Overseas conferences: to go or not to go?

By the Hon John Nader QC

Since 1987 the Criminal Lawyers Association of the Northern Territory (CLANT) has held its biennial criminal law conference in Sanur, Bali, with the next one due in June 2015. The CLANT conference has become an institution. It is eagerly looked forward to by lawyers in the Top End, well-attended by their colleagues in other states, and highly regarded by leading members of the judiciary, including High Court judges and retired judges of eminence from throughout Australia. It is significant that the CLANT conferences have, for various reasons, also come to be regarded by many Indonesians as important events. They are usually visited by one or more senior Indonesian lawyers.

Early in February 2015 the president of CLANT sought opinions from members as to whether the 2015 Bali conference should proceed while two Australian citizens were awaiting execution by the Indonesian Government.

I have responded that I would not attend. The fact that two of the persons on death row are Australian is quite irrelevant. What matters is that, since the election of the new Indonesian president, the use of the death sentence has experienced a crescendo which I found too serious to ignore. Fundamental to my decision is the belief that not holding the CLANT conference in Bali would disappoint Indonesian authorities.

It is now commonplace for Australian legal professional organisations to hold conferences overseas. Sometimes, they are held in countries that have capital punishment on their statute books, or where internationally recognised human rights are violated. CLANT's 2015 Bali conference poses a number of difficult questions. Should organisers of conferences for legal practitioners take into consideration the human rights record of the proposed host-country? Should CLANT, or any other bar association or law society for that matter, be held to a higher standard? How would this affect the many conferences held in Singapore or even the United States of America?

Sanur Beach Hotel, Bali. Photo: Chris Winslow

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I believe that there is no more reliable indicator of the depth of the civilization of a nation than its criminal law and administration of the criminal law.

Of all people in a community, criminal lawyers are most obliged by their profession to stand guard over the propriety of the criminal law and to protest when it falls below acceptable standards, and to suggest to governments what should be done to improve it. It is commonly done by lawyers in Australia almost every day of the week. Mining law and other branches of legal practice are of course important, but they are as nothing if a state does not have civilised criminal laws.

Of course standards change and evolve over time, and laws which were appropriate in the past may be considered repugnant in today's civilised society.

If lawyers can influence foreign countries with close connections to ours to adopt more just laws, they should be able to do so without suffering adverse criticism.

However, many foreign laws that we may not approve of are born of custom and cannot be said to be bad laws unless they unequivocally transgress universal human rights. I put the death sentence for crime in that category.

It seems to me that we are precisely in that position with respect to Indonesia. Indonesia is geographically and politically close to us. We are neighbours. In a real sense we are friends: should we turn a blind eye to what we perceive to be serious infringements of human rights by a neighbour?

In our lifetime we have seen what we consider to be immense advances in the standards of Indonesian governance. It had a long way to go and it has come a long way forward. It has not yet quite accepted the standards of civil liberties and criminal administration that we would hope for. I think it is appropriate for us to use all legitimate means, excluding hostile language or action, to encourage Indonesia to move yet further.

Of course we can tell the Indonesians when we are in Bali how badly we regard capital punishment and express our reasons civilly.

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There can be no doubt that they already know how strongly our opinions are held.

I believe that boycotts, even sporadically imposed, by important groups such as criminal lawyers, are one acceptable means of letting our friends know that we are serious when we mouth noble platitudes at criminal law conferences.

I have never thought that by removing a conference from Bali, the Indonesians would be induced to abolish capital punishment instanter. But, I think that of all groups of non-government people, practising criminal lawyers are close to having a duty to put their conduct where their mouths are. We should start the ball rolling towards more civilised punishments and try to persuade the new president to adopt the stance taken by his predecessor, Susilo Bambang Yudhoyono, and reinstate the pause in executions.

The last cricket match played at the SCG between Australia and South Africa which I attended was the last test played by South Africa in Australia for many years. Boycotts and falling tourism amongst many other things eventually wore down South African resistance to the abolition of apartheid.

If we abandon Bali as a conference venue on short notice, and if other serious organizations do the same, there is a chance that some persons in authority in Indonesia will react favourably to us, not only to retain our goodwill but also by seeing that it does not benefit them to alienate a close neighbour.

I would be foolish to think that barristers, whose professional activity thrives on finding reasons to disagree with other barristers, will all agree that my refusing to attend the June CLANT Bali conference was appropriate. None may agree. I urge those who think my action was misguided or inappropriate to write to the *Bar News* and express their opinions. I can imagine that many might think that my action was too idealistic to lead to any benefit, either because very few will adopt similar action in like situations or because even if such action became general the desired result would be a vain hope, or both. My mind is open to persuasion that I have been wrong.

CLANT responds

For 30 years, CLANT has held its biennial conference in Bali, interrupted only once, in the months following the 2002 Bali bombings, when for reasons of security, the conference was moved to Port Douglas. We have scheduled the fifteenth Bali conference to be held at the Sanur Beach Hotel in Bali from 20 to 26 June 2015.

The recent spate of executions in Indonesia, with the threat of further judicially sanctioned killings has outraged the Australian and indeed the international legal community, and is of deep and acute concern to CLANT. Some of our members and supporters have urged us to relocate the conference away from Indonesia, as a sign of that concern. In response, the CLANT Committee has sought and received advice from our proposed conference speakers, our members and senior members of the legal community, including the judiciary, past CLANT presidents, and CLANT life members.

Passionately expressed, impeccably argued and widely divergent views have been expressed, but there is a very substantial majority in favour of retaining the arranged venue, and accordingly we now confirm it. We have had regard to, *inter alia*, the following considerations, distilled from the responses we have received, for which we are grateful:

- CLANT members abhor and deplore capital punishment, wherever it is practised.
- The issue of capital punishment in Indonesia is of particular current concern, because of the Executive's recent decision to execute a large number of drug offenders on death row, including Australian offenders who have been represented by some of our own members.
- It is incumbent on CLANT to 'send a message' that these executions are unacceptable to us.
- Changing the venue is unlikely to have any significant effect in influencing the Indonesian Government to change its policy.
- Moving the conference would give rise to a perception that CLANT parochially and unfairly

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places a higher value on the lives of Australian drug offenders than offenders from other countries.

- Moving the conference would unfairly single out Indonesia, one of many countries in the region (including, it is to be noted, Australia) with an unsatisfactory human rights record.
- Moving the conference now would be inconsistent with our long-standing commitment to maintaining the conference in Bali, over a period in which various Indonesian regimes have pursued policies with which CLANT members have strongly disagreed.
- Moving the conference from Bali would adversely effect the Balinese tourism industry.
- If we move the conference from Bali, a precedent will be set which may well result in us never returning.
- Holding the conference in Bali affords CLANT the opportunity to continue to engage with our colleagues in the Balinese and Indonesian legal community.
- Changing the venue would cause significant inconvenience and expense to CLANT members who have already made their travel arrangements, and to CLANT itself, which has already contracted with the conference venue.

Many of the responses we have received urged us to include in the conference program a session dealing with the issue of capital punishment, featuring speakers from the Indonesian legal community. Although the Organising Committee is mindful that this would entail a risk of harmfully ruffling feathers, we are seriously considering amending the program as has been proposed.

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CLANT