



Implementation of the Palermo Protocol Regarding the Crime of Human Trafficking: A State Responsibility Perspective

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Abstract

This study examines the implementation of the Palermo Protocol in the handling of human trafficking and its implications for the responsibility of ratifying states, taking as its focus the protection of Indonesian nationals trafficked into online scam operations in Cambodia. It is normative legal research employing statutory, conceptual and case approaches. The study finds that ratification of the Palermo Protocol through Law Number 14 of 2009 did more than incorporate an international instrument into the domestic legal order: it converted the Protocol's standards into binding obligations of conduct owed by Indonesia under the principle of *pacta sunt servanda*, obligations which Law Number 21 of 2007 substantially transformed into national criminal law. The gap therefore lies not in the norms but in their operation. Weak interstate coordination, the limits of cross-border jurisdiction, protracted mutual legal assistance, difficulties of victim identification and inadequate recovery mechanisms are not merely practical obstacles; they are failures to discharge an obligation of due diligence, and as such engage the international responsibility of the ratifying state rather than excusing it. The analysis further shows that responsibility falls upon both the state of origin and the state of destination, and that it is measured by the fulfilment of victims' rights rather than by the number of prosecutions secured. The study concludes that the effectiveness of the Palermo Protocol depends upon translating ratification into institutional capacity, harmonised cross-jurisdictional procedure and enforceable victim recovery, failing which state responsibility remains formal rather than substantive.

Keywords: *Human Trafficking; Palermo Protocol; State Responsibility; Victim Protection.*

I. INTRODUCTION

Human trafficking is a serious and organised form of transnational crime, carried out through a sequence of acts ranging from recruitment, transportation, transfer and harbouring to the exploitation of the victim. The offence is committed by unlawful means, including deception, abuse of vulnerability, threats, violence and the abuse of power or of a position of dominance. In practice it is executed through structured mechanisms involving a plurality of actors, and typically features forged documents, restrictions upon the victim's liberty and coercive control directed at exploitation.¹ Because such offending is committed by networks that operate across national boundaries, and because it has developed markedly in its patterns, its network structures and its use of technology, and given its grave consequences for human dignity, it is properly classified as an extraordinary crime.²

Recognising the cross-border character of the offence, the international community established a global legal framework through the United Nations Convention against Transnational Organized Crime of 2000, supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which Indonesia has since adopted.³ Those instruments oblige states parties to criminalise trafficking in persons, to afford protection to victims, to undertake preventive measures and to strengthen cross-jurisdictional cooperation so that the offence may be addressed effectively.⁴

Indonesia, for its part, possesses a reasonably clear legal framework for dealing with trafficking in persons. Law Number 21 of 2007 governs the eradication of the offence and is supported by Government Regulation Number 9 of 2008 on integrated services for witnesses and victims and by Presidential Regulation Number 69 of 2008 establishing the Task Force for the Prevention and Handling of Trafficking in Persons. Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers is also closely connected, since a great many victims are recruited under the guise of overseas employment placement.⁵

Since the resumption of international mobility and migration after the Covid-19 pandemic, the propensity of Indonesian nationals to seek work

¹ Anne T. Gallagher, *The International Law of Human Trafficking*, Cambridge University Press, Cambridge, 2010, ISBN 978-0-521-19107-4, p. 29.

² Lidia Veronica Sitania and Eko Suponyono, "Akomodasi Pemberantasan Tindak Pidana Perdagangan Orang dalam Aspek Hukum Internasional dan Nasional", *Jurnal Pembangunan Hukum Indonesia*, Vol. 2, No. 1, 2020, <https://doi.org/10.14710/jphi.v2i1.38-54>, p. 40.

³ United Nations, *United Nations Convention against Transnational Organized Crime*, 2000, Article 25, read with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000.

⁴ Gallagher, *op. cit.*, pp. 71–75.

⁵ Republic of Indonesia, Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons, State Gazette of the Republic of Indonesia of 2007 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 4720.

abroad has continued to rise. That phenomenon has been accompanied by an increased risk of Indonesian nationals becoming victims, and in some instances participants, in transnational organised criminal networks, particularly those engaged in online fraud and trafficking in persons. Between 2020 and November 2024 the Ministry of Foreign Affairs recorded the handling of more than five thousand online fraud cases, a proportion of which were directly connected with trafficking in persons. The vulnerability of Indonesian nationals is attributable not only to increasingly sophisticated and undetectable methods of recruitment, but also to novel patterns of exploitation employed by criminal syndicates, such as the practice of requiring a victim to recruit a replacement before being released.⁶

The situation in Cambodia illustrates the point. Trafficking there affects not only Indonesian nationals but also victims from other states in South-East Asia and beyond, which confirms the transnational character of the offending. The annual report of the United States Department of State places Cambodia in Tier 2, indicating that the minimum standards for the elimination of trafficking have not been met, and official Cambodian data for 2024 record a significant increase in trafficking cases involving victims from several countries who were subsequently repatriated to their states of origin.⁷ These facts confirm that trafficking in Cambodia is a cross-border problem requiring international cooperation and a transnational legal approach of the kind mandated by the Palermo Protocol.

Most victims come from communities living in poverty with limited access to basic rights, including economic rights and rights to education, health and information, and such communities are concentrated in developing states and in regions with high rates of labour migration. Cases arising in Cambodia display a pattern similar to those in Myanmar: they commonly begin with an offer of employment from a friend or relative, typically a position as a call-centre agent or operator with a promised monthly salary of between twelve and fifteen million rupiah together with commission upon meeting targets. Prospective victims who express interest are then interviewed by video call, which forms the opening stage of the recruitment process preceding exploitation.⁸

The handling of cross-border trafficking continues to encounter difficulties, particularly in the gathering of evidence and in proof, as the cases of Indonesian victims taken to Cambodia demonstrate. Differences of jurisdiction require cooperation between the state of origin and the state of

⁶ Ministry of Foreign Affairs of the Republic of Indonesia, *Laporan Kinerja Pelindungan Warga Negara Indonesia di Luar Negeri Tahun 2024*, Ministry of Foreign Affairs of the Republic of Indonesia, Jakarta, 2024, pp. 12–13.

⁷ United States Department of State, *Trafficking in Persons Report 2024*, U.S. Department of State, Washington DC, 2024, pp. 141–145.

⁸ Andre Aprilion and Ali Roziqin Murdani, "The Role of the Indonesian Government in Mitigating Human Trafficking Cases through Social Media", *Global Local Interactions: Journal of International Relations*, Vol. 4, No. 1, 2024, <https://doi.org/10.22219/gli.v4i1.31604>, p. 34.

destination, yet such efforts are frequently impeded by administrative problems, differences of language and weak mechanisms for the exchange of data between authorities. Although international instruments such as the Palermo Protocol have been ratified, their implementation remains suboptimal, and that state of affairs provides the occasion for a closer examination of the effectiveness of law enforcement and international cooperation in cross-border trafficking cases.⁹

A number of earlier studies have addressed the subject from differing standpoints. Sitania and Suponyono map the accommodation of anti-trafficking measures within international and national law, but that study halts at a comparison of norms and does not connect it with the consequences flowing from state responsibility.¹⁰ Mardiyanto examines the standing of treaties from the perspective of national law and highlights the process by which they are transformed into the domestic legal order, yet does not test what follows where such transformation is not matched by enforcement capacity.¹¹ Aprilion and Murdani consider the role of the Indonesian government in addressing trafficking conducted through social media and provide a valuable empirical account of recruitment methods, but their analysis is one of policy and does not situate those findings within an international legal framework.¹² At the international level Gallagher has produced the most comprehensive treatment of the international law of human trafficking, including the obligation of states to act with due diligence, although that work is general in character and is not directed at the practice of any single jurisdiction.¹³

A clear research gap emerges from that survey. The existing literature tends to halt at one of three points: a comparison of international and national norms, an account of the mechanics of ratification, or a description of policy responses to particular cases. No study has yet drawn the full analytical line connecting the ratification of the Palermo Protocol with the legal obligations arising from it, testing the discharge of those obligations against the difficulties encountered in handling the cases of Indonesian nationals in Cambodia, and then drawing the consequences at the level of state responsibility. The novelty of this study lies in constructing precisely that sequence: it treats the obstacles to implementation not as freestanding technical problems but as indicators of a failure to discharge the obligation of due diligence, an obligation borne by the state of origin and the state of destination alike, with the result that the effectiveness of the Palermo

⁹ Sitania and Suponyono, op. cit., p. 45.

¹⁰ Sitania and Suponyono, op. cit., pp. 38–40.

¹¹ Ibnu Mardiyanto, "Perjanjian Internasional Ditinjau dari Perspektif Hukum Nasional dan Internasional: Analisis Pasal 9 dan 18 Undang-Undang Perjanjian Internasional", *Sapientia et Virtus*, Vol. 8, No. 1, 2023, <https://doi.org/10.37477/sev.v8i1.415>, p. 190.

¹² Aprilion and Murdani, op. cit., p. 36.

¹³ Gallagher, op. cit., pp. 71–75.

Protocol falls to be measured by the fulfilment of victims' rights rather than by the number of prosecutions secured.

Upon the basis of the foregoing, two legal questions form the focus of this study. First, what is the standing of states which have ratified a treaty from the perspective of international law. Secondly, to what extent the international rules contained in the UNTOC framework and the Palermo Protocol are capable of minimising the incidence of trafficking in persons. The two questions are addressed in turn, with the standing and responsibility of ratifying states serving as the analytical framework by which the effectiveness of the Protocol's implementation is assessed, particularly in the protection of Indonesian nationals trafficked in Cambodia.

II. RESEARCH METHOD

This study constitutes normative legal research, that is to say research which takes legal norms as its object and is directed towards discovering the rules, principles and doctrines by which the legal issue in question may be resolved.¹⁴ Three approaches are employed in combination. The statutory approach is used to examine Law Number 14 of 2009, Law Number 21 of 2007, Law Number 18 of 2017 and Law Number 1 of 2006, together with the international instruments to which they relate. The conceptual approach is used to construct the analytical framework concerning the standing of the state as a subject of international law, the principle of *pacta sunt servanda* and the doctrines of state responsibility and due diligence. The case approach is used to examine the handling of trafficking cases involving Indonesian nationals in Cambodia as the factual context against which the norms are tested. The primary legal materials comprise legislation, treaties and official documents of state institutions; the secondary materials comprise textbooks, journal articles and legal doctrine; and the tertiary materials comprise legal dictionaries and encyclopaedias. All materials were gathered by means of library research and are analysed qualitatively through legal interpretation and prescriptive analysis in order to determine the legal consequences which ought to follow.

III. RESULT AND DISCUSSION

A. The Standing of Ratifying States in the Perspective of International Law

1. The Binding Force of the International Legal System upon States

The international community, viewed in juridical and political terms, is constituted by states. Within the international legal system there exists no

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2017, ISBN 978-602-7985-16-2, pp. 133–138.

supreme authority capable of imposing its decisions upon states, no international legislature enacting provisions which bind member states directly, and no policing institution able to apply sanctions against those regarded as having breached the law.¹⁵ The system may accordingly be described as a body of rules which binds and regulates relations between states and other subjects of law within international society.¹⁶ It is precisely because international law forms a legal system of its own, separate from municipal legal systems and possessed of distinctive means of making and enforcing rules, that it has at times been criticised as not being law at all.¹⁷ International law ought nevertheless to reflect universal values rooted in the wisdom of the nations of the world.

International law is universal in the sense identified by Anghie, namely that those who had been excluded from the realm of sovereignty came to be included and were enabled to participate in the international system as sovereign equals.¹⁸ The state occupies a distinctive position within that system: notwithstanding the increasing range of actors and participants, states remain by far the most important legal persons, and notwithstanding globalisation they retain their standing as the primary focus of social activity and therefore of international law.¹⁹

The international legal system differs in essence from national legal systems. Its principal actors are sovereign and formally equal states. The international community is not homogeneous but comprises more than one hundred and ninety states differing in economy, politics, culture and ideology, which nonetheless require peaceful coexistence. International law emerged to meet that requirement and is designed to promote international peace and harmony. Breaches of its norms by states and other subjects are, in terms of the effectiveness of law, an ordinary phenomenon rather than a refutation of its legal character.²⁰ Accordingly, despite the absence of the institutional apparatus familiar from municipal systems, international law may be understood on natural-law reasoning as the embodiment of universal values recognised and agreed by states in the conduct of their relations; and on sociological reasoning it continues to bind and to be observed because it is indispensable to the orderly conduct of international relations.²¹

The binding force of international law upon its subjects has been explained by several theories. Natural-law theory holds that international law binds because it is no more than natural law applied to the life of the

¹⁵ Malcolm N. Shaw, *International Law*, Cambridge University Press, Cambridge, 2008, ISBN 978-0-521-72814-0, pp. 5–6.

¹⁶ Shaw, *op. cit.*, p. 7.

¹⁷ Shaw, *op. cit.*, p. 4.

¹⁸ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, Cambridge, 2005, ISBN 978-0-521-82892-5, p. 32.

¹⁹ Shaw, *op. cit.*, p. 197.

²⁰ Sitania and Suponyono, *op. cit.*, p. 41.

²¹ Shaw, *op. cit.*, p. 43.

community of nations, states being subject to it in their mutual relations because it forms part of a higher law. Triepel, by contrast, explains the binding force by reference to a common will higher than the individual will of each state.²² Kelsen, for his part, grounds the validity of an international norm in a higher norm, and that in turn in a higher norm still, until one arrives at the apex of the pyramid where the basic norm is found, which cannot be traced to any higher norm and must be accepted as an original hypothesis incapable of legal explanation.²³

From these theories it may be understood that international law is law properly so called, of wide scope, whose binding character rests upon the common will of states as its subjects in the pursuit of shared order. States comply with international law not merely in their own interest but in order to establish harmonious and conducive relations among the nations of the world. Understood from the standpoint of binding force, therefore, international law does not differ materially from the national legal systems in force within states.

2. State Responsibility as an Aspect of the Position of Ratifying States

International law is the body of norms regulating relations between states and other subjects of international law. A subject of international law is an entity possessing international legal personality, that is to say an entity bearing international rights and duties and having the capacity to maintain those rights and duties by bringing an international claim.²⁴ Entities possessing such personality include states, international organisations, individuals, the International Committee of the Red Cross, the Holy See and belligerents. The state is the first and principal subject among them.²⁵ Juridically, the Peace of Westphalia of 1648 conferred legitimacy upon the state as the sole legal entity in international relations, so that its role as an actor in international law long went unchallenged.²⁶ As a matter of fact, the state remains dominant in international relations, from treaty-making to diplomatic and other relations.

Although international cooperation continues to rest upon the principle of state sovereignty, sovereignty is no longer understood in modern international law as absolute. A state which has consented to and ratified a treaty is under an obligation to give effect to its provisions. International cooperation is accordingly not a diminution of sovereignty but part of the responsibility of the state for the maintenance of international order and the protection of victims of transnational crime.²⁷

²² Shaw, *op. cit.*, pp. 25–28.

²³ Shaw, *op. cit.*, p. 29.

²⁴ Shaw, *op. cit.*, p. 195.

²⁵ Shaw, *op. cit.*, pp. 197–198.

²⁶ Anghie, *op. cit.*, pp. 13–15.

²⁷ Gallagher, *op. cit.*, p. 219.

International law provides that sovereignty carries with it an obligation not to abuse that sovereignty. A state may therefore be held responsible for its unlawful acts or omissions. In the interaction of states there is considerable scope for error or breach causing injury to another state, and it is there that state responsibility arises.²⁸ State responsibility is among the important questions of international law, precisely because the state is its principal subject; it was for that reason that the International Law Commission undertook to study and codify the topic, an endeavour which culminated in the Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted in 2001.²⁹ On another view, responsibility in international law denotes the obligation owed by one state to another by command of international law.³⁰

Alongside its subjects, the international legal system possesses sources of law which serve as points of reference in international intercourse. The positive sources are set out in Article 38(1) of the Statute of the International Court of Justice, among which the treaty is at present the most significant.³¹

The treaty, as a source of international law, plays and will continue to play an important part in regulating relations between subjects of international law. It affords a greater guarantee of legal certainty to the parties bound by it, since its written form sets out their rights and obligations clearly and thereby facilitates its performance.³² Globalisation, moreover, demands greater observance of and adherence to treaties within domestic law, and for that purpose a robust mechanism of treaty compliance has been developed under international law.³³

In theoretical terms, and following Anzilotti, a treaty binds by virtue of the principle *pacta sunt servanda*. That principle accords with the London Declaration of 1871, by which states recognised the rule of international law that no state may release itself from its treaty engagements, or modify their terms, save with the consent of the other contracting party by amicable understanding. A state's consent therefore obliges it to comply. Where a treaty governs the matter in dispute, moreover, the decision of the International Court of Justice will be founded upon its provisions. The treaty thus occupies a position in international law as significant as that of legislation in a national legal system.³⁴

States which have ratified a treaty are obliged to give effect to its substance in their national law and policy. Since the entry into force of the

²⁸ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, United Nations, New York, 2001, Articles 1 and 2.

²⁹ International Law Commission, op. cit., Article 12.

³⁰ Shaw, op. cit., p. 778.

³¹ United Nations, Statute of the International Court of Justice, 1945, Article 38(1).

³² Ibnu Mardiyanto, "Perjanjian Internasional Ditinjau dari Perspektif Hukum Nasional dan Internasional: Analisis Pasal 9 dan 18 Undang-Undang Perjanjian Internasional", *Sapientia et Virtus*, Vol. 8, No. 1, 2023, <https://doi.org/10.37477/sev.v8i1.415>, p. 190.

³³ Mardiyanto, op. cit., p. 195.

³⁴ United Nations, Vienna Convention on the Law of Treaties, 1969, Article 26.

Vienna Convention on the Law of Treaties of 1969, the conclusion, performance and termination of treaties must be conducted in accordance with that Convention; Article 42(2) provides that the termination of a treaty must first follow the procedure laid down in the treaty itself. A ratifying state is accordingly bound to implement the substance of the treaty within its own legal order and policy.³⁵

International law further provides that sovereignty entails the obligation not to abuse it, so that a state may be held to account for unlawful acts or omissions injurious to another state.³⁶ State responsibility rests upon the premise that no state may enjoy its own rights without respecting the rights of others; every infringement of the rights of another state obliges the offending state to make reparation, or in other words to answer for it.³⁷

Where a treaty requires ratification, the process of ratification in truth calls for transformation into national law. In that process it is important to consider how the state translates the content of the treaty into its domestic law, since such translation is ordinarily accompanied by amendment of the provisions in force within the state.³⁸ Treaties of this kind expressly require an instrument of ratification, which must be deposited with the state or international organisation designated as depositary.³⁹

The relationship between international law and the problem of human trafficking is significant because trafficking is a transnational offence governed not only by national law but also by international instruments, chief among them the Palermo Protocol, which lays down standards for states in preventing and suppressing the offence and in protecting its victims. A treaty is a source of international law binding upon states parties once they have expressed their consent to be bound; that consent arises from free consent and must be performed in accordance with the principle *pacta sunt servanda*, namely that a treaty in force is to be respected and performed in good faith.

B. The Role of the UNTOC Framework and the Palermo Protocol in Minimising Trafficking in Persons

Mochtar Kusumaatmadja regarded law as serving not only to secure certainty and order but also as a means of renewal and of social development. In the international context that function is directed towards the formation of a just and orderly international society through cooperation between states. International law derives its binding force from the agreement of states expressed in treaties and founded upon the principle *pacta sunt servanda*. That framework confirms that international instruments, including conventions and protocols, have an important part to play in realising justice,

³⁵ Mardiyanto, op. cit., p. 198.

³⁶ International Law Commission, op. cit., Articles 4 and 12.

³⁷ Shaw, op. cit., p. 781.

³⁸ Mardiyanto, op. cit., pp. 200–203.

³⁹ United Nations, Vienna Convention on the Law of Treaties, 1969, Article 16.

peace and the protection of human rights as common objectives of the international community.⁴⁰

In the practice of international law, trafficking in persons is understood not merely as an ordinary criminal offence but as a serious violation of human rights, since it involves exploitation, modern slavery and the deprivation of basic human liberty and dignity. That characterisation gives rise to obligations upon the state to respect, to protect and to fulfil the rights of victims effectively, whether through the harmonisation of national law or through the strengthening of international cooperation. Consistently with that view, a purely repressive approach directed at offenders, unaccompanied by adequate mechanisms for the protection and recovery of victims, is not fully in accordance with international standards, which place the victim of trafficking as the principal subject of rights within the human rights framework.⁴¹

1. The Scope and Objectives of the Palermo Protocol

Under the Palermo Protocol, trafficking in persons denotes the recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force, abduction, fraud, the abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The definition demonstrates that trafficking is characterised not only by the act of moving a person but also by the means employed and the ultimate purpose of that act, namely exploitation. The Protocol makes clear that exploitation extends to sexual exploitation, forced labour, slavery or practices similar to slavery and the removal of organs. Trafficking is accordingly a highly complex offence, involving as it does a range of violations of human dignity and freedom.⁴²

The Protocol supplies a comprehensive juridical definition in order to secure a uniform international standard for identification and enforcement. In addressing the offence it treats trafficking not as the mere movement of persons across borders but as a cycle of exploitation integrating preventive, rehabilitative and punitive dimensions. Success in suppressing the offence depends upon the capacity of the state to dissect its anatomy by reference to three interrelated constitutive elements. By that mandate, states parties are required to align their domestic regulation so as to reach every dimension of exploitation, particularly that directed at vulnerable groups such as women and children.⁴³

The Palermo Protocol of 2000 is an international instrument supplementing the United Nations Convention against Transnational

⁴⁰ Sitania and Suponyono, *op. cit.*, p. 39.

⁴¹ Gallagher, *op. cit.*, pp. 276–280.

⁴² United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, Article 3(a).

⁴³ Gallagher, *op. cit.*, pp. 47–49.

Organized Crime. It supplies a clear definition of trafficking in persons and affirms the need for concerted action to prevent, suppress and punish the offence. Article 3 defines trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons by specified means, such as threat or coercion, for the purpose of exploitation.⁴⁴

In order that the provisions of such an instrument may bind at the national level, ratification is required. By ratifying, a state expresses its consent to be bound by the treaty and assumes an obligation to align its national law with the principles agreed. The implementation of the Palermo Protocol cannot be assessed solely by reference to an increase in the number of prosecutions; it must be measured comprehensively through the balance struck between prosecution, protection and prevention. Successful implementation is reflected in the fulfilment of victims' rights, including access to legal protection, physical and psychological rehabilitation, social recovery and a guarantee against the criminalisation of victims. The effectiveness of the Protocol is further determined by the extent to which a state is able to build effective international cooperation, particularly between the state of origin and the state of destination, with a view to prevention, the handling of cross-border cases and the repatriation and reintegration of victims. In practice, however, implementation still tends to concentrate upon repression rather than upon protection and prevention, which produces a gap between the international norm and national practice. That state of affairs demonstrates the urgency of examining the effectiveness of implementation of the Palermo Protocol, particularly in the protection of a state's nationals who become victims abroad.⁴⁵

2. Compliance of States with the Palermo Protocol in Minimising Trafficking in Persons

International law comprises the rules recognised and enforced by the global community and the norms regulating the conduct of the members of international society. In legal terms it embraces provisions designed to ensure that conduct within a community remains ordered, with legitimacy enforced by an authority external to that community. As part of the wider legal system, its principal object remains that of law generally, namely the creation of order and justice within global society.⁴⁶

As a form of transnational crime, trafficking involves cross-border networks which exploit gaps in supervision and weaknesses of regulation in particular states. International instruments such as the Palermo Protocol call for global cooperation to prevent, suppress and punish the offence. States, for their part, have an important role in adopting national policies consonant

⁴⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, op. cit., Article 3.

⁴⁵ United Nations Office on Drugs and Crime, Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, United Nations, Vienna, 2004, pp. 9–12.

⁴⁶ Shaw, op. cit., p. 44.

with international standards and in securing protection for victims. In Indonesia, Law Number 21 of 2007 provides the legal basis for dealing with trafficking, yet its implementation continues to encounter difficulties, including insufficient coordination between law enforcement agencies and preventive efforts which remain suboptimal.⁴⁷

The Palermo Protocol also embodies, if implicitly, a principle of state accountability, namely the obligation of the state to ensure that every policy and measure adopted in the suppression of trafficking is capable of being justified in legal and moral terms. The state is responsible not only for making rules but also for securing their effective implementation in practice. The principles underlying the Protocol accordingly show that trafficking must be addressed comprehensively and in an integrated manner, balancing prevention, protection of victims, prosecution of offenders and international cooperation. Those principles serve not merely as normative guidance but as the foundation of a legal system oriented towards justice and respect for human rights, and their application may be expected to enhance the effectiveness of suppression whilst affording optimal protection to victims.⁴⁸

One of the principal objects of the Palermo Protocol is to ensure that ratifying states possess a robust legal framework for combating trafficking. Article 5 requires states parties to criminalise all forms of trafficking within their national law. The Protocol further calls upon each state to adopt the legislative, administrative and operational measures necessary to protect victims, to enforce the law and to prevent the offence, and it emphasises the importance of international cooperation given the cross-border character of trafficking networks.⁴⁹

The Protocol likewise treats international cooperation as an essential element in the suppression of trafficking. Articles 10 to 13 stress the importance of the exchange of information, the training of law enforcement officers and the strengthening of capacity to investigate and prosecute trafficking cases.⁵⁰ States parties are encouraged to cooperate in cross-border investigations, in the gathering of evidence and in the return of offenders to their state of origin for trial, the object being to narrow the operating space of increasingly sophisticated and organised trafficking networks.

Implementation of the Protocol nevertheless faces significant challenges across states. Differences of legal system, limited enforcement capacity and insufficient coordination between states frequently impede the suppression of trafficking, and states which have not ratified the Protocol constitute a further gap in the global response. A shared commitment among all states is therefore required. The Protocol at the same time affords states latitude to adapt their enforcement measures to local conditions, provided

⁴⁷ Sitania and Suponyono, *op. cit.*, pp. 48–50.

⁴⁸ Gallagher, *op. cit.*, pp. 244–246.

⁴⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, *op. cit.*, Article 5.

⁵⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, *op. cit.*, Articles 10 to 13.

they remain consistent with its basic principles. That flexibility enables a more contextual approach, but it equally requires effective coordination if disparities of implementation between states are to be avoided. The compliance of ratifying states with the Protocol thus serves as a measure of the success of international law in reducing transnational crime.

IV. CONCLUSION

From the perspective of international law the state is the principal subject of law, bound by the treaties it has ratified in accordance with the principle *pacta sunt servanda*; ratification of the Palermo Protocol accordingly generated for Indonesia an obligation to transform the substance of the Protocol into national law and to perform it in good faith, an obligation substantially discharged at the normative level through Law Number 21 of 2007, so that failure or neglect in its performance engages the international responsibility of the state as a consequence of the principle that sovereignty is not absolute but carries with it a duty of due diligence in the protection of nationals, including those trafficked abroad. The Protocol itself, supplementing the United Nations Convention against Transnational Organized Crime, supplies a comprehensive normative framework resting upon the three pillars of prevention, prosecution and protection; yet the effectiveness of its implementation in the handling of Indonesian victims in Cambodia remains impaired by weak interstate coordination, the limits of cross-border jurisdiction, suboptimal international cooperation, difficulties of victim identification and inadequate mechanisms of protection and recovery, and the tendency to prioritise repression over prevention and protection widens the gap between the international norm and national practice. It follows that the success of the Protocol cannot be measured by the number of prosecutions alone but must be assessed comprehensively through the fulfilment of victims' rights and the quality of cooperation between the state of origin and the state of destination; strengthened coordination between institutions and between states, harmonisation of regulation across jurisdictions, and improved capacity for the identification and recovery of victims are therefore required if the obligations of ratifying states under the Palermo Protocol are to be discharged effectively and justly.

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