

## GENERALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW AND EMERGING CHALLENGES: THE CASE OF CONTEMPORARY MEDICAL TECHNOLOGIES

*PRINCIPIOS GENERALMENTE RECONOCIDOS DEL DERECHO INTERNACIONAL Y NUEVOS RETOS: EL CASO DE LAS TECNOLOGÍAS MÉDICAS CONTEMPORÁNEAS*

Yulia Viktorovna Bobrova<sup>1</sup>  
Elena Evgenievna Gulyaeva<sup>2</sup>  
Jorge Isaac Torres Manrique<sup>3</sup>

### ABSTRACT

New medical technologies are advancing unstoppably, specifically 4P medicine. However, this rapid progress causes friction with the principles of international law. The authors propose that, due to the immutability of general principles of law, it is essential that these principles be updated so that they can be brought into line with the new reality and advances in 4P medicine.

**KEYWORDS:** The not immutability of general principles of law. 4P Medicine. Principles of International Law. Updating of principles.

### RESUMEN

Las nuevas tecnologías médicas avanzan imparables, concretamente la medicina 4P. Sin embargo, este rápido progreso provoca fricciones con los principios del derecho internacional. Los autores proponen que, debido a la inmutabilidad de los principios generales del derecho, es esencial que estos principios se actualicen para que puedan adaptarse a la nueva realidad y a los avances de la medicina 4P.

1 Institute of Legislation and Comparative Law under the Government of the Russian Federation, Moscow, Russia, [juliabobrova@gmail.com](mailto:juliabobrova@gmail.com), <https://orcid.org/0000-0003-3635-5770>. Email: [juliabobrova@gmail.com](mailto:juliabobrova@gmail.com)

2 Diplomatic Academy of the Ministry of Foreign Affairs of the Russian Federation, Moscow, Russia, [gulya-eva@yandex.ru](mailto:gulya-eva@yandex.ru), <https://orcid.org/0009-0002-2708-8332>. Email: [gulya-eva@yandex.ru](mailto:gulya-eva@yandex.ru)

3 President of the Interdisciplinary School of Fundamental Rights Praeeminentia Iustitia. <https://independent.academia.edu/JTorresManrique> - [kimblellmen@outlook.com](mailto:kimblellmen@outlook.com). Email: [kimblellmen@outlook.com](mailto:kimblellmen@outlook.com)

**PALABRAS CLAVE:** La no inmutabilidad de los principios generales del derecho. Medicina 4P. Principios del derecho internacional. Actualización de los principios.

## I. GENERAL ISSUES OF THE TOPIC

“Humanity currently finds itself at a critical juncture in its developmental trajectory, characterized by an indeterminate direction. Virtually all domains of human activity are increasingly influenced by a pervasive technological imperative, the full spectrum of whose effects—both beneficial and detrimental—remains insufficiently understood, systematically analyzed, and inadequately regulated within existing legal frameworks”.<sup>4</sup>

Among the interdisciplinary focal points of this discourse is the global healthcare system, which aims to enhance the duration and quality of active life through the implementation of 4P medicine<sup>5</sup>—predictive, preventive, personalized, and participatory approaches. This paradigm is particularly relevant in the context of rapid advancements in modern medical technologies<sup>6</sup>. Notably, these developments have precipitated significant tensions between technological progress and the potential risks posed to both current and future generations, thereby raising complex ethical, legal, and regulatory challenges.

The contemporary advancement of 4P medicine has introduced novel challenges to legal systems. Russian academician T.Y. Khabrieva observes that the emergence of unprecedented issues—such as those related to genetic engineering and cloning—has necessitated the development of new legal norms to regulate these previously unknown relationships. She emphasizes that, “notwithstanding divergent approaches to addressing scientific progress, foundational legal principles—such as legality, fairness, proportionality, and balance—must consistently underpin regulatory measures.

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4 Bobrova Y.V. Modern risks of development of predictive, preventive and personalised medicine: international legal regulation of counteraction // International Public and Private Law, No. 4 2024. P. 22. DOI: 10.18572/1812-3910-2024-4-22-25.

5 The Russian Federation currently has a Strategy for the Development of Medical Science in the Russian Federation for the period until 2025, approved by the Order of the Government of the Russian Federation No. 2580-r of 28 December 2012.

6 For example, CRISPR, genome editing. In general, we are talking about the specifics of NBIC-convergence as a phenomenon of convergence of a number of technologies: nano-, bio-, information and communication, cognitive. Currently, this convergence determines the development of science and the emergence of technoscience. Scientists from various branches of knowledge are investigating the negative trends of NBIC-convergence, which may significantly change the nature of man himself. See more details, for example: Pavelieva T.Y. NBIC-convergence and its impact on the development of modern science // Socio-political sciences. 2018, N° 4. P. 66-68.

Effective law enforcement, in this context, serves as a critical indicator of the legal framework's capacity to accommodate scientific advancements".<sup>7</sup>

Of particular significance is the question regarding the boundaries of the commercialization of medical technologies and the imperative to regulate such boundaries to address associated legal and ethical challenges, including the confidentiality of genetic information and the prevention of discrimination<sup>8</sup>.

Accordingly, a pivotal issue arises: how can the universally recognized principles of international law reconcile the necessity for comprehensive international legal regulation with the sovereign interests of States and the dynamics of commercializing modern medical technologies? From the authors' perspective, this underscores the importance of conducting comparative legal analyses focused on the tension between the imperative for international regulatory frameworks governing modern medical technologies—particularly genetic technologies—and the accelerating processes of their commercialization.

## 2. GENERALLY RECOGNISED PRINCIPLES OF INTERNATIONAL LAW IN THE CONTEXT OF TECHNOLOGICAL CHALLENGES

Article 38 of the Statute of the International Court of Justice identifies the general principles of law recognized by civilized nations as a foundational source of international law.<sup>9</sup>

The Declaration on Principles of International Law<sup>10</sup> solemnly affirms six such principles alongside the obligation of States to cooperate in accordance with the United Nations Charter. In light of contemporary issues and challenges<sup>11</sup>, it is arguable that the scope and interpretation of these universally recognized principles require modernization and contextual adaptation.

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7 Khabrieva T.Ya. Legal dimension of scientific progress // Journal of Russian Law. 2009 – 8 (152). P.14-24.

8 Trikoz, E., Gulyaeva, E., & Brasil, D.R. (2024). Genomic Security in the Criminal Policies of the BRICS Countries // BRICS Law Journal. 2024. Vol. 11(4). P. 108–125.

9 <https://www.un.org/ru/icj/statut.shtml#chap2>

10 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Adopted by UN General Assembly Resolution 2625 (XXV) of 24 October 1970. [https://www.un.org/ru/documents/decl\\_conv/declarations/intlaw\\_principles.shtml](https://www.un.org/ru/documents/decl_conv/declarations/intlaw_principles.shtml).

11 For example, armed conflicts, double standard policies and other manifestations of the heterogeneous world crisis.

In the current critical phase for international law, complex problems acquire heightened urgency within the philosophy of international law. For instance, conflicts arising from practical applications of modern medical technologies—such as surrogacy and genome editing—have generated intricate international legal dilemmas involving concepts such as biosovereignty<sup>12</sup>, the prohibition of genetic discrimination, the evolving principle of self-determination of peoples, and legal restrictions on the confidentiality of the human genome<sup>13</sup>.

Consequently, the principle of sovereign equality of all United Nations Members, enshrined in Article 2 of the UN Charter, may require a reconceptualization amid ongoing transformations of sovereignty, including the emergence of the concept of “biosovereignty” and attendant complexities within this legal category.

Russian Professor P.A. Kalinichenko notes that international law pertaining to genomic research is currently in formation. The fundamental characteristics, developmental trajectories, regulatory approaches, and the framework for systematized regulation have been established. This development commenced with the Human Genome Project, which culminated in the full decoding of the human genome by 2003. Subsequently, the integration of genomic research achievements into practical applications has precipitated increasingly complex legal and ethical questions.<sup>14</sup>

In this context, comparative legal analyses aimed at reconciling the intrinsic freedoms<sup>15</sup> of the individual with the accelerating commercialization of modern medical procedures and protocols are particularly pertinent.

It is important to recognize that the legal conception of human “freedom” extends beyond the political domain to encompass all spheres of social existence. Coupled with human dignity, individuals are vested with personal inviolability, constituting a fundamental legal value and a benchmark of the rule of law. This principle traces its

12 Gulyaeva E.E. International legal issues on biosafety: general overview. *Lex Genetica*. 2022;1(1):34-55. <https://doi.org/10.17803/lexgen-2022-1-1-34-55>

13 Trikoz, E.N., Sidorova, N.O., Gulyaeva, E.E. (2025). Ethical and Legal Landscape of Blockchain in Genetic Research. *Lex Genetica*, 4(1), 54–66 (InRuss.). <https://doi.org/10.17803/lexgen-2025-4-1-54-66>

14 For example, the issues of genetic link between an embryo created through in vitro fertilisation and a donor; genetic screening and parents' attempts to prevent the transmission of genetic diseases to their offspring. See more: Kalinichenko P.A., Nekoteneva M.V. Peculiarities of legal regulation of genomic research at the international and European level // *Vestnik of O.E. Kutafin University*. – 4, 2020. P. 68-78. [doi.org/10.17803/2311-5998.2020.68.4.068-078](https://doi.org/10.17803/2311-5998.2020.68.4.068-078); *Human genome law: lex genomica in global and regional dimension: monograph / col. Authors. Edited by P.A. Kalinichenko*. —, 2022.

15 Gulyaeva E.E. On the legal understanding of personal cognitive liberty // *Social Novelties and Social Sciences: A View from Moscow*. 2024. N 1. Pp. 73–81.

historical origins to the cultural and social struggles for emancipation from slavery in any given culture.<sup>16</sup>

There is a prevailing argument advocating for international-level restrictions on the commercial exploitation of advanced medical procedures and protocols relating to the human genome and cloning, potentially through the application of *jus cogens* norms of international law.

It should be recalled that *jus cogens* is recognized in the 1969 Vienna Convention on the Law of Treaties as a peremptory norm of general international law (Articles 53 and 64). Nevertheless, both in the theoretical discourse and practical application of international law, the concept of *jus cogens* remains contentious: there exists no universally accepted definition regarding the precise conditions under which such norms arise or attain peremptory status.

This ambiguity has rendered the doctrine of *jus cogens* a subject of evolving interpretation within international legal scholarship and jurisprudence, thereby fostering innovative and creative approaches to imperative norms.<sup>17</sup> In light of contemporary global challenges and threats demanding adequate international legal responses, the question persists as to whether the full potential of the *jus cogens* framework has yet been realized or if it remains underutilized.

The Council of Europe's Convention for the Protection of Human Rights and Dignity with regard to the Application of Biology and Medicine<sup>18</sup> (commonly referred to as the Oviedo Convention) has not succeeded in establishing a uniform legal regime regulating genomic research on human germline cells among its member states. For instance, Article 11 of the Oviedo Convention explicitly prohibits any form of discrimination based on genetic heritage. Furthermore, Article 18(2) prohibits the creation of human embryos solely for research purposes. Notably, Article 21 asserts that the human body and its parts shall not, as such, serve as a source of financial gain.

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16 Dolova M.O., Pechegin D.A. Freedom as a value-significant category // Constitution and modernisation of legislation: proceedings of the XV International School-Practice of young legal scholars (Moscow, 27 May - 5 June 2020). Ed. ed. ed. col. T.Y. Khabrieva. Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation, 2020. —. 109.

17 Ispolinov A. Several lives of the doctrine of peremptory norms (*jus cogens*) in international law // International Justice. 2025. —. 15. — 1 (53). P. 70-97.

18 The Convention for the Protection of Human Rights and Human Dignity with regard to the Application of Biology and Medicine (ETS No. 164) was concluded in Oviedo on 4 April 1997. The Convention entered into force on 1 December 1999.

Additionally, the UNESCO Universal Declaration on the Human Genome and Human Rights<sup>19</sup> mandates the International Bioethics Committee to provide ongoing recommendations and assessments to the General Conference regarding the implementation of the Declaration, particularly concerning practices potentially incompatible with human dignity, including the implications for future generations (Article 24).

### 3. PROBLEMATIC INTERNATIONAL LEGAL ISSUES ARISING FROM INNOVATION IN MODERN MEDICINE

The rapid development of 4P medicine presents a series of novel challenges to international law, many of which involve complex moral, ethical, and cultural considerations, thereby posing significant regulatory dilemmas.

Currently, neither international law nor national legislations provide a cohesive and universally accepted framework or strategy governing the development and application of such technologies. Critical issues remain unresolved regarding how to advance these innovations without causing harm to individuals or subsequent generations.<sup>20</sup>

The advancement of modern 4P medicine presents complex challenges to international law, notably manifesting as jurisdictional conflicts and issues of extraterritoriality. For instance, patient data may be stored in one country, analyzed in another, and utilized in a third, thereby complicating regulatory oversight and enforcement. Concurrently, the proliferation of commercial enterprises within this domain has contributed to the erosion of national regulatory frameworks and undermined traditional notions of state sovereignty. These commercial entities effectively establish their own standards and operational rules, prioritizing profit motives and frequently circumventing state authority.

From a theoretical perspective, M. Koskenniemi critically examines these dynamics through the lens of his *managerialism* theory. In a seminal anniversary article, Koskenniemi explores the historical transformation of international law and offers a comprehensive critique of managerialism. He argues that managerialism, by appropriating concepts such as governance, legality, and regulation, obfuscates its own normative priorities. This has led to the emergence of a culture characterized by “apolitical expert legal norms” that diminish the significance of political will, contingency,

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19 Universal Declaration on the Human Genome and Human Rights adopted on 11 November 1997 by the United Nations General Conference on Education, Science and Culture.

20 Bobrova Y.V. “Modern risks of development of predictive, preventive and personalised medicine: international legal regulation of counteraction” // International Public and Private Law, – 4 2024. P. 22.

passion, and ideology in the management of the international order, as well as obscure the “active participation of managerial actors themselves in these processes”. According to Koskeniemi, managerialism operates as an advisor to power structures at all levels, thereby enjoying preferential rights and powers relative to other subjects of international law.<sup>21</sup>

Currently, there is significant divergence in national regulatory approaches to genetic and other advanced medical technologies. For example, within the European Union, editing of the human germline genome is prohibited; in China, it is permitted under strict limitations; and in the United States, it is allowed for research purposes. A notable case highlighting these regulatory challenges is the 2018 genetic experiment conducted by scientist He Jiankui in China using CRISPR-Cas9 technology, which contravened relevant national legislation and elicited widespread public outcry.<sup>22</sup>

In light of these developments, it becomes evident that contemporary international law is increasingly permeating the domestic legal domain, exerting growing influence on both national legislation and law enforcement practices. This trend reflects broader processes in the evolution of the international legal system—processes that are at times contradictory and unpredictable, yet nonetheless contribute to the expansion of international law’s normative scope and its deepening impact on national legal orders.<sup>23</sup>

Within this context, the role and significance of universally recognised principles of international law are notably amplified. Their foundational function as the legal bedrock of the modern international legal system is of critical importance amid the complexity and rapid transformation of international relations. Many national constitutions acknowledge the normative force of such principles and norms, incorporating them into their domestic legal frameworks. For example, the Constitution of the Russian Federation explicitly affirms the binding nature of generally recognised principles and norms of international law. These principles not only shape the structure of national

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21 Kolskeniemi M. The Politics of International Law - twenty years later. Kolskeniemi M. The Politics of International law - twenty years later // European j. of intern. of intern. Law. Oxford, 2009. Vol. 20, n 1, p. 7-19. Rec. Ad. Op.: Laforgia R. // European j. of intern. of intern. Law. Oxford, 2009. Vol. 20, n 4. p. 979-984. In journal: Polunin B.L. Social and Humanities. Domestic and foreign literature. Ser. 4, State and Law. 2011. P. 191.

22 For more details see, for example: E.N. Trikoz, D.M. Mustafina-Bredikhina, E.E. Gulyaeva. Legal regulation of gene editing procedure: the experience of the USA and EU countries // Vestnik RUDN. Series: Legal Sciences 2021, Vol. 25. No. 1. 67-86. DOI: 10.22363/2313-2337-2021-25-1-67-86.

23 Implementation of judgements of the European Court of Human Rights in the Russian legal system: concepts, legal approaches and practice: a monograph / T.Y. Khabrieva, A.Y. Kapustin, A.I. Kovler et al; ed. by V.V. Lazarev. Lazarev. —, 2019. P. 19.

legal systems but also underpin core legal values such as the rule of law, the protection of human rights, and democratic governance in the contemporary international order.<sup>24</sup>

It is important to recall that the application of general principles of law becomes necessary when a particular issue is not addressed by international treaties or customary international law, thereby creating a lacuna that requires normative resolution.<sup>25</sup> This legal situation is closely analogous to the rapidly evolving regulatory landscape in the field of modern 4P medicine, particularly with regard to emerging genetic technologies.

#### **4. THE GENERAL PRINCIPLES OF LAW ARE NOT IMMUTABLE OVER TIME, IN THE SAME WAY THAT THE UNIVERSALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW ARE NOT IMMUTABLE OVER TIME.**

It is commonly accepted without question that the principles of any science, discipline, organization, among others, become invariable, irreplaceable, unobservable, and irreplaceable. However, this is far from what actually makes sense and serves a purpose. Especially if we look at it from the perspective of a rapidly changing contemporary society and development.

In this sense, it is clear that time changes principles. Principles must necessarily change because they are not logical categories, but rather a concentration of material rules, and rules change with relationships. Believing in the immutability of principles demonstrates a lack of critical thinking in the study of history.<sup>26</sup>

Then, it is fair to make it clear that, in training and development, principles have always been and will continue to be developed within the framework of a commendable guiding, edifying, guaranteeing, safeguarding, modifying, and advancing nature. However, principles do not correspond to a finished, completed, closed, definitive subject.

In this line of thinking, principles must necessarily evolve and adapt to the times and new scenarios in order to harmoniously align with new circumstances that, like time itself, inexorably arise and will continue to arise.

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24 Kashirkina A.A. Reflection of universally recognised principles and norms of international law in the conclusions of the Venice Commission // *Journal of Foreign Legislation and Comparative Law*. 2022. V. 18. – 4. P. 113-125. DOI: 10.12737/jflcl.2022.054

25 Romashev Y.S. General principles of law in the system of international law *Law. Journal of the Higher School of Economics*. 2021. – 3. P. 148-174.

26 Monroy Gálvez, Juan F. *The formation of the Peruvian civil process*. Palestra publishers. Lima. 2004, p. 292.



Consequently, it is incorrect, to say the least, to assert what many colleagues consider to be dogma, namely that principles are and must be immutable and unchanging over time.

This error can be refuted with a fundamental and compelling reflection: if time and reality pass, change, and advance unstoppably, it would be illogical to maintain that everything else does not have to adapt to time and the vicissitudes it brings or presents. Otherwise, they would become not only anachronistic and useless, but also tremendously harmful.

Furthermore, concepts are relative; they only make sense within a system and at a specific moment in history. When a human institution created by man for the service of man begins to write its name in block letters, when a human institution crystallizes, abstracts itself from the history that gave rise to it, and claims to be a universal value, then something breaks and is lost: our capacity for inventiveness and responsiveness to new situations.<sup>27</sup>

Likewise, everything material and immaterial that exists in humanity does not remain petrified as decades, centuries, and millennia pass. In the inevitable passage of time, it undergoes progressive, seemingly imperceptible, and systematic modifications, minor or major, in order to remain consistent with each specific period of time, with the aim of reaffirming its validity, relevance, and continued existence.

On the other hand, it should be noted that what is stated in this section regarding the non-immutability of general principles is fully applicable to all principles of the various branches of law, science, arts, and disciplines of human knowledge other than law. Consequently, where appropriate, it also warrants an urgent and unavoidable renewal, incorporation, replacement, or new interpretations of the universally recognized classic principles of international law.

## CONCLUSIONS

INew 4P medical technologies pose serious challenges to universally recognized principles of international law.

Universally recognized principles of international law continue to provide the fundamental framework for these emerging legal relationships, albeit insufficiently.

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27 De Trazegnies, Fernando. The transformation of property rights. In: The Lawo. No. 33. Publisher Fund of the PUCP. Lima. 1978, p. 104.

## SUGGESTIONS

An interdisciplinary academic discourse is needed on the conceptualization of the human being and the legal strategies necessary to regulate the constantly evolving interactions between states and other international actors in the field of modern innovative medicine, specifically 4P medicine.

For effective application in today's reality, the universally recognized principles of international law require adaptive reinterpretation, incorporating contemporary considerations of legitimacy, ethics, and the philosophical dimensions of society's changing "demands." This reexamination is essential to ensure that legal norms are consistent with the overall objective of preserving human dignity, identity, and the integrity of traditional activities of natural life on Earth.

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