Contents

List of Tables	XV
Table of Cases	xvii
List of Contributors	xxvii
List of Abbreviations	xxix
List of 1100reviations	
	1
1. Introduction	1
Helen Keller and Daniel Moeckli	
I. THE PAST: WHAT HAVE THE	
COVENANTS (NOT) ACHIEVED?	
2. The History of the Covenants: Looking Back Half a Century and Beyond	d 7
Maya Hertig Randall	
I. Introduction	7
II. The Political Context	10
III. Select Thorny Issues	14
A. The rights to be included	14
B. States' obligations under the Covenants	17
C. Measures of international supervision and enforcement	23
IV. Concluding Remarks	26
Bibliography	27
3. Giving Meaning and Effect to Human Rights: The Contributions of	31
Human Rights Committee Members	51
Gerald L Neuman	21
I. Introduction	31
II. The Functions of the Human Rights Committee	31
III. The Committee and Its Members	37
IV. The Interpretative Function of the Members	40
Bibliography	46
C. L. LOECOD, D	48
4. Interpretation of the ICESCR: Between Morality and State Consent	10
Daniel Moeckli	48
I. Introduction	49
II. The CESCR as Interpreter	51
III. Rules of Interpretation	52
A. The ICESCR	52
B. VCLT articles 31–33	53
IV. A Special Regime of Treaty Interpretation? A. 'Special' interpretive methods	54
A. Special interpretive methods	

Contents

		54
	1. Effectiveness	55
	2. Evolutive interpretation	56
	B. Legality of 'special' interpretive methods	58
	V. Between Morality and State Consent	59
	A Morality	59
	1. Object and purpose: Teleological interpretation	60
	2. Rules of international law	61
	3. 'Special' interpretive methods	62
	B State consent	62
	1. Travaux as supplementary means of interpretation	63
	2. Wording: Textual interpretation	63
	3. Subsequent practice	64
	C. Morality or State consent?	65
	VI. Generating Legitimacy	67
	A. Adherence	67
	B. Coherence	68
	C. Transparency	71
	VII. Conclusion	72
	Bibliography	12
Б	NGOs: Essential Actors for Embedding the Covenants in	
5.	the National Context	75
	Patrick Mutzenberg	75
	I. Introduction II. Cooperation with the Committees Primarily Related to the	
	II. Cooperation with the Committees I minarily related to the	77
	Reporting Procedure	77
	A. The role of NGOs in the reporting procedure	80
	1. NGO interaction prior to the review	81
	 NGO interaction during the State report review The role of NGOs in the elaboration of General Comments 	84
	B. The role of NGOs in the individual communications procedure	
	C. The role of NGOs in the individual communications procedure	86
	under the Optional Protocols	
	III. The Emerging Role of NGOs in the Implementation of	87
	Concluding Observations and Views	87
	A. At the national level	87
	1. Raising awareness at the national level	88
	2. Engaging with national stakeholders	89
	 B. Participation in the committees' follow-up procedure 1. The embryonic follow-up procedure of the CESCR 	89
	2. The key role of NGOs in the follow-up procedure of the HRC	90
	2. The key role of NGOs in the follow up proceeding of the UN treaty C. Difficulties for NGOs in engaging systematically with the UN treaty	
		92
	body system	93
	IV. Conclusion	94
	Bibliography	

II. THE PRESENT: WHAT IS THE INFLUENCE OF THE COVENANTS?

6.	Influence of the ICESCR in Africa	99
	Manisuli Ssenyonjo	00
	I. Introduction	99
	II. Influence of the ICESCR on the African Regional Human Rights System	101
	III. Influence of the ICESCR on the Domestic Protection of Human Rights in Africa	107
	A. Are the rights protected in the ICESCR part of domestic constitutions in Africa?	107
	 B. Dualist approaches to the ICESCR in Africa and their influence on human rights 	109
	C. Monist approaches to the ICESCR in Africa and their influence on human rights IV. Conclusion	117 121
		122
	Bibliography	
7.		124
	Başak Çali	124
	I. Introduction	121
	II. Challenges to Surveying the Influence of the ICCPR in the Middle East	126
	III. Pathways for Influence: Ratification, Reservations, Engagement,	130
	and Legal Status	133
	A. Reservations to the ICCPR	135
	B. Engagement with the Human Rights Committee	137
	C. Domestic legal status of the ICCPR	207
	IV. Resistance to HRC's Concluding Observations in the Middle	140
	East Region A. States of emergency, counter-terrorism, and extraordinary judicial	110
		140
	practices B. Death penalty	142
	C. Extraordinary administration of justice systems	143
	D. Non-discrimination and equal citizenship agenda	144
	E. Minorities and indigenous peoples	145
	F. Democratic expression of political pluralism	147
	V. Conclusion	147
	Bibliography	149
		151
8	. Influence of the ICESCR in Latin America	1)1
	Mónica Pinto and Martín Sigal	151
	I. Introduction	1/1
	II. The Region's Constitutional Frameworks and Their Approach to International Human Rights Instruments	153

Contents	Con	tents
----------	-----	-------

	A. Argentina	154
	B. Brazil	155
	C. Chile	155
	D. Paraguay	156
	E. Uruguay	156
	F. Venezuela	156
	G. Ecuador	156
	H. Bolivia	157
	I Interim conclusion	157
	III. Justiciability of Economic, Social, and Cultural Rights	157
	A. The road to justiciability	157
	B. A new form of litigation	161
	IV. Influence of the ICESCR on the Jurisprudence of	
	National Courts	162
	A. Argentina	163
	B. Brazil	165
	C. Colombia	166
	D. Venezuela	168
	E. Other countries' experiences	170
	V. Influence of the ICESCR on the Regional Human Rights System	171
	A. The San Salvador Protocol	171
	B. Measuring progress	172
	C. Incorporating ESCR into the regional case law	173
	VI. Political Impact, Poverty, and Social Rights Violations:	
	The CESCR and the IACHR	175
	VII. The By-products of ESCR's Justiciability in the Region	179
	VII. The By-products of ESCIA's Justicial may in an any g	180
	VIII. Concluding Remarks	181
	Bibliography	
0	Influence of the ICCPR in Asia	184
9.	Yogesh Tyagi	
	I. Introduction	184
		185
	II. Preliminary Observations	186
	III. Theoretical Framework	187
	IV. Assessment of the Influence of the ICCPR	187
	A. Participation in the drafting of the ICCPR	188
	B. Acceptance of the ICCPR	189
	 C. Reservations and declarations 1. Objections to reservations and declarations 	190
	 Withdrawal of reservations and declarations 	191
	D. Status of treaties under domestic law	191
	E. Influence of the ICCPR on domestic law	195
	F. Influence of the ICCPR on domestic courts	196
	1 Influence of the draft ICCPR	196
	2. Influence of the ICCPR before States' ratification or accession	196
	 Influence of the ICCPR on the domestic courts of 	
	the States parties	197
	G. Influence of the ICCPR on legal scholarship	198
	G. materie	

Contents	xi
H. Influence of national human rights institutions	201
I. Reporting record	203
J. Influence of General Comments and concluding observations	205
K. Influence of Views	206 207
L. Influence of the Universal Periodic Review	207
M. Availability of human rights documents in local languages and their accessibility	208
N. General support	209
V. Concluding Remarks	209
Bibliography	212
Dionography	
10. Influence of the ICESCR in Europe	215
Amrei Müller I. Introduction	215
II. Influence of the ICESCR by Acceptance of ESCRs' Direct Effect?	218
A. Signs of increased legal influence	218
B. Signs revealing the limits of legal influence	225
III. Particularities of Domestic Systems	231
IV. The Financial and Economic Crises as a Chance for Reinforced	
Engagement with the ICESCR in Europe?	235
V. Concluding Remarks	239
Bibliography	240
11. The Influence of the Two Covenants on States Parties Across	
Regions: Lessons for the Role of Comparative Law and of Regions in	
International Human Rights Law	243
Samantha Besson	
I. Introduction	243
II. A Framework for the Proposed Regional Human Rights	216
Comparison	246
III. Comparative Analysis of the Regional Influence of the Two	251
Covenants	251
A. Comparative analysis	252 252
 International law status 'Domestic international law' status 	255
3. Domestic constitutional order	257
4. Domestic institutions	258
5. Other domestic actors	260
B. An overall assessment: Four trends and five needs	261
IV. A Comparative Law Argument for the Authority of the	2 (2
Committees' Interpretations	262
V. Three Proposals for Enhancing the Legitimacy of the	264
Committees' Interpretations	264 265
A. The role of subsidiarity in Covenant law	20)
B. The role of comparison and transnational consensus in Covenant law	267
C. The role of regions and regional human rights regimes under	/
Covenant law	269

VI. Conclusions	273
Bibliography	273
Dibilography	
III. THE FUTURE: WHAT SHOULD	
BECOME OF THE COVENANTS?	
BECOME OF THE COVENNING.	279
12. The Covenants in the Light of Anthropogenic Climate Change	
Stephen Humphreys	279
I. Introduction	283
II. Preambles to the Covenants	286
III. Common Article 1 (Self-determination)	291
IV. Jurisdiction (Articles 2)	291
A. Article 2 of the ICCPR	294
B. Article 2 of the ICESCR	296
V. Limitation/Derogation (Articles 4 and 5) A. Common article 4 of the ICCPR and ICESCR	296
 A. Common article 4 of the ICCPR and ICESCR B. Common article 5 of the ICCPR and ICESCR 	298
	298
VI. Conclusion	301
Bibliography	202
13. The Covenants and Financial Crises	303
Christine Kaufmann	202
I Introduction	303
II Anotomy of Financial Crises: Who, How, and What?	304
A Typologies of an 'equal opportunity menace : Currency, ba	lance of 304
payments, and debt and banking crises	307
B. Human rights impacts of financial crises	308
1. Economic, social, and cultural rights	309
2. Civil and political rights	310
3. Equality and non-discrimination	
C. Human rights in times of financial crises: Two case studies	311
1. Argentina	314
2. Greece III. States' Human Rights Obligations in Times of Financial	Crises 317
A States' obligations as parties to the UN Covenants	0
 B. State responsibilities as members of IFIs or participants in 	rescue
programmes	0=-
C Obligations of States with regard to private actors	322
IV. Human Rights Obligations and Responsibilities of IFIs	
and Their Members	525
A Obligations and responsibilities	323
B IFIs' human rights obligations—Much ado about nothing	g? 323
C. Human rights-related responsibilities of IFIS:	326 327
D. The role of the UN human rights bodies	527

xii

	Contents	xiii
	A People-oriented, rights-based perspective	328 328 329 329 329 330
14.	The Institutional Future of the Covenants: A World Court	/
	for Human Rights?	334
	Felice D Gaer	226
	I. Introduction	334
	II. Human Rights Treaty Implementation and the Covenants	337
	III. Past Treaty Reform Efforts	338
	IV. Recommendations for Reform by Alston, and Others	339
	V. Consolidation Ideas: Stakeholder Meetings and Beyond	340
	VI. Arbour's Proposal Deferred: A Unified Standing Treaty Body	343
	VII. The Dublin Statement and Treaty Body Strengthening	344
	VII. The Dublin Statement and Treaty Body Strengthening	
	VIII. The General Assembly Concludes the Treaty	345
	Strengthening Process	346
	IX. A 'World Court' for Human Rights?	-
	X. Improving Individual Communications: What Should be Done?	350
	Bibliography	355

Index

357