

AUSTRALIAN-CHINESE RELATIONS-MODEL ARBITRATION CLAUSE-LEGAL EXCHANGE
ATTORNEY GENERAL'S VISIT TO CHINA.

VIII International Economic Law

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(by the Attorney-General)

LAW TALKS IN CHINA

The Attorney-General, Senator Gareth Evans, returned to Australia today after a 7-day visit to China during which he had discussions with his Chinese counterpart, the Minister for Justice, Mr Zou Yu, and other senior Chinese government officials on a range of legal subjects.

The visit forms part of a continuing series of high-level legal exchanges which, as part of the broadening base of Australia's bilateral relations with China, reflect the priority which China is giving to the restoration and modernisation of its legal system in the wake of the Cultural Revolution.

In keeping with the expanding commercial and economic links between the two countries, the discussions focused on the development of Chinese economic and trade law but also covered the court system, criminal law and procedure, correctional institutions, legal education, dispute resolution and the development of legal exchanges between Australia and China.

Some specific highlights of the visit were:

- the opening of the new Australian Consulate-General in Shanghai attended by over 150 Chinese civil and political leaders;
- a meeting with Senior Vice-Premier Wan Li to discuss continuing Australia-China relations;

- meetings in Peking with the President of the Supreme Court, the Procurator-General (who is responsible for supervising criminal investigation and for initiating prosecutions) and the China Law Society;

- attendance at an Intermediate Court criminal trial and visits to a juvenile reformatory and an adult prison;

- discussions on legal education with the East China Institute of Political Science and Law in Shanghai; and

- a meeting with several directors of local mediation (dispute resolution) committees.

Model Arbitration Clause for Australia-China Trade

The Attorney-General had discussions in Peking with the Ministry of Foreign Economic Relations and Trade (MOFERT) and with the China Council for the Promotion of International Trade (CCPIT) on legal aspects of trade and investment and specifically on the need for a model arbitration clause for use in Australia-China trading contracts.

The Attorney-General and MOFERT agreed that a model arbitration clause - to be recommended by both governments for inclusion in new contracts - would be of very considerable benefit to China-Australia trade relations, and accordingly that substantive inter-governmental negotiations on the drafting of such a clause should begin promptly.

The starting-point for the negotiations will be two Australian draft clauses which have been submitted to the Chinese. These drafts were prepared by the Trade Law Committee of the Law Council of Australia whose chairman, Mr David Bailey, was a member of the Australian delegation on the current visit.

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experience to be provided would include, as appropriate, periods of work in private law firms and corporations, with government legal agencies, and attached to university law faculties and similar tertiary institutions.

It is envisaged in particular that private legal firms and corporations in Australia would provide legal work experience for Chinese lawyers and legal workers in both international and Australian trade and investment law. The would implement a proposal initially put forward by the Law Council of Australia.

It is proposed that up to four placements would initially be offered in Australia for suitable Chinese applicants, each placement, being of between 6 months and two years duration. The scheme would be co-ordinated at the Australian end by the Attorney-General's Department.

Criminal Justice

The Attorney-General attended a criminal trial, visited a juvenile reformatory in Shanghai and a factory prison in Beijing, and discussed prosecution policy with the Procurator-General and questions of substantive criminal law and the role of lawyers in criminal proceedings with officials from the Ministry of Justice.

The opportunity was taken on several occasions in discussions with senior Chinese leaders to communicate the widespread concern that had been felt in Australia, and the West generally, at reports last year of the large-scale administration of capital punishment as part of the Government's anti-crime campaign.

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It is contemplated that, in addition to the arbitration facilities currently provided by China's Foreign Economic Trade Arbitration Commission, trading parties would have the option of having their arbitration conducted under UNCITRAL rules in a third country, desirably within the Asian region.

"The particular question of third-country arbitration remains a sensitive one, but there is clear agreement on the need for effective dispute-resolution procedures to be established involving friendly negotiation, conciliation, and arbitration, with litigation only as an absolute last resort", Senator Evans said.

"We are breaking new ground with this project, but the constructive and friendly nature of the Beijing talks, and the positive direction agreed upon, give some cause for optimism that it will in due course be brought to a successful conclusion."

Australia-China Legal Exchange Scheme

At his meeting with the Chinese Minister for Justice, Mr Zou Yu, the Attorney-General put forward a proposal for a systematic and ongoing legal exchange scheme between the two countries to supplement existing ad hoc visits and delegations.

Broad agreement in principle was reached on the proposed scheme, and it is hoped that, subject to further discussions on questions of detail at official level, it can commence operation in 1985.

The scheme proposed by the Attorney-General would involve exchanges of legal personnel from a range of legal institutions in each country and would be designed to provide participants with an integrated and diverse program of legal experience.

Participants in the proposed scheme would include judges, lawyers, legal workers from government legal agencies and