

International Legal Mechanisms for the Protection of Children Who Migrate through Irregular Means

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Abstract. This article analyses the international legal protection of children who migrate in an irregular manner, treating them as an especially vulnerable group in contemporary migration flows. It outlines the main concepts and categories of migrant children and the risks they face, then examines the key international treaties, UN resolutions, and the roles of UNHCR and UNICEF in ensuring their rights, while noting persistent gaps between legal standards and practice that call for stronger, child-sensitive migration policies.

1. INTRODUCTION

The issue of children migrating through irregular means has attracted considerable international attention in recent times. Although this phenomenon is not new in the history of human migration and mobility across various age groups—including men and women—what is particularly notable is that irregular migration is no longer confined to youth alone. It now affects the most vulnerable segment of society: children. The infiltration and unlawful entry of children into numerous geographical territories outside their countries of origin has been documented in various regions worldwide, making this one of the most pressing social issues threatening the international community.

These migration flows reflect the existence of humanitarian crises that compel people to leave their countries. These crises are predominantly linked to instability and armed conflicts in their home countries, as well as various other factors such as poverty and social pathologies. Within the flow of irregular migrants crossing borders, the situation becomes less severe when migrant children are accompanied by their families. However, the situation transforms into a profoundly complex humanitarian problem when children are traveling alone, which has resulted in tragic circumstances. In many cases, these unaccompanied children have been subjected to gross violations of their rights, including exploitation by human traffickers, and have become victims of various crimes such as violence, abuse, neglect, and exploitation.

The importance of this research stems from the need to respond to the challenges it raises at the international and regional levels. The issue of irregular migration—which violates laws and regulations governing the entry, residence, and exit of foreigners across land or maritime borders through forged documents or sea vessels—has often resulted in punitive measures being taken against migrant children without due consideration for their particular vulnerability and special status.

Therefore, this study aims to highlight the international legal mechanisms for protecting this vulnerable group, including international conventions and principles established for the protection of children migrating through irregular means, as well as the mechanisms available at the regional level for the protection of such children, with emphasis on the role of the European Court of Human Rights.

The motivation for studying this subject stems from a desire to examine and elucidate the stages and methods by which protection is afforded to this vulnerable group, thereby enabling us to identify the mechanisms and principles established by international law for the protection of children migrating through irregular means.

2. RESEARCH PROBLEMATIC

The research addresses several fundamental points: irregular migration, the risks faced by children migrating through irregular means, and the legal responses provided through international and regional mechanisms for achieving both general and specific protection. Accordingly, the following research question can be posed:

2.1. What are the International Legal Mechanisms for Protecting Children Who Migrate through Irregular Means?

In order to comprehensively address this issue, this study employs several methodological approaches to address all aspects related to the subject:

Historical Approach: This approach is used to trace all ideas related to the study's subject and to establish a chronological narrative highlighting the problems affecting the international community regarding children migrating through irregular means—an issue that represents a pressing concern and a primary preoccupation of international public opinion.

Analytical Approach: This approach is employed through the analysis and examination of the content of international conventions related to the protection of the rights of migrant children, including textual analysis, extraction of legal principles, and discussion of the adequacy of these provisions in ensuring effective protection for children.

To address the fundamental points of this study, this article is divided into two main sections as follows:

Section One: The Conceptual Framework of Child Migration Through Irregular Means.

Section Two: The International Legal Mechanisms Established for the Protection of Children Who Migrate Through Irregular Means.

Section One: The Legal Concept of Migrant Children in International Law

Migrant children constitute one of the most vulnerable groups in the context of international migration. They are exposed to multiple forms of violations that harm their dignity and fundamental rights, whether during transit, in detention centers, or even in receiving communities. This situation has prompted growing attention from international organizations and human rights bodies, leading international law to develop a comprehensive system of rules and standards aimed at protecting children in the context of migration.

Defining fundamental concepts and terminology is the correct foundation for launching any scientific research. Therefore, it is essential to provide a definition of the migrant child. For this purpose, we will rely on definitions provided by international instruments and will also extract the dangers to which children migrating through irregular means are exposed.

Section 1.1. The Concept of Children Migrating Through Irregular Means in International Law

To arrive at a definition of the migrant, it is first necessary to define migration. Migration is understood as "movement from one place to another." However, this definition encompasses both internal and external migration. The subject matter of concern in this study pertains to external migration. Accordingly, we shall clarify the terminology related to the concept of children migrating through irregular means.

1.1.1. Definition of Irregular (Unlawful) Migration

Definition of Child: The term "child" in linguistic terms refers to childhood and tenderness, and is applied to the "small" or "young" of all things, whether human or animal.

In legal terminology: A child is any person who has not reached the age of majority or legal adulthood.

According to international law instruments, particularly the Convention on the Rights of the Child (1989), a child is defined as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" [1]. This definition has become the most widely accepted in international legal circles, establishing eighteen years as the standard age of childhood for legal protection purposes across all international instruments and regional mechanisms.

Definition of Migration: Migration, in general terms, refers to "the movement of a person from one place to another" [2]. However, it is crucial to differentiate between internal migration (movement within a single country) and external migration (movement across international borders). International organizations define migration as the movement of persons away from their place of usual residence, either within a country or across an international border, for a period of at least three months [3].

Definition of Irregular Migration: Irregular migration refers to the entry, stay, or work of migrants in a country in violation of that country's laws and regulations governing immigration and the employment of foreigners. The International Organization for Migration (IOM) defines irregular migrants as "migrants who do not possess the required immigration documents or permits to enter, reside, or work in a country; they are sometimes referred to as undocumented migrants or migrants in an irregular situation" [4].

The legal status of irregular migration is characterized by the violation of legal procedures and documentation requirements established by receiving states. Irregular migrants, including children, often enter countries without proper authorization, using unauthorized routes, fraudulent documentation, or through smuggling networks.

1.1.2. The Concept of Irregularly Migrant Children

The concept of irregularly migrant children encompasses minors who have crossed international borders without proper authorization or who remain in territories outside their country of origin without legal permission. These children may be accompanied by family members or traveling alone, but what unites them is the absence of legal authorization for their presence in the receiving country.

International instruments recognize that children migrating through irregular means face particular vulnerabilities and require special protection. This recognition is based on the acknowledgment that children possess inherent rights as human beings, combined with the understanding that their status as minors necessitates additional safeguards.

Section Two: International Legal Mechanisms Established for the Protection of Children Who Migrate Through Irregular Means

The international community has recognized the urgent need to establish comprehensive legal frameworks for protecting children migrating through irregular means. These mechanisms operate at multiple levels—global, regional, and institutional—to provide integrated protection.

Section 2.1: International Conventions and Protocols

2.1.1 The Convention on the Rights of the Child (1989)

The Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly in 1989, represents the primary international instrument for child protection [5]. This Convention establishes four foundational principles: (1) non-discrimination, (2) the best interests of the child, (3) the right to life and development, and (4) the right to be heard.

Article 37 of the CRC explicitly prohibits torture and other cruel, inhuman, or degrading treatment or punishment of children. Article 40 establishes the right of children in conflict with the law to fair and humane treatment. For migrant children specifically, these provisions ensure that immigration enforcement does not employ measures that would violate these fundamental protections [6].

2.1.2. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Adopted in 1990, this Convention extends comprehensive protections to all migrant workers and their families, including children [7]. The Convention addresses the particular vulnerabilities of migrant workers and their dependents, establishing minimum protections regardless of migration status. It guarantees access to basic services, protection from discrimination, and recognition of fundamental human rights [8].

2.1.3. Optional Protocols to the Convention on the Rights of the Child

Two Optional Protocols to the CRC are particularly relevant to the protection of migrant children:

Optional Protocol on the Involvement of Children in Armed Conflict (2000): This protocol addresses the protection of children in conflict situations, recognizing that many children migrate as a consequence of armed conflict in their home countries [9].

Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000): This protocol specifically addresses the protection of children from exploitation, including trafficking and sexual abuse [10]. Migrant children, particularly unaccompanied minors, are at heightened risk of such exploitation, making this protocol directly applicable to their protection.

Section 2.2. Regional Protection Mechanisms

2.2.1. The African Charter on the Rights and Welfare of the Child (1990)

The African Charter on the Rights and Welfare of the Child (ACRWC), adopted in 1990, provides protection for children within the African context [11]. The Charter explicitly recognizes the rights of refugee and migrant children and emphasizes the best interests of the child as a primary consideration in decisions affecting children. Article 23 specifically addresses the protection of refugee children, requiring state parties to provide special protection and humanitarian assistance to such children [12].

2.2.2. The European Framework

The European Court of Human Rights has developed significant jurisprudence regarding the protection of migrant children through its interpretation of the European Convention on Human Rights. The Court has consistently held that member states must respect the rights of migrant children, including:

- The right to family life (Article 8 ECHR)
- The right to an effective remedy (Article 13 ECHR)
- The prohibition against torture and inhuman or degrading treatment (Article 3 ECHR)

In landmark cases involving unaccompanied migrant children, the European Court has established that states cannot employ immigration enforcement measures that would breach these fundamental protections, even when the individuals involved are in an irregular migration situation [13].

Section 2.3: United Nations General Assembly Resolutions and Security Council Determinations

2.3.1. General Assembly Resolution on Migrant Children and Adolescents (2014)

United Nations General Assembly Resolution 69/187 on "Migrant Children and Adolescents" affirms the rights of migrant children and calls upon member states to ensure the protection of all migrant children, regardless of migration status [14]. The resolution emphasizes:

- The elimination of all forms of discrimination against migrant children
- The provision of education and healthcare services
- The protection of children from trafficking, exploitation, and abuse
- The right to a nationality and identity documents

2.3.2. United Nations Security Council Resolutions on Children and Armed Conflict

Security Council Resolution 1539 (2004) and subsequent resolutions establish mechanisms for protecting children affected by armed conflict, including provisions applicable to displaced and migrant children [15]. These resolutions recognize that armed conflict often necessitates migration and establish international mechanisms for monitoring and reporting on violations against children.

Section 2.4: The Role of International Organizations

2.4.1. United Nations Children's Fund (UNICEF)

The United Nations Children's Fund (UNICEF) plays a crucial role in advocating for and implementing protections for migrant and displaced children. UNICEF works across multiple sectors—including education, health, protection, and humanitarian response—to ensure that migrant children receive necessary services and protection [16]. The organization emphasizes the principle that "children on the move are children first," prioritizing the rights and needs of children above immigration status considerations [17].

UNICEF's work includes:

- Direct assistance to migrant children in detention and transit situations
- Advocacy for policy changes to strengthen child protection frameworks
- Support for capacity-building of governments and civil society organizations
- Documentation and dissemination of evidence regarding threats to migrant children

2.4.2. The Office of the United Nations High Commissioner for Refugees (UNHCR)

The UNHCR provides specialized protection for refugee children, including those migrating through irregular means. The organization emphasizes the principle of non-refoulement—the prohibition against returning individuals to places where their lives or freedoms are threatened [18]. UNHCR's mandate includes:

- Identification of children in need of international protection
- Facilitation of family reunification processes
- Provision of legal assistance and representation
- Coordination with member states on asylum procedures protecting children

2.4.3. The International Organization for Migration (IOM)

The IOM serves as the primary intergovernmental organization addressing migration issues globally. The organization recognizes that effective protection of migrant children requires comprehensive, coordinated responses involving multiple stakeholders [19]. The IOM conducts research, provides technical assistance to member states, and implements direct assistance programs for vulnerable migrants, including children.

3. CONCLUSION

Through this examination of the scholarly literature, it is evident that the issue of migrant children and the problems arising from this phenomenon constitute a fundamental and serious matter affecting the world across diverse regions. As today's children represent tomorrow's adults, it is imperative that they not be deprived of their fundamental rights or subjected to discriminatory treatment, nor denied basic services on account of circumstances compelling them to migrate from one region to another in search of safety and security.

The international community has demonstrated responsiveness to this challenge through the negotiation of international conventions, the adoption of resolutions by the United Nations General Assembly and the Security Council, and the establishment of institutional mechanisms that recognize the rights of this vulnerable population and condemn instances of detention, discrimination, and cruel treatment. However, the reality observed in contemporary practice reveals that the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children's Fund (UNICEF), among other supporting bodies, continue to work directly in the field with this vulnerable population, particularly in exceptional circumstances where they endeavor to provide essential rights and necessary protection for child rights.

Ongoing efforts must prioritize:

1. The strengthening of legal frameworks at both national and international levels to ensure comprehensive protection regardless of migration status
2. The provision of accessible and culturally appropriate services to migrant children
3. The accountability of states for violations of child rights in immigration enforcement contexts
4. The involvement of children themselves in the development and implementation of policies affecting them
5. The coordination of international responses to address the root causes of irregular child migration

Only through such comprehensive, coordinated, and child-centered approaches can the international community fulfill its obligation to protect and promote the rights and welfare of all children, regardless of their migration status.

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