towards the treatment of our own citizens who happen to be of a different ethnic origin.

Although the controversy surrounding Mr Chen's application has since been resolved, its effects linger on, not in the sense that Australia's relations with China have been undermined, but in the sense that it has revealed critical weaknesses in our own human rights policies as well as serious flaws in the handling of our foreign policy, our relations with Asia and, in particular, our relations with China. It is for such reasons that I support an independent Australian foreign policy with an emphasis on multilateralism, which neither bends too far towards the US nor too far towards China, but maintains an equitable balance between the two, with sole reference to our own self-interest. Indeed, given our geostrategic situation, and the rising tensions between the US and China, I believe such a policy represents the only rational and responsible course of action.

In the meantime, it is a measure of the present sad state of Australia's human rights and our lack of respect for our obligations under the international human rights treaties we have ratified that Mr Chen's application for a visa should have developed into such a nation-wide controversy and taken so long to resolve. Unless Australia embarks on a serious rethinking of its foreign policy interests and priorities, its obligations under international law and its attitude to the human rights of its citizens and residents, of whatever ethnic origin, such problems are bound to recur.