THE RIGHT TO INFORMED CONSENT AT THE CONVERGENCE
OF INTERNATIONAL BIOLAW AND INTERNATIONAL
HUMAN RIGHTS LAW

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I. EXPLORING INFORMED CONSENT IN INTERNATIONAL
LEGAL PERSPECTIVE

Informed consent is a fundamental tenet of medical ethics conjugating ethical imperatives and respect for human rights in biomedical research as well as in the exercise of the medical profession. It is considered the foundation of the “new ethos of patient autonomy”,¹ since recognition of autonomy in health care decision-making has enabled and empowered competent patients to retain control of their lives and has come to govern the doctor-patient relationship consistently with respect for the right to self-determination.

From the legal viewpoint, informed consent represents a well-established rule of both biolaw and of human rights law. In fact, the bioethical and human rights-based approaches to the life sciences share common foundations and values, converging over the common objective of protecting human dignity and the integrity of every human being from the risks posed by the progress of technology and its applications to the natural processes governing the beginning and the end of life.² Hence, in the relative paucity of universally agreed principles providing a framework for ethical conduct in the biomedical field, informed consent—just like the basic principle of respect for human dignity—stands as the cornerstone of biomedical law and human rights law alike.³

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³ On the fundamental role of dignity in the fields of bioethics and biolaw, see especially the introductory chapter to this book: Angela Di Stasi, *Human Dignity: From Cornerstone in International Human Rights Law to Cornerstone in International Biolaw?*. 

S. Negri (ed.), *Self-Determination, Dignity and End-of-Life Care*
Exploring the nature and scope of informed consent is definitely not sailing into uncharted waters, especially in consideration of the fact that an impressive wealth of important contributions has been devoted to the subject in both philosophical and legal literature. However, since informed consent has mainly been studied within the framework of domestic law and jurisprudence, it is worth making the point on its present status from the viewpoint of international law and case law. This perspective reveals some interesting insights inasmuch as informed consent has gained remarkable importance in the international legal framework too, and it is by now widely recognised that also “from the standpoint of international law, the only accepted position is that no medical act may be performed without the patients' freely given and informed consent”. Moreover, it is particularly telling that some relevant steps were recently taken within the United Nations human rights system—namely, the issuance of a specific report in November 2009 by the Special Rapporteur on the right to health and the adoption in September 2010 of the Human Rights Council’s resolution on the right to health—inviting all States to “safeguard informed consent within the health counselling, testing and treatment continuum, including in clinical practice, public health and medical research, as a critical element of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

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6 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, U.N. Doc. A/64/272, 10