

Message to Indonesia: the meaning of Sovereignty

By Greg Craven, 17 Feb 2015

IF there is one thing that lies at the heart of the fate of condemned Australians Andrew Chan and Myuran Sukumaran, it is sovereignty. This is this principle on which Indonesia takes its stand. It is a sovereign nation and entitled to apply its laws. Under these laws, the Bali two must die.

So it is vital on both sides of the debate to understand what sovereignty means, and in particular what it means in this situation.

That Indonesia is a sovereign nation, and a great sovereign nation, no one can doubt. Nor can it be denied that it is absolutely entitled to apply its own laws. The real question is whether it follows from this that there is no alternative but for Indonesia to shoot the two Australians to death.

The unequivocal answer is no. What is more, that answer proceeds directly from the full sovereignty and power of the Indonesian republic, not through any denial of its total right to control its own internal affairs.

Sovereignty is an ancient concept

Sovereignty is an ancient concept, well understood by lawyers and philosophers. In the context of nation-states it broadly means the unlimited power to make such laws as they think fit and to administer them according to their terms.

This is an awesome capacity, coming as close to the power of God as it is possible to come on earth. Nothing is beyond reach.

But it does not follow from this that a sovereign nation is a prisoner of its own capacity, bound to exercise its sovereignty in a formulaic way, as rigidly and harshly as possible, constrained by every announced position and declared procedure.

The hallmark: the ability to change tack

On the contrary, the hallmark of true sovereignty is the ability to change tack. Servants must follow. Sovereigns may make and change their own course.

Applying this to Chan and Sukumaran, the sovereignty of Indonesia over their fate already has been demonstrated for the world to see. The two men are absolutely in the power of the Indonesian state. It and it alone will decide whether they live or die.

But exercising sovereignty is entirely different from possessing it. Precisely because it is sovereign — all-powerful — Indonesia can no more be bound to execute the two Australians than it can be bound not to. As a sovereign, it retains a free choice to the very last.

Not bound by past expression of opinion

This is the vital point. A true sovereign is not bound by past expression of opinion, even its own. It does not have to follow past protocols or precedents set only by itself. The fact President Joko Widodo has consistently said that the two men will be executed certainly binds them, but as the head of state of a sovereign nation it does not bind him. A sovereign always has the right to right to consider further facts, to show mercy or to just change their mind.

Indeed, one of the hallmarks of true sovereignty is the refusal to be constrained by petty considerations: whether an action is consistent with previous positions, how it will play politically, whether someone may claim it is weak.

The state retains the right to adjust its position

Real sovereigns are marked by the confidence of their judgment. They understand that, on the world stage, it is the state that always retains the right to adjust its position, to make its mind up freely, that is strong.

And what could be stronger than Indonesia deciding, not because Australia wants it to but by its own judgment, to show these two pathetic men mercy? Who looks like the sovereign in this pitiful equation? Only Jakarta.

The other thing to remember about sovereignty is that it is not the same as autocracy. Sovereignty is exercised through the law, not over it. It is Indonesian law that is sovereign here. This is vital because the sovereign law of Indonesia provides clear signals of the direction in which sovereign powers should be exercised.

Mercy is part of Indonesian and Australian law

Notably, mercy is as much part of Indonesian law as it is part of Australian law. This is why the President is empowered to grant mercy, and indeed is required to consider granting mercy to Chan and Sukumaran.

To consider granting mercy, each case must be assessed on its merits. It is not possible to say: no mercy for drug runners, or murderers, or terrorists. To bind one's hands like this is less than sovereign. In the same way, all legal processes must be exhausted before a person is executed. This is not a limit on Indonesian legal sovereignty: it is obeying it.

So let there be no doubt. Indonesia is sovereign and, precisely because of this, can extend mercy.

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