


International Legal Status of Migrants and its Relevance to Consular Protection

Араббоев Жасурбек Дилшодбек угли

студент 4 курса бакалавриата факультет международного права и сравнительного правоведения Ташкент — 2025

E-mail: arabboyev556@gmail.com

	<p>Abstract: This article examines the international legal status of migrants and its impact on the implementation of consular protection mechanisms. The absence of a unified definition of the term “migrant” in international law, together with the fragmented nature of regulatory frameworks, creates conditions in which many categories of migrants remain vulnerable in host states. The study reviews key international instruments shaping migrants’ legal status, including core ILO conventions and decisions of the International Court of Justice that reaffirm individual rights to consular assistance. Particular attention is paid to the practical role of consular institutions as mechanisms to compensate for gaps in international regulation and to safeguard migrants’ rights in contexts of limited access to justice, administrative barriers, and discriminatory practices. The article concludes that the effectiveness of consular protection directly depends on the clarity of migrants’ legal status and the willingness of states to apply international norms in practice.</p>
<p>Keywords: Vienna Convention on Consular Relations; human rights; consular protection; consular assistance; international protection mechanisms; international legal status; migrants; ILO; International Convention on the Protection of the Rights of Migrant Workers; vulnerability of migrants.</p>	

Introduction

Contemporary migration is a dynamic and often unpredictable phenomenon that is not only a social or economic process, but also a space in which the real capacity of a State to protect its citizens outside its own territory is revealed. Consular protection, which is formally enshrined in international documents as one of the areas that the state pursues in its foreign policy activities, acquires an even more complex and deep aspect in the 21st century. It is no longer just an administrative process, but a mechanism for adapting to constantly changing migration routes, changes in the labour market, political crises, conflicts and increased cross-border flows.

The international legal status of migrants is a complex and multi-level legal phenomenon that develops at the intersection of international law, national legislation and the practice of interstate cooperation. In modern times, characterized by increased mobility of the population, changes in

the nature of labor migration and an increase in the number of people in a vulnerable situation, the issue of the status of migrants is becoming particularly acute. Since a migrant outside his country remains a bearer of human rights, and his connection with the source country is not eliminated, consular offices are called upon to be a key mechanism for the implementation of these rights.

There is no universal understanding of a migrant in international law. Thus, the ILO calls a migrant a person who leaves the country of citizenship for the period of work or residence, while the UN uses a broader concept that includes both long-term and short-term movements. From a scientific point of view, migrant status is "the minimum set of rights necessary to protect the human dignity of an individual who is outside the jurisdiction of his state."

Opeskin argues that the international legal status of migrants is fragmentary and functional, because different categories of migrants (labor, seasonal, illegal, victims of human trafficking, students) fall under different international regimes.

The theoretical polemics of the researchers come down to a common conclusion: the international legal status of migrants is not enshrined in codified norms and is based on a number of non-systemic norms. This "faience" creates conditions for the delegation of functions for the execution of "black holes" of consular protection.

Despite the absence of a single convention on the rights of migrants, their status is determined by several fundamental documents:

- International Covenant on Civil and Political Rights (1966) – protects migrants from arbitrary detention (Article 9), guarantees the right to be informed of the reasons for detention and the right to a fair trial.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) is the most comprehensive document that recognizes the right of a migrant to apply to the consulate of his state (Article 23). However, it has not been ratified by most host countries, including the EU states and the Gulf countries, which significantly reduces its application in practice.
- ILO Conventions No97 and No143 – regulate working conditions and the protection of migrants from abuse.
- The Convention against Torture is important for migrants in prison.

OSCE and IOM Guidelines – Provide standards for the treatment of migrants, prevention of exploitation, and protection from discrimination.

Taken together, these documents form the basis for the status of migrants as subjects of international law. However, as T. Meron emphasizes, international human rights norms "operate only to the extent that states are ready to apply them in practice."

The key right of a migrant is the right to consular assistance, provided for in Article 36 of the Vienna Convention on Consular Relations of 1963.

- the right of a migrant to notify the consulate when detained;
- the right to communicate with the consul;
- The right of the consul to visit the detained migrant.

The International Court of Justice in the cases of LaGrand (2001) and Avena (2004) finally recognized that Article 36 of the HQCJ creates individual rights, the violation of which entails international legal responsibility.

However, the practice of many countries shows that the notification of consulates is delayed, incomplete or ignored altogether. In the United States and a number of EU countries, human rights organizations document violations of Article 36 on the detention of migrants almost every year. In the Gulf states, according to Human Rights Watch, Article 36 applies mainly to citizens of "privileged countries," but not to labor migrants from Central Asia and South Asia. This gap between the norm and practice is one of the key arguments in favour of consular protection.

International organizations (ILO, IOM, OECD) identify several factors of vulnerability of migrants:

- lack of knowledge of the language and legislation;
- lack of access to a lawyer;
- dependence on the employer;
- Operational risk
- administrative barriers when contacting the police;
- fear of deportation;
- lack of documents.

Therefore, the international legal status of a migrant includes not only formal rights, but also the actual conditions for their implementation, which are often limited:

It is the degree of certainty and security of the decision that largely affects the effectiveness of consular protection. The less reliable and stable the legal status of a migrant in the country of residence, the less he or she is influenced by the internal policy of the host state and the procedures of law enforcement agencies, the more important the role of consular offices is. In cases where international norms enshrine only a general set of rights, but do not include a mechanism for their real implementation, it is the consulate that acts as an intermediary between the migrant and the state structures of the host country.

The legal status of a migrant largely determines the provision of a number of key protection mechanisms. The scope of the rights guaranteed to him does not depend on the speed of his legal assistance, the ability to apply for clarification of his procedural rights or to challenge the decision of the employer or state authorities. It is important whether the migrant has the opportunity to convey to the law enforcement agencies information about the violation of his or her legal norms, whether repression or deportation is punishable for it, how formatted he is from the arbitrary actions of the police and authorities, and in relation to him, whether the public sector of resources is available to him in case of violation of rights that he does not know. This status affects working and living conditions, the possibility of illegal return to their homeland, medical and social protection.

It is for this reason that consular protection is becoming a key mechanism for ensuring the rights of migrants: it fills the gaps that inevitably arise as a result of the fragmented nature of international regulation. Since the international legal status of migrants in itself does not guarantee the completeness and effectiveness of legal protection, consular authorities actually play the role of the last and most realistic line of defense. They intervene in situations where general international norms do not provide practical results, so that the importance of consular assistance increases in proportion to the vulnerability of the migrant and the imperfection of national mechanisms for his legal protection.

References:

1. Vienna Convention on Consular Relations (United Nations, 1963) [Электронный ресурс]. https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf (Дата обращения: 14.11.2025).
2. International Covenant on Civil and Political Rights (United Nations, 1966) [Электронный ресурс]. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (дата обращения: 14.11.2025).
3. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (United Nations, 1990) [Электронный ресурс]. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers> (дата обращения: 14.11.2025).
4. Migration for Employment Convention (Revised), 1949 (No. 97) (International Labour Organization, 1949) [Электронный ресурс]. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312242 (дата обращения: 14.11.2025).
5. Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (International Labour Organization, 1975) [Электронный ресурс]. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:P12100_INSTRUMENT_ID:312288 (дата обращения: 14.11.2025).
6. LaGrand (Germany v. United States of America), Judgment of 27 June 2001, ICJ Reports 2001 [Электронный ресурс]. <https://www.icj-cij.org/case/104> (дата обращения: 14.11.2025).
7. Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment of 31 March 2004, ICJ Reports 2004 [Электронный ресурс]. <https://www.icj-cij.org/case/128> (дата обращения: 14.11.2025).
8. Meron T. The Humanization of International Law. Leiden: Martinus Nijhoff Publishers, 2006.
9. Opeskin B. International Migration and Global Governance. Cambridge: Cambridge University Press, 2012.
10. Human Rights Watch. "I Already Bought You": Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates. HRW Report, 2014 [Электронный ресурс]. <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united> (дата обращения: 14.11.2025).
11. Guild E., Basaran T., Allinson K. Migrant Rights, Human Rights and Social Justice. London: Routledge, 2021.
12. Global Migration Group (IOM). Handbook on the Protection of Migrants. IOM, 2020 [Электронный ресурс]. <https://publications.iom.int/books/handbook-protection-migrants> (дата обращения: 14.11.2025).
13. Momotov V.A. Mezhdunarodno-pravovye aspekty zashchita prav migrantov [International legal aspects of the protection of migrants' rights] // Zhurnal mezhdunarodnogo prava, 2019.
14. Alimov A.A. Consular Law and Practice of the Republic of Uzbekistan. Tashkent: University of World Economy and Diplomacy, 2020.
15. Sultanov Y.M. Pravoy status migrantov v mezhdunarodnoy prave [Legal status of migrants in international law]. №3. 2021.