

Issue 2:

Events that highlight legal issues

Chapter 14

The Bali Nine

Chapter objectives

In this chapter, students will:

- describe the key features of the investigation of transnational crime
- identify the relevant legal terminology in investigating and discussing Australian and Indonesian law in regard to transnational crime
- evaluate the effectiveness of Australia's legal system in achieving justice in fighting transnational crime
- investigate the relationship between society and the Australian and Indonesian legal systems
- recognise differing perspectives on issues related to the death penalty
- locate quality information from authoritative sources using the internet.

Key terms/vocabulary

adversarial system

drug mule

Indonesian National Police (INP)

inquisitorial system

transnational crime

Relevant law

IMPORTANT LEGISLATION

International Covenant on Civil and Political Rights (ICCPR), 1966

Death Penalty Abolition Act 1973 (Cth)

Second Optional Protocol to the ICCPR, 1989

Indonesia Law on Psychotropic Substances, Law No. 5 of 1997, art. 59, Mar. 11, 1997

Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters, 1999

Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005

(Cth) ('Law and Justice Amendment Act')

Agreement with the Republic of Indonesia on the Framework for Security Cooperation, 2006

Extradition Treaty between Australia and the Republic of Indonesia, 2007



14.1 A brief history of the Bali Nine

On 17 April 2005, the Indonesian National Police (INP) arrested four Australians at Bali's Ngurah Rai Airport: Martin Stephens, Renae Lawrence, Scott Rush and Ngurah Rai. The Indonesian police found heroin strapped to the bodies of these four people. Soon after, Andrew Chan was arrested by INP officers at Denpasar Airport: his suitcase had 0.01 grams of heroin in it. Also, on the night of 17 April, in a hotel in Kuta, Myuran Sukumaran, Tan Duc Thanh Nguyen, Matthew Norman and Si Yi Chen were arrested. The INP found nearly 350 grams of heroin in a bag at the Kuta motel. In total, this group of nine Australians was planning to smuggle eight kilograms of high-grade heroin into Australia. From this time on, they were known as the 'Bali Nine'. All were charged with trafficking heroin and faced the possibility of receiving the maximum penalty of death by firing squad, or lesser penalties of a life sentence or 20 years in jail.

In 2015 Andrew Chan and Myuran Sukumaran were executed by firing squad. This was an event that came to the attention of all Australians and involved statements in Parliament and pleas by Prime Minister Tony Abbott and Foreign Minister Julie Bishop to spare the lives of these two men. Despite being characterised as the 'king-pins' or 'ringleaders' of the Bali Nine's smuggling operation, Chan and Sukumaran had distinguished themselves as model prisoners in their 10-years in jail. Their executions shocked the nation and had a serious impact on Australia–Indonesian relations.

The international community places a high priority on cooperation in dealing with **transnational**



Figure 14.1 Myuran Sukumaran at the Denpasar District Court in 2006.

crime and many agreements and treaties have been made between nations to facilitate cooperation. However, the international community is also committed to human rights and sometimes there is a clash between cooperation in transnational crime and commitment to human rights. In the case of the Bali Nine there is a clash between Australia's cooperation with Indonesia in combating drug trafficking, and Australia's commitment to abolishing the death penalty.

transnational crime

crime that occurs across international borders, either in origin or effect

Planning

The young Australians had been recruited by contacts they had made in nightclubs in Australia. The heroin was sourced from Thailand and the

Table 14.1

Name	Age in 2005	From	Role	Sentence
Andrew Chan	21	Sydney	Ringleader	Execution
Myuran Sukumaran	24	Sydney	Ringleader	Execution
Matthew Norman	18	Sydney	Drug mule	Life imprisonment
Scott Rush	19	Brisbane	Drug mule	Life imprisonment
Tan Duc Thanh Nguyen	21	Brisbane	Financier	Life imprisonment
Si Yen Chen	20	Sydney	Drug mule	Life imprisonment
Martin Stephens	29	Wollongong	Drug mule	Life imprisonment
Michael Czugaj	19	Brisbane	Drug mule	Life imprisonment
Renae Lawrence	27	Newcastle	Drug mule	20 years imprisonment

group was to pick it up and smuggle it back into Australia.

Andrew Chan, Myuran Sukumaran and Tan Duc Thanh Nguyen were in charge of this smuggling operation. The other six were to be **'drug mules'**, carrying the drugs back to Australia. The drug mules were organised into separate teams and did not know of each other's existence until their arrest. All nine went on a 'holiday' to Bali, a very popular destination for Australian tourists.

drug mule

a person who transports drugs in their luggage, by ingesting them in pouches, or having them strapped to their body or concealed in some other way

Before leaving for Bali, Andrew Chan met Martin Stephens and Renae Lawrence who were staying in Room 126 at the Formule One Motel in the Sydney suburb of Enfield. Also in the same motel were Matthew Norman and Si Yen Chen staying in room 129. Their suitcases were repacked with items needed for attaching bags of heroin to their bodies such as bandages, fabric bands and tight shorts. Chan then flew to Bali on 3 April. The others stayed at this motel for a few days, and then on 6 April they took the flight to Bali.



Figure 14.2 Signs warning of the death penalty to drug smugglers greet all who enter Indonesia through any of their airports.

Meanwhile, Scott Rush and Michael Czugaj had flown down from Brisbane and were staying at the Spanish Inn Motor Lodge at Strathfield. They had been invited to Sydney by Tan Duc Thanh Nguyen. They were joined at the motel by Myuran Sukumaran who gave them cash and told them to book a holiday to Bali. They took a flight to Bali on 8 April 2005. Sukumaran and Nguyen were on the same plane to Bali.

However, the activities of these young Australians had been followed with great interest by the Australian Federal Police (AFP).

Cooperation between law enforcement agencies

Australian Federal Police

In 2005, the AFP viewed Indonesia as one of the main places from which the drug lords would smuggle their drugs into Australia.

They had been watching the group of young Australians for six months since they received a tip-off from an informant in Brisbane. The AFP were not sure that this was a drug smuggling operation. It took the next few months of surveillance, building profiles and putting together information about friendship and travel plans. By April 2005, the AFP officers involved on the case had a big wall chart connecting each of the individuals under surveillance. There had been a recent crackdown on drug importations and the AFP knew that drug lords were trying every trick in the book to keep up the supply of drugs into Australia. The drug lords were aware of how lucrative the Australian market was. The use of drug mules was one of the many means that the drug lords used to smuggle drugs into Australia.

By 8 April, when all the Australians were in Bali, the AFP had a large amount of intelligence. All their intelligence pointed to Andrew Chan being the organiser. They decided to contact their counterparts in Indonesia.

Legal Links

See the Australian Federal Police website for further information.

Indonesia National Police

AFP cooperation with the **Indonesia National Police (INP)** began in the late 1990s when Indonesia transitioned to a full democracy after the downfall of President Suharto's regime. From this time the AFP gave training and support for the INP's enforcement activities regarding drug smuggling and transnational crime. AFP–INP cooperation intensified in the aftermath of the Bali Bombings of 2002 when the AFP formed a permanent investigative team in Indonesia called Operation Alliance. AFP officers in Operation Alliance gave close support over the next few years in response to the Marriott Hotel bombing in 2003, the bombing of the Australian Embassy in 2004 and the Bali Bombings of 2005.

Indonesian National Police (INP)

In Indonesia they are called the *Kepolisian Negara Republik Indonesia*, which is abbreviated to POLRI

On 8 April, the AFP's senior liaison in Bali, Paul Hunniford, sent a letter to INP in Bali which stated that: '[the] AFP in Australia has received information that a group of persons are allegedly importing a narcotics substance (believed to be heroin) from Bali to Australia.' Four days later, on 12 April, he again wrote to the INP listing the passport numbers, birth dates and likely return dates of eight young Australians. The AFP had no knowledge of Myuran Sukumaran. The INP would soon transmit information about the ninth Australian



Figure 14.3 Emblem of the Indonesia National Police

back to the AFP. Sukumaran was then added to the now substantial AFP wall chart.

After receiving the two letters from the AFP, the INP began surveillance of the nine young Australians in Bali. They focused particularly on Andrew Chan who had been to Bali two previous times in the last six months, one of them with Renae Lawrence. Chan and Lawrence had managed to smuggle a shipment of heroin back to Australia without a hitch in October 2004.

Legal Links

Further information about the relationship between the AFP and INP can be found in the article: 'Partners against crime: A short history of the AFP–INP relationship', *ASPRI*, March 2014, which can be accessed via the following link <http://cambridge.edu.au/redirect/?id=6536>.

The crime

On 8 April, Andrew Chan picked up a suitcase containing five kilograms of heroin, in a specially constructed silver suitcase, from Cherry Likit Bannakorn, a 22-year-old woman from Thailand. Chan was not under surveillance, as the AFP had not yet sent the first of their letters to the INP.

From 12 April, INP officers were stationed in the hotels that the groups of young Australians were staying at and began taking photos and tracking their movements. The original plan was for the nine Australians to return to Australia on 9 April with the heroin. However, Andrew Chan wanted to wait for another shipment of heroin before the drug mules returned home. Bannakorn had not brought enough on her first trip so they had to wait until she could deliver some more heroin. This gave the INP officers more time to continue surveillance and compile more evidence.

At 9 p.m. on 16 April, Chan met again with Bannakorn at Seaview Cottage to collect the rest of the heroin. This time INP officers were filming Chan though they did not know what he was doing in the building for 10 minutes.

As well as visual surveillance, which included numerous photos and some videos, the INP was

also monitoring the phone conversations of the nine Australians. Even though the group spoke in code with each other on the phone, the metadata alone connected all of the Bali Nine together making it difficult for some of them to claim, as they later did, that they didn't know the other members of the group.

On 17 April, Andrew Chan checked out of his hotel and went to another hotel where he and Sukumaran met Scott Rush and Michael Czugaj, and taped packages of heroin to their bodies. Then Chan and Sukumaran met and set up the drug mules from the other group, Renae Lawrence and Martin Stephens. The two groups of drug mules, unaware of each other's existence, left in separate taxis to Ngurah Rai Airport in Denpasar.

Nguyen and Sukumaran headed to the Melasti Bungalows where they met up with Si Yen Chen and Matthew Norman. Meanwhile, Chan got a taxi to Ngurah Rai Airport. During all of this time every move had been under surveillance of the INP.

Arrest

At 8 p.m. on Sunday 17 April, Martin Stephens and Renae Lawrence arrived at Ngurah Airport. From the moment they got out of the taxi, every move they made was being watched. However, they were unaware of this as they passed through security without a hitch, not even being picked up by the sniffer dogs. Then the pair was approached by a customs officer, who asked them to follow him so they could be searched. This search revealed the packages of heroin.

Meanwhile, at 8:30 p.m., Scott Rush and Michael Czugaj left the hotel for Ngurah Airport. At the immigration counter at the airport the two men were detained by customs officials and escorted into an office where they found Martin Stephens and Renae Lawrence. Rush and Czugaj were searched. Between them, the four drug mules were found to be carrying 8.2 kilograms of heroin worth up to \$4 million on the streets of Sydney.

Unaware that his four drug mules had been detained by customs, Andrew Chan then arrived at the Airport and checked into the same flight as Stephens and Lawrence. Soon after, customs officials and police arrived and asked Chan to come with them.



Figure 14.4 Scott Rush caught with heroin strapped to his body, at Denpasar Airport.

Police then went to the Melasti Bungalows where Sukumaran, Matthew Norman, Si Yen Chen and Tan Duc Thanh Nguyen were celebrating Sukumaran's 24th birthday. Again, the three men did not know that every move that they had made that day had been under surveillance. The police searched the hotel room, and in a rucksack they found 334.26 grams of heroin. The four men were handcuffed and taken to Polda police station.

Review 14.1

- 1 What made the Bali Nine's crime a transnational rather than a domestic crime?
- 2 Describe the content of the letters that the AFP sent to the INP on 8 and 12 April.
- 3 Explain what methods the AFP and INP used to gather intelligence on the Bali Nine before their arrest.
- 4 How were each of the Bali Nine arrested?

14.2 Legal responses

Trials

The Indonesian justice system is based on Dutch law inherited from the days when they had been part of the Dutch empire in Asia. As a result, Indonesian law follows the European system, which is **inquisitorial**, rather than the **adversarial** system followed in Australia. There are no juries and each case is presided over by a panel of three to five judges. As well as leading the questioning of witnesses and suspects, the judges also decide the guilt or innocence of the accused.

inquisitorial system

a legal system where the court or a part of the court (e.g. the judge) is actively involved in conducting the trial and determining what questions to ask; used in some countries which have civil legal systems rather than common law systems

adversarial system

a system of resolving legal conflicts, used in common law countries such as England and Australia, which relies on the skill of representatives for each side (e.g. defence and prosecution lawyers) who present their cases to an impartial decision-maker

In court the Indonesian prosecutors had decided to bring the same charge against all Bali Nine defendants, regardless of their role – ‘exporting narcotics as part of an organisation’. This charge carried the death penalty. Once the trials were underway in Denpasar District Court, the prosecutors followed the same strategy in each case of trying to get the co-accused to give evidence against each other. The four mules, Lawrence, Czugaj, Rush and Stephens, all followed the same story that they had told from the day of their arrest that they had no idea of the true reason of why they were in Bali until it was too late and that they had been threatened by the ringleaders, Chan and Sukumaran. When the four drug mules testified, they backed up each other’s story. When the prosecutors made their sentence request they asked for 20 years for Lawrence, but life for Czugaj, Rush and Stephens. The judges agreed and imposed these sentences.

The ringleaders, Chan and Sukumaran, along with Norman, Chen and Nguyen followed the same strategy of denial of any involvement or any knowledge about the drugs. When these five were called to testify, they all said that they did not wish



Figure 14.5 Tan Duc Thanh Nguyen, Si Yi Chen and Matthew Norman wait for the beginning of their trials on 12 October 2005.

to give evidence because they were also suspects in the same case. When asked about their responses to the drug mules accusations against them, they all issued denials.

The judges were visibly displeased and they were particularly annoyed with the testimonies of Chan and Sukumaran despite the glowing personal references that were presented on their behalf during the trials. Sukumaran’s defence lawyer, Mochamad Rifan, had portrayed his client as a scapegoat for the mules, who had tried to absolve themselves of all blame by putting all responsibility onto Sukumaran and Chan.

The prosecutors were harsh in their condemnation of Chan and Sukumaran. The prosecutors at Sukumaran’s trial said that he had been evasive during the trial and was indeed guilty and not a shred of leniency should be given. They demanded the death penalty. Similarly, Chan was described as being the ‘driving force’ of the Bali Nine operation and that he had failed to cooperate and had given confusing and convoluted evidence. Therefore, the prosecutor demanded the death sentence for Chan in his trial. In both cases, Judge Supratman said that there were no mitigating factors that might lessen the sentence and commented that a drug dealer was as bad as a terrorist. As a result, the judge found the two men guilty and sentenced them to death by firing squad. These were to be the first Australians in history sentenced to death in

Indonesia. Meanwhile, Norman, Chen and Nguyen were given life sentences.

The last of the Bali Nine to be tried were the men who made up the so-called Melasti Group. These were the men arrested at the Melasti Beach Bungalows. Even though the evidence against the Melasti Group was more circumstantial, it pointed to Chen and Norman being next in line to be the drug mules to transport heroin to Australia once they received the next shipment of heroin from Thailand. Each of the three men said that they had been in the wrong place at the wrong time. When each was asked by the judge whether they had regrets, they all said that they did. But when they were asked if they acknowledged guilt, they said they did not. They too were given life sentences.

Review 14.2

- 1 Identify the arguments the four drug mules used in their defence at their trials.
- 2 Describe the strategy Andrew Chan and Myuran Sukumaran used in their defence.
- 3 What was the outcome of the trials for each member of the Bali Nine?

Imprisonment and rehabilitation

After their arrest, the nine young Australians were held at the cells in Polda Jail, though soon Chan and Sukumaran were split from the other seven due to claims by some that they feared the two 'ringleaders.' Eventually though, all nine ended up in Kerobokan Prison on 28 July 2005.

Kerobokan Prison

Information about Kerobokan Prison is available in the digital versions of the book.

The eight male members of the Bali Nine were lodged in the maximum-security block or 'tower block' as it was called in the prison. Renae Lawrence was housed with the female prisoners in another block.

In 2005, Kerobokan Prison had a bad reputation, but since then it has been transformed. This has

largely been due to the Ilham Djaya who was head of the prison until April 2008. Ilham's number one priority was to clean up corruption in the prison. Gangs and drug dealers no longer ran the jails and the drab grounds of the prison have been revamped and there are now gardens and lawn, worked on by prisoners.

Ilham's other priority was to rehabilitate the inmates. He sacked many of the guards and difficult prisoners were moved to other jails.

Within the tower, the eight male members of the Bali Nine were given some freedom to reconfigure and redecorate their cells. They set up some gym equipment in their cells and Myuran Sukumaran had a screen-printing machine. They were allowed out of the tower into the rest of the prison during the day.

Despite the fact that the four of them who were drug mules had testified against Chan and Sukumaran, they all get on well. In fact, reports indicate that Chan and Sukumaran had demonstrated kindness to their fellow Bali Nine prisoners. Chan had become a motivator, always insisting that the men keep active and not just sit around. Chan also had many repeat visitors who spoke of his engaging personality. Sukumaran developed a talent for art, and became a mentor to other prisoners.

Ilham Djaya was replaced in 2008 by Mr Siswanto, who was the governor of the prison for the next three years. Under his guidance, the Bali Nine prisoners in Kerobokan Prison were able to continue their rehabilitation. In 2010 he gave character evidence supporting Chan and Sukumaran.



Figure 14.6 Myuran Sukumaran with some of his artworks painted while in prison.

Legal Links

The SBS documentary, 'The Condemned' can be accessed via the following link <http://cambridge.edu.au/redirect/?id=6537>. It originally aired in November 2010 just days before a final hearing on whether Chan and Sukumaran's death sentences for drug trafficking would be carried out. The documentary gives an insight into their living conditions in Kerobokan Prison and their rehabilitation, as well as a lawyer's perspective.

Research 14.1

Jewel Topsfield's article, 'Bali nine executions: How Chan and Sukumaran's road to redemption changed Kerobokan jail', *SMH*, 22 February 2015, can be accessed via the following link <http://cambridge.edu.au/redirect/?id=6538>.

- 1 How has Kerobokan Prison changed since 2005?
- 2 What was Chan and Sukumaran's reaction on arrival in the prison in 2005?
- 3 Outline the initiatives taken by Chan and Sukumaran to improve life in the prison for the inmates.
- 4 How does the author describe Sukumaran?
- 5 Why do the other inmates and the prison guards fear life in Kerobokan prison once Chan and Sukumaran are gone?

Appeals

The appeals process available to the Bali Nine commenced with an appeal to their sentences given in the Denpasar District Court to the Bali High Court. Appeals from decisions made in the Bali High Court go to the Indonesian Supreme Court. The Indonesian Supreme Court oversees 68 high courts across Indonesia. The Supreme Court only considers questions of law, not fact. Another avenue that can be taken is to appeal to the Constitutional

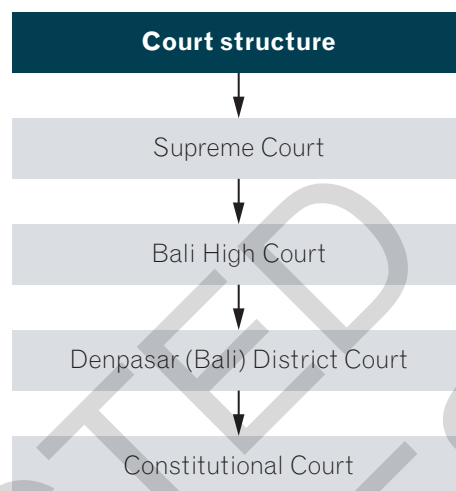


Figure 14.7 The court hierarchy in Bali

Court. This court has the same standing as the Supreme Court.

All members of the Bali Nine appealed their sentences and exhausted the appeals process. Appealing a conviction could be risky as sentences can be increased as well as decreased, as members of the Bali Nine soon found out.

- 26 April 2006 – Bali High Court
Chan and Sukumaran's death sentences confirmed.
- 27 April 2006 – Bali High Court
Life sentences of Chen, Czugaj, Lawrence, Nguyen and Norman reduced to 20 years' imprisonment.
Life sentences on Rush and Stephens upheld.
- 6 September 2006 – Supreme Court
Convictions of the 'Melasti Three' and Rush upheld, and death penalty imposed, rather than lighter sentences granted by Bali High Court. This was in response to prosecution appeals about the sentence reductions given by the Bali High Court. Chan and Sukumaran' death sentences upheld.
Stephens's life sentence upheld.
Czugaj's life sentence reinstated.
- 3 May 2007 – Constitutional Court
Ruled that Indonesian law permitted the death penalty for the crime of drug trafficking. This was in response to Chan, Rush and Sukumaran lodging a constitutional challenge against the death penalty.

- 6 March 2008 – Supreme Court
Final appeal to the court – a *Peninjauan Kembali* or 'PK'.
'Melasti Three's' PKs upheld, and death sentences reduced to life imprisonment.
- 10 May 2011 – Supreme Court
Rush death sentence reduced to life imprisonment.
- 10 May and 6 July 2011 – Supreme Court
Appeals by Chan and Sukumaran against death penalty dismissed.
- 13 May and 9 July 2012 – Indonesian President Susilo Bambang Yudhoyono
Appeals by Chan and Sukumaran for pardon rejected.
- December 2014 and January 2015 – Indonesian President Joko Widodo
Appeals by Chan and Sukumaran for clemency rejected.
- January 2015 – Denpasar District Court
Application by Chan and Sukumaran for a judicial review into their cases rejected.
- 9 February 2015 – Indonesian Court
Challenge against President Widodo's refusal to grant pardons dismissed.
- 6 April 2015 – Indonesian Administrative Court
Appeal against the ruling that they could not challenge Indonesian president's refusal to grant clemency rejected.

At the end of the appeals process, six of the Bali Nine are serving sentences of life imprisonment and one is serving a sentence of 20 years' imprisonment. The remaining two, Andrew Chan and Myuran Sukumaran, were executed by firing squad on 29 April 2015.

Execution of Andrew Chan and Myuran Sukumaran

Information about the execution of Chan and Sukumaran is available in the digital versions of the book.

Review 14.3

- 1 Why did Kerobokan Prison have a bad reputation by the time that the Bali Nine arrived there?
- 2 List the different avenues of appeal taken by the lawyers for Chan and Sukumaran.
- 3 What were the outcomes of appeals by other members of the Bali Nine?
- 4 How would the execution have been carried out?

Research 14.2

Read 'Death for Bali ringleaders' which appeared in *The Age* after Chan and Sukumaran were given death sentences in February 2015. The article can be accessed via the following link <http://cambridge.edu.au/redirect/?id=6530>.

- 1 Where was this case heard?
- 2 What reasons did the judge Arief Supratman give for giving the two men the death penalty? (Give four reasons found throughout the article.)
- 3 What was the reaction of prominent Australians?
- 4 What comment did AFP chief Mick Kelty make?
- 5 According to their lawyers, what was the next legal move for Chan and Sukumaran?
- 6 If all else failed, what was the chance of a presidential pardon?

14.3 Non-legal responses

Public campaign

Although their July 2012 appeal had failed, there did not seem to be a rush to have Andrew Chan and Myuran Sukumaran executed. This changed in October 2014, with the election of President Joko Widodo, who had run on a campaign of being tough to drug smugglers.

Public opinion in Australia about Chan and Sukumaran had changed significantly since 2005: the Australian public now saw two quietly spoken and thoroughly reformed men. Following President Widodo's December 2014 statement that no mercy would be shown to drug dealers, supporters of Chan and Sukumaran strengthened public campaigns to pressure the Indonesian president. One of these was the Mercy Campaign, which attracted over 200 000 signatures to a petition asking for clemency that was directed to President Joko Widodo. Newspapers, such as the *Sydney Morning Herald*, added their pleas to the cause, with an editorial on 23 February stating that the 'two men who have apologised and atoned from their crimes, pioneers of rehabilitation in Indonesia's prison system, will be killed senselessly.' Also, the NSW Premier Mike Baird added his voice to



Figure 14.8 Indonesian President Joko Widodo had run on a campaign of being tough to drug smugglers.



Figure 14.9 The Mercy Campaign attracted over 200 000 signatures to a petition asking for clemency.

the cause stating that: 'We all understand the need for justice – but not like this. I stand for mercy.' Radio broadcasters, news commentators, journalists, actors and musicians also added their voices to the Mercy Campaign.

On 29 April 2015, when all hope was gone, people gathered around Australian and in Bali in all-night vigils until the time of execution.

Legal Links

View the Mercy Campaign website for more information.



Figure 14.10 Foreign Affairs Minister Julie Bishop and Deputy Opposition Leader Tanya Plibersek during a candlelight vigil for Andrew Chan and Myuran Sukumaran.

International diplomacy

There were various diplomatic attempts to prevent the executions.

- In January 2015, Prime Minister Tony Abbott made a direct appeal to Indonesian President Widodo to show mercy.
- On 5 March, Foreign Minister Julie Bishop again made an attempt to stop the executions by offering to repatriate to their homeland three Indonesian drug criminals in return for sparing the lives of Chan and Sukumaran.
- United Nations Secretary General Ban Ki-Moon also directly appealed to the Indonesian President.

There was also diplomatic fall-out after the executions. Prime Minister Tony Abbott announced that Australia would withdraw its ambassador from Indonesia and relations between the two countries soured.

Research 14.3

The article 'Bali Nine: Julie Bishop, Tanya Plibersek plead for clemency for Andrew Chan and Myuran Sukumaran,' *Nine News*, 12 February 2015, can be accessed via the following link <http://cambridge.edu.au/redirect/?id=6540>.

- 1 What occurred in Parliament on this day and why was this unusual?
- 2 Identify the arguments the deputy Labor leader used in her address to Parliament.
- 3 Identify the arguments Foreign Minister Julie Bishop used in her address to Parliament.
- 4 Describe the reaction of the Indonesian Foreign Minister.

Memorials

Many people tried to take something positive from the lives of these young men or tried to honour their memory in some way. Others were motivated to campaign for an end to the death penalty altogether.

One attempt to memorialise the men for a good cause was the Australian Catholic University's (ACU) creation of two scholarships, to be made available to Indonesian undergraduate students. The scholarships offer the equivalent of full tuition for a period of up to four years, at any of the ACU's campuses. The scholarship would be awarded on the basis of an essay on the sanctity of human life. Professor Craven, the Vice Chancellor of the Australian Catholic University, had been one of the founders and co-spokesmen of the Mercy Campaign. Professor Craven said that: 'While our calls for mercy for Mr Chan and Mr Sukumaran were ultimately rejected, we strongly believe that hope remains for prisoners around the world who face a similar fate. In memory of Mr Chan and Mr Sukumaran each of us can take action to end this punishment.'

Legal Links

Further information about the Australian Catholic University scholarships can be found via the following link <http://cambridge.edu.au/redirect/?id=6541>.

Review 14.4

- 1 Identify all of the public figures who came out in support of Andrew Chan and Myuran Sukumaran.
- 2 Describe the Mercy Campaign.
- 3 Outline the offer Foreign Minister Julie Bishop made to the Indonesian Government.
- 4 What initiative did Professor Craven announce in honour of Chan and Sukumaran?

14.4 Effectiveness of responses

The Bali Nine is a significant example of the transnational crime affecting Australian citizens. It brings to the fore two competing interests of the Australian legal system, the protection of its citizens abroad and the fight against transnational crime. Both the political leaders and the legal system need to find the right balance between these two priorities. This study raises the issue of the sanctity of life and the extent to which international law, with its clear statements on this, can deliver certainty in the protection of this principle in practice.

This case also raises the issues that confront Australians abroad who have to navigate the legal system of a foreign country, a situation that confronts a growing number of Australians who live or work overseas. Therefore it is important that Australia remains on good relations with as many countries as it can, and has in place understandings with those countries on how they should treat Australians in their justice systems and how we should treat their nationals in the Australian justice system.

This case also concerns the purpose and effectiveness of punishment. Is punishment in the legal system only about retribution and deterrence? To what extent should rehabilitation have an impact on a prisoner's sentence? Both Andrew Chan and Myuran Sukumaran were considered to be rehabilitated in the ten years they were in prison yet it appears this was not taken into account in regard to their death sentence.

Andrew Chan and Myuran Sukumaran were the first Australians ever to be executed in Indonesia. Is the Australian public and the government comfortable with the idea that this could happen again? So, the question is how effective is the law in dealing with the tension between international cooperation while dealing with transnational crime and Australia's own anti-death penalty stance, as well as our international obligations in regard to human rights law? If Australia is serious about working for the international abolition of the death penalty, then is Australia prepared to be consistent in its opposition to the use of the death penalty in Indonesia in all circumstances?

Australian–Indonesian cooperation

In the case of the Bali Nine it seems that the actions followed by the AFP that gave preference to cooperation over human rights obligations has been controversial.

From the early days of the case, the AFP was under fire for its role in facilitating the arrest of the Bali Nine by INP in Bali. The two letters sent by Paul Hunniford of the AFP, the senior liaison officer in Bali, on 8 and 12 April 2005, handed over all the key information to the INP. The AFP left it up to their Indonesian counterparts to decide whether the INP would intercept and arrest the young Australians in Bali, or let them leave Bali for the AFP to arrest on arrival in Australia. The AFP claimed that the nature of international cooperation over transnational crime fighting demanded close cooperation between countries, and that they could not put conditions on the release of information to their Indonesian counterparts.

In fact, in their letter 8 April 2005, the AFP did indicate their preference that the Bali Nine be allowed to return to Australia for arrest (although it was not a precondition of sharing the information). However, when the INP had arrested the Bali Nine and then asked the AFP to send on the evidence that they had compiled in Australia, the AFP sent the information without requesting that the young Australians be exempted from the death penalty.

Most commentators agree that the actions of the AFP in this matter were lawful, and that there are benefits to having a good relationship with Indonesia: there are cases where terrorist plots have been foiled, and where threats to both countries have been removed.

However, others feel that by sharing information with the INP, while knowing the death penalty was almost certain, the AFP may have acted lawfully but they did not act morally. It is arguable that this does not fit in with Australia's obligations under international law.

Arguments for and against sharing information without conditions

More information about arguments for and against sharing information without conditions is available in the digital versions of the book.

The death penalty

Cindy Wockner, one of the authors of the comprehensive book on the nine Australians, 'Bali 9: The Untold Story' had this to say about the execution of Chan and Sukumaran:

For years I interviewed them in jail and visited and interacted with them. As I watched their transformation there was no doubt their rehabilitation was genuine. They had become decent and honourable young men who were trying, every day, to make amends for their crime. They knew they deserved to be in jail ... Sukumaran and Chan were not the same people who were arrested on April 17, 2005. They had reformed and helped reform so many other lives. By killing them Indonesia lost its best chance yet to fight the scourge of drugs. The world is a poorer place. RIP Andrew Chan and Myuran Sukumaran.



Figure 14.11 After ten years in Kerobokan Prison, both Andrew Chan and Myuran Sukumaran were considered to be rehabilitated.

Australian law

Australia's position on the death penalty in domestic law has been crystal clear for many years. In 1967, Ronald Ryan became the last person in Australia to be executed. The *Death Penalty Abolition Act 1973* (Cth) states that 'a person is not liable to the punishment of death for any offence'. No Australian jurisdiction uses the death penalty today. In Parliament, there is a bipartisan approach to the death penalty with the major parties opposed to any return of capital punishment.

International law

The situation regarding the death penalty in international law is unresolved. While it is not illegal, we can see a movement towards its global abolition. The *International Covenant on Civil and Political Rights* (ICCPR) does allow for it, but only under limitations listed in Article 6.2:

International Covenant on Civil and Political Rights (ICCPR), Article 6.2

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the *Convention on the Prevention and Punishment of the Crime of Genocide*. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

However, the *Second Optional Protocol of the ICCPR* leaves no doubt as to the United Nations' position of the death penalty. In Article 1 the Protocol states:

Second Optional Protocol of the ICCPR, Article 1

- 1 No one within the jurisdiction of a State Party to the present Protocol shall be executed.
- 2 Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

There are numerous other treaties and covenants that also enshrine opposition to the death penalty. It is also to be noted the Rome Statute of 1998, which led to the creation of the international Criminal Court, excludes the use of the death penalty. So it is clear that we are seeing a movement towards global abolition of the death penalty. Since 1990, it has been abolished in over 40 countries, and has generally not been reintroduced. However, the increased amount of transnational crime means that cooperation between national police forces in the fight against transnational crimes is steadily increasing. This has resulted in many mutual assistance treaties between governments, which in turn has led to tension in the international sphere between the recognition of human rights in the extradition process and the need for cooperation when dealing with international crime. Currently, the balance is tipping in the direction of human rights being given the priority in the extradition processes between countries. In extradition cases it seems that countries are able to resolve the tension between international cooperation and the commitment to the abolition of the death penalty. The question is whether cooperation between national police forces should also move in this direction.

Legal Links

View the following via the given links:

- *International Covenant on Civil and Political Rights* (ICCPR), Article 6.2 <http://cambridge.edu.au/redirect/?id=6542>.
- Second Optional Protocol of the ICCPR, Article 1 <http://cambridge.edu.au/redirect/?id=6543>.
- Death Penalty Database – Indonesia <http://cambridge.edu.au/redirect/?id=6544>.

Australia's policy on global abolition of the death penalty

If Australia does want to work towards the abolition of the death penalty in countries in which large numbers of Australians go for work or tourism, then it needs to follow a consistent and long-term approach. Australia's position on the death penalty

in regard to the Bali Nine was compromised by its support for the execution of the Bali Bombers in 2008. To be effective with Indonesia in promoting death penalty abolition there needs to be a principled and consistent policy by the Australian Government.

In a 2002 report for the Lowy Institute, Dr Dave McRae argued that Indonesia is the key to getting the abolition of the death penalty in the South-East Asian region. Indonesia is in fact moderate in its use of the death penalty in the region compared with countries like Malaysia and Singapore. There are strong lobby groups within Indonesia both for and against the death penalty and the momentum for it could progress to see either its abolition or its increased use. However, the one factor that could tip Indonesia in the direction of abolition is the fact there are many Indonesian nationals on death row in other countries and the Indonesian Government has been working hard in opposing the imposition of the death penalty on its nationals. Indonesia could be won over by the argument that if they abolished the death penalty at home it would be easier to plea for mercy for Indonesians facing execution in other countries.

Dr McRae argues that the abolition of the death penalty in Indonesia would contribute to the protection of Australians in Indonesia and minimise the threat to relations between the two countries. Also, it would build momentum towards death penalty abolition in the South-East Asian region. But for this to be achieved:

The Australian government must avoid further equivocation on capital punishment. No advocacy will be effective if Australia is not a principled and consistent opponent of the death penalty.

Legal Links

The article, 'A Key Domino? Indonesia's Death Penalty Politics,' *Lowy Institute*, March 2012, by Dr Dave McRae can be accessed via the following link <http://cambridge.edu.au/redirect/?id=6545>.



Figure 14.12 Justice Michael Kirby

In 2003, former High Court judge Justice Michael Kirby said the following in regard the death penalty:

We have set ourselves upon a path to a higher form of civilisation. It is one committed to fundamental human rights. Such rights inhere in the dignity of each human being. When we deny human dignity we diminish ourselves. We become part of the world of violence. Judges and lawyers stand for the rational alternative to a world of terror and violence. The law will often fail. But inflicting the death penalty is the ultimate acknowledgment of the failure of civilisation.

Review 14.5

- 1** Why are the executions of Andrew Chan and Myuran Sukumaran significant for Australia?
- 2** What has been the criticism of the role of the AFP in the Bali Nine case?
- 3** Were the actions of the AFP in regard to the Bali Nine lawful:
 - a** in domestic law?
 - b** in international law?
- 4** Describe Cindy Wockner's opinion of the execution of Chan and Sukumaran.
- 5** Identify the domestic actions and laws that have ended the death penalty in Australia.
- 6** How is the death penalty viewed in:
 - a** the ICCPR?
 - b** the Second Optional Protocol of the ICCPR?
- 7** Discuss the current situation with the abolition of the death penalty globally.
- 8** Outline Australia's policy on the death penalty.
- 9** What does Dr McRae recommend Australia's policy and actions in regard to the death penalty need to be?
- 10** Reflect on Justice Michael Kirby's view of the death penalty.

Chapter summary

- The Bali Nine case is a classic example of a transnational crime involving police agencies from a number of national police forces.
- The Australian Federal Police (AFP) and the Indonesian National Police have been cooperating since the late 1990s.
- Information from the AFP to the Indonesian police made it possible for the Bali Nine to be arrested in Bali.
- Indonesia has a mandatory death sentence for drug smugglers.
- The Bali Nine had to navigate a totally different legal process in Indonesia that is based on the inquisitorial system.
- Andrew Chan and Myuran Sukumaran were considered to be reformed after 10 years in prison but it appears this carried no weight in their appeals for clemency to the Indonesian president.
- If Australia is serious about working towards the abolition of the death penalty internationally, it needs to have a far more consistent approach.

Chapter summary questions

Multiple-choice questions

- The AFP was established after:
 - the bombing of the Hilton Hotel in 1979
 - World War Two
 - the September 11 terrorist attacks in 2001
 - Bali Bombings in 2002
- The highest court in the Indonesian judicial system is the:
 - High Court
 - District Court
 - Supreme Court
 - Administrative Court
- Since 2005, Kerobokan Prison has been:
 - riddled with corruption and dominated by gangs
 - reformed and focused more on rehabilitation
 - closed down
 - expanded
- The AFP's role in the Bali Nine cases has been criticised for:
 - prioritising cooperation with Indonesia above human rights concerns
 - failing to work effectively with the Indonesian police against transnational crime
 - involving themselves in Indonesian politics
 - being too slow to act when tipped off about the Bali Nine in Australia
- The death penalty has not been used in Australia since:
 - 1967
 - 1975
 - 1990
 - 2005

Short-answer questions

- 1 Outline the role and work of the Australian Federal Police.
- 2 What was the Bali Nine's plan to smuggle heroin into Australia?
- 3 What surveillance methods did the Indonesian National Police use to gather evidence on the Bali Nine before arrest?
- 4 How were the Bali Nine arrested?
- 5 Describe the conditions in Kerobokan Prison.
- 6 Outline the structure and processes of the judicial system in Indonesia.
- 7 What role did Australian politicians play in the attempt to save Andrew Chan and Myuran Sukumaran?
- 8 How are executions carried out in Indonesia?
- 9 How does the existence of the death penalty in Indonesia pose an increased threat to Australians?
- 10 What do the international covenants say about the death penalty?

Extended-response questions

- 1 Describe the relationship between Australia and Indonesia between 2002 and 2015.
- 2 Evaluate the strategies used by each member of the Bali Nine in their trials.
- 3 Compare and contrast the Indonesian and the Australian judicial systems.
- 4 Discuss how Australia could work towards the abolition of the death penalty in the South-East Asian region.
- 5 Evaluate the argument that the Australian Government needs to take a far more proactive role in working towards the abolition of the death penalty.

Marking criteria for the extended-response questions can be found on the Cambridge GO website. Refer to these criteria when planning and writing your responses.

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