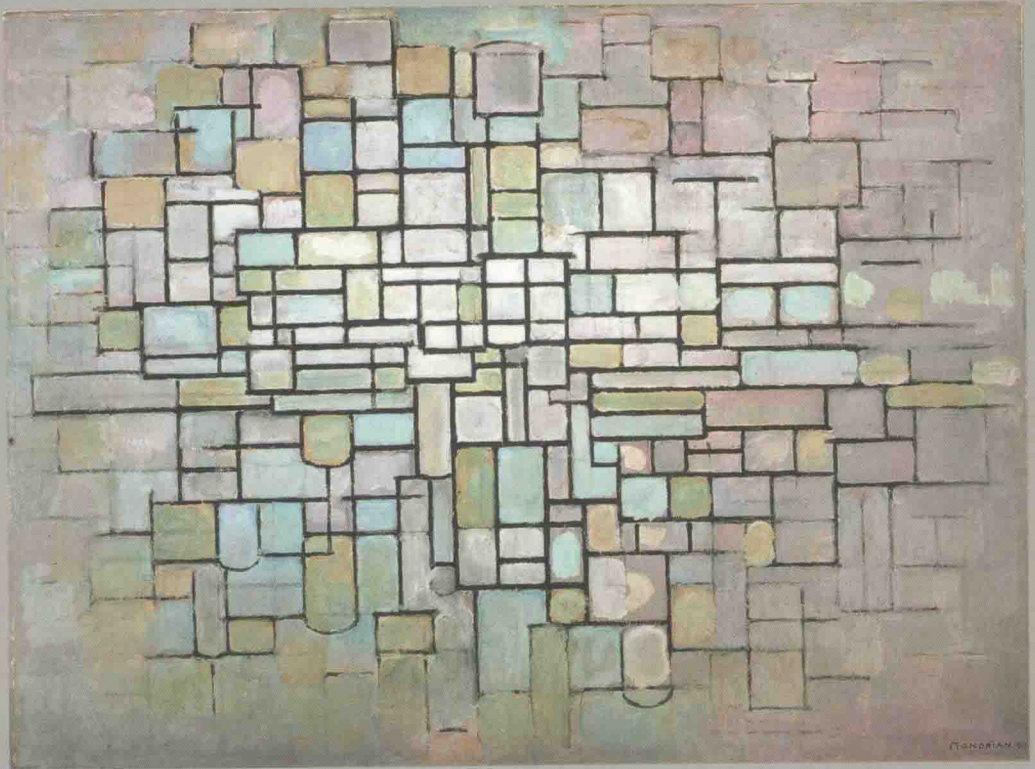


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WORLD TRADE LAW AFTER NEOLIBERALISM

RE-IMAGINING THE GLOBAL ECONOMIC ORDER



ANDREW LANG

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Preface

The work of international lawyers deeply affects the shape and operation of global economic governance, much more now than it has ever done in the past. Most visibly in the context of world trade—but also in respect of foreign investment, debt, finance, and development—the activity of ‘governing’ at the global level is increasingly carried out through international legal processes, and by professionals schooled in the techniques, habits of thought, and forms of argument characteristic of international law. The number of international lawyers contributing to the evolution of international economic governance, including through our role as interpreters and evaluators of existing governance practices, continues to grow.

A central theme of this book, then, is an exploration of the role that international legal processes and international lawyers play in the construction and contestation of structures of global economic governance. By ‘international lawyers’ I am not referring solely to those engaged in the professional practice of international law in and around formal dispute settlement, but much more broadly to the wide range of actors—government officials, NGOs, academics, officials of international organizations, and many others—working in the disciplinary field of international law and engaging in international legal styles of argument. And by ‘international legal processes’ I am not referring solely to formal processes of judicial dispute settlement, but rather to the huge variety of different activities conducted in an international legal idiom, from writing and thinking about international law all the way through to its concrete operation in specific contexts. This focus on international law does not, it should be said, derive from an exaggerated sense of the importance of international law and legal processes in the conduct of global economic governance. I readily admit that there are often much more powerful forces and actors directly at play, than those associated with international law. Instead I focus on international law in order to highlight the responsibility of international lawyers: the point, in other words, is to emphasize the ways in which the work of international lawyers has important effects on the practice of international economic governance, often in ways we do not realize, in order to encourage a greater sense of moral responsibility for those outcomes.

When the research for this book began in the early 2000s, civil society activism around the Seattle Ministerial of the World Trade Organization was a recent memory, and a series of criticisms of the global trading system and its social consequences had achieved wide notoriety. The public debate which accompanied this activism raised fundamental questions about the social and distributional outcomes of the late twentieth-century global economic order, about the extent to which structures of global economic governance entrench and perpetuate patterns of privilege and disadvantage, power and subjection—and about the ways in which those structures of governance may also open up space for effective contestation in

the interests of those who are currently marginalized. Inevitably, and quite rightly, these questions quickly began to be addressed by international lawyers, along broadly two lines of inquiry. On one hand, some began to explore the role that international law and lawyers currently play in producing and entrenching the existing global economic order. How exactly, it was asked, does the work of international lawyers shape the social consequences and normative orientations of international economic governance? What contribution does the professional activity of international lawyers make to the present regime of global economic governance—including its more inequitable and unjust elements? On the other hand, another line of inquiry was also set in train, relating to the emancipatory potential of international law, in the context of global economic governance. What role, if any, should international law and lawyers play in facilitating contestation of the structures of global economic governance in the interests of the presently marginalized? What tools, if any, does international law offer that project?

Answering these questions has rightfully come to be a major professional project for many international lawyers, and I count myself among them. Such questions represent the fundamental normative impulse which provided the initial impetus for this book and has guided it ever since. The imagined audience of the book includes all those who share this impulse.

In the early 2000s, for reasons explained later in this book, one of the key contexts in which international lawyers were turning their minds to these questions was the 'trade and human rights' debate—that is to say, a debate among international lawyers about potential conflicts between international trade law and international human rights law. Claims began to be made that trade liberalization and economic globalization potentially undermined the enjoyment of human rights, particularly social and economic rights. More formally, there were claims that the obligations imposed by international trade law conflict with the obligations imposed on states by international human rights law. Others countered that the norms, rules, and objectives of the trade and human rights regimes were fundamentally mutually compatible, as two halves of a single liberal project of world order.

As a result, this book began life as an intervention into the trade and human rights debate. At one level it continues to serve that purpose: part of the point of this book is to respond to a series of claims made in that debate, and more generally to reflect on its deeper dynamics. For example, I ask what effects, if any, has the trade and human rights debate had on the operation and contestation of the global trade governance? Which kinds of interventions into the debate have been productive, and which have not? Are there any lessons to be learnt from this decade of activity which might inform current attempts by international lawyers to engage in issues around the global governance of trade, investment, and finance? In my view, the time is right for such reflection. In fact, I will be arguing that the trade and human rights debate has in some ways misdirected the energies of international lawyers interested in contributing to the creation of a more just international economic order, and the opening up of productive contestation of its contours.

But while this book is, at one level, a specific intervention into the trade and human rights debate, it also addresses questions of much more general relevance. As

will become clear, the political and cultural context for the emergence of the trade and human rights debate was the rise to dominance of 'neoliberalism' as an economic and political ideology over the last three decades of the twentieth century. This major ideological shift deeply transformed the structure, content, and dynamics of international law, and changed what it meant to do international legal work in the area of global economic governance. My broader interest in this book, then, is with the possibilities and limitations of international economic law 'after neoliberalism'. Focusing specifically on the international trade regime, and with the specific normative orientation described above in mind, I begin to explore what shape international legal work should take in the contemporary period. What questions should we equip ourselves to ask? Where should we direct our attention? What projects should we set ourselves, and how are we to contribute most productively to them?

That said, readers who approach this book in the hope of finding specific proposals for the reform of international economic law and institutions will by and large be disappointed. That is not the kind of contribution that my research and reflection have put me in a position to offer—nor do I think it is necessarily the only significant contribution that is needed at this moment. The primary contribution that I seek to make to that project in this book takes the form of a kind of ground-clearing role: my aim is to help to create the ideational conditions of possibility for more open and productive criticism, reflection and re-imagination of structures of global economic governance, by targeting a number of *imaginative* constraints which currently present serious obstacles to such processes. Thus, while this book looks very different from what might be expected from most contributions to the trade and human rights debate, readers will still find in its pages an argument which is practical and pragmatic, and which is I hope of particular utility for participants in that debate, who are motivated by the desire to imagine and pursue the practice of global economic governance in its emancipatory mode.

Andrew Lang

London, England
2011

List of Abbreviations

AFL-CIO	American Federation of Labor—Congress of Industrial Organizations
AIWN	Asian Indigneous Women's Network
APWLD	Asia-Pacific Forum on Women, Law and Development
APRODEV	Association of Protestant Development Organizations in Europe
ASC	Alianza Social Continental
ASCODE	Association of Central American Peasant Organisations for Cooperation and Development
ATTAC	Association pour la Taxation des Transactions financière et l'Aide aux Citoyens
AWID	Association for Women's Rights in Development
CAFOD	Catholic Overseas Development Agency
CAFTA	Central American Free Trade Agreement
CBD	Convention on Biological Diversity
CDES	Centros de Derechos Economicos y Sociales
CEDHA	Centro de Derechos Humanos y Ambiente
CELS	Centro de Estudios Legales y Sociales
CESCR	Committee on Economic, Social and Cultural Rights
CIIR	Catholic Institute for International Relations
CLADEM	Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer
CLOC	Coordinadora Latinoamericana de Organizaciones del Campo (Latin American Coordinating Group of Rural Organisations)
CONACAMI	Confederación Nacional de Comunidades del Perú Afectadas por la Minería
CONAIE	Confederación de Nacionalidades Indigenas del Ecuador
CRC	Committee on the Rights of the Child
CTD	Committee on Trade and Development (GATT/WTO)
CTE	Committee on Trade and Environment (WTO)
CUSFTA	Canada—US Free Trade Agreement
CUT	Central Única dos Trabalhadore
ECOSOC	Economic and Social Council (UN)
EED	Evangelischer Entwicklungsdienst/Church Development Service

EMIT	Working Group on Environmental Measures and International Trade (GATT)
EPZs	export processing zones
ETOs	extraterritorial state obligations
EURO-CIDSE	Coopération Internationale pour le Développement et la Solidarité/ International Cooperation for Development and Solidarity Europe
EUROSTEP	European Solidarity Towards Equal Participation of People
FAO	Food and Agriculture Organization (UN)
FCTC	Framework Convention on Tobacco Control
FIAN	FoodFirst International Action Network
FIDH	Fédération Internationale des ligues des Droits de l'Homme/ International Federation for Human Rights
FTAA	Free trade Area of the Americas
FTAs	free trade agreements
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
HIC	Habitat International Coalition
HRW	Human Rights Watch
IATP	Institute for Agriculture and Trade Policy
ICDA	International Coalition for Development Action
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
ICLQ	International and Comparative Law Quarterly
IGTN	International Gender and Trade Network
ILO	International Labour Organization
INCHRITI	International NGO Committee on Human Rights and Trade and Investment
IP	intellectual property
ITO	International Trade Organization
ITUC	International Trade Union Confederation
IWLD	Institute for Women, Law and Development
KRRS	Karnatka Rajya Ryota Sangha/Karnatka State Farmers' Association
LDCs	less developed countries
LWF	Lutheran World Federation
MAI	Multilateral Agreement on Investment
MEA	multilateral environmental agreement
MFN	most-favoured nation

MODTLE	Mobilization on Development, Trade, Labour and the Environment
MST	Movimento dos Trabalhadores Rurais Sem Terra (Landless Rural Workers' Movement)
NAFTA	North American Free Trade Agreement
NGLS	Non-Governmental Liaison Service (UN)
NGO	non-governmental organization
NIEO	New International Economic Order
NOVID	Netherlands Organisation for International Development Cooperation
OHCHR	Office of the High Commissioner for Human Rights
PRODH	Centro de Derechos Humanos Miguel Agustín Pro Juárez
PROVEA	Programa Venezolano Educación-Acción en Derechos Humanos
RMALC	Red Mexicana de Acción frente al Libre Comercio
SCM Agreement	Agreement on Subsidies and Countervailing Measures (WTO)
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures (WTO)
TBT Agreement	Agreement on Technical Barriers to Trade (WTO)
TRIMS	Agreement on Trade-Related Investment Measures (WTO)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO)
TWN	Third World Network
UAW	United Auto Workers
UDHR	Universal Declaration of Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations General Assembly
VCLT	Vienna Convention on the Law of Treaties
WEDO	Women's Environment and Development Organization
WIDE	Women in Development Europe
WiLDAF	Women in Law and Development in Africa
WIPO	World Intellectual Property Organization (UN)
WSF	World Social Forum
WTO	World Trade Organization
WWF	World Wide Fund for Nature

Tables of Treaties and Official Documents of International Organizations

TREATIES

i. GATT/WTO Agreements

Agreement establishing the World Trade Organization ('WTO Agreement' or 'Marrakesh Agreement') (15 April 1994, entry into force 1 January 1995) LT/UR/A/2	89
Agreement on Government Procurement ('GATT Government Procurement Code') (1 January 1981) BISD 26S/33.....	250, 275
Agreement on Subsidies and Countervailing Measures ('SCM Agreement') (15 April 1994, entry into force 1 January 1995) LT/UR/A-1A/9	6, 165, 252, 254, 271
Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ('GATT Anti-Dumping Code') (1 January 1980) BISD 26S/171	250
Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 ('Agreement on Customs Valuation') (15 April 1994, entry into force 1 January 1995) LT/UR/A-1A/4.....	252
Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ('GATT Subsidies Code') (1 January 1980) BISD 26S/56	248, 250, 271, 275
Agreement on Technical Barriers to Trade ('GATT Standards Code') (12 April 1979, entry into force 1 January 1980) BISD 26S/8.....	65, 248, 250-1, 275, 330
Agreement on Technical Barriers to Trade ('TBT Agreement') (15 April 1994, entry into force 1 January 1995) LT/UR/A-1A/10.....	68, 126, 251-2, 254, 331
Agreement on the Application of Sanitary and Phytosanitary Measures ('SPS Agreement') (15 April 1994, entry into force 1 January 1995) LT/UR/A-1A/12.....	6, 151, 153, 165, 251-2, 253, 254, 271, 330-43, 346
Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement') (15 April 1994, entry into force 1 January 1995) LT/UR/A-1C/IP/1.....	69, 75, 86, 89, 97, 102, 112, 120-6, 165, 175-6
Annex on Financial Services (GATS) (15 April 1994, entry into force 1 January 1995) MTN/FA	291, 293-6
'Decision on Negotiations on Maritime Transport Services' in Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, WTO Ministerial Decision (15 April 1994) MTN/FA.....	281
'Decision on Negotiations on Movement of Natural Persons adopted by Ministers in Marrakesh on 15 April 1994' in Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, WTO Ministerial Decision (15 April 1994) MTN/FA.....	281
General Agreement on Trade in Services ('GATS') (15 April 1994, entry into force 1 January 1995) LT/UR/A-1B/S/1	18-9, 72, 97-9, 113, 119, 120, 126, 174, 254, Ch 9 <i>passim</i>
General Agreement on Tariffs and Trade 1947 ('GATT') (April 1947, entry into force 1 January 1948) LT/UR/A-1A/1/GATT/2	28-30, 46-7, 89, 119, 146, 149-50, 164-5, 190-9, 206-8, 211-6, 246, 253-71, 317-330 and <i>passim</i>
Fourth Protocol to the General Agreement on Trade in Services ('Telecommunications Reference Paper') (30 April 1996, entry into force 1 January 1998) S/L/20	284-8
Third Protocol to the General Agreement on Trade in Services (24 July 1995) S/L/12.....	281

Understanding on Rules and Procedures Governing the Settlement of Disputes ('Dispute Settlement Understanding') (15 April 1994, entry into force 1 January 1995)	
LT/UR/A-2/DS/U/1	251-2
Understanding on Commitments in Financial Services (15 April 1994) LT/UR/U/1	291, 295

ii. Other treaties

The Atlantic Charter, Joint Declaration by the President and The Prime Minister, Declaration of Principles, Known as the Atlantic Charter ('Atlantic Charter') (14 August 1941) 55 Star app 1603, EAS No 236.....	27
Canada-US Free Trade Agreement ('CUSFTA') (2 January 1988)	
27 ILM 281	62-4, 66, 67, 88
Cartagena Protocol on Biosafety, Protocol to the Convention on Biological Diversity ('Biosafety Protocol') (adopted 29 January 2000, entry into force 11 September 2003)	
39 ILM 1027	145-6, 150, 152-3
Convention on Biological Diversity ('CBD') (opened for signature 5 June 1992, entry into force 29 December 1993) 31 ILM 818	149, 152-3
Framework Convention on Tobacco Control ('FCTC') (opened for signature 21 May 2003, entry into force 27 February 2005) 42 ILM 518	143-4
Havana Charter for an International Trade Organization, Final Act of the United Nations Conference on Trade and Employment ('Havana Charter') (signed 24 March 1948) UN Doc E/CONF.2/78, UN Publications Sales No. 1948.II.D.4.....	24, 25, 26-8, 36, 194, 195, 199-200, 207, 208-9, 241-2, 274
International Covenant on Economic, Social and Cultural Rights ('ICESCR') (16 December 1966, entry into force 1 March 1976) UN Doc A/6316, 6 ILM 368	52, 83, 107-10, 117, 140
North American Agreement on Labor Cooperation ('NAALC') (opened for signature 8 September 1993, entry into force 1 January 1994) 32 ILM 1499.....	139-40
North American Free Trade Agreement ('NAFTA') (December 1992) 32 ILM 289	64-67, 82, 84, 88, 140, 151-2
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entry into force 18 March 2007) < http://unesdoc.unesco.org/images/0014/001429/142919e.pdf >	144-5
Vienna Convention on the Law of Treaties ('VCLT') (23 May 1969, entry into force 27 January 1980) 1155 UNTS 331	152-3

OFFICIAL DOCUMENTS OF INTERNATIONAL ORGANIZATIONS

i. GATT/WTO Documents

Committee on Trade and Environment, <i>Report (1996) of the Committee on Trade and Environment</i> (12 November 1996) WTO Document WT/CTE/1	147
Committee on Trade in Financial Services, <i>Communication from Hong Kong, China</i> (3 December 2002) WTO Document S/FIN/W/25	299
— <i>Communication from Japan: The Establishment of the Financial Services Agency</i> (13 July 2000) WTO Document S/FIN/W/15.....	299
— <i>Communication from Switzerland: E-banking in Switzerland</i> (30 April 2003) WTO Document S/FIN/W/26.....	299
— <i>Report of the Meeting Held on 13 April 2000: Note by the Secretariat</i> (8 May 2000) WTO Document S/FIN/M/25.....	298
— <i>Report of the Meeting Held on 25 May 2000: Note by the Secretariat</i> (29 June 2000) WTO Document S/FIN/M/26	298

— <i>Report of the Meeting Held on 13 July 2000: Note by the Secretariat</i> (23 August 2000) WTO Document S/FIN/M/27	298, 299
— <i>Report of the Meeting Held on 9 October 2000: Note by the Secretariat</i> (20 November 2000) WTO Document S/FIN/M/28	298
— <i>Report of the Meeting held on 11 October 2001: Note by the Secretariat</i> (9 November 2001) WTO Document S/FIN/M/32	299
— <i>Report of the Meeting Held on 2 December 2002: Note by the Secretariat</i> (11 February 2003) WTO Document S/FIN/M/38	294, 298–9
— <i>Report of the Meeting held on 4 June 2002: Note by the Secretariat</i> (8 July 2002) WTO Document S/FIN/M/35	298
— <i>Report of the Meeting Held on 26 February 2003: Note by Secretariat</i> (7 April 2003) WTO Document S/FIN/M/39	294
— <i>Report of the Meeting held on 16 May 2003: Note by the Secretariat</i> (30 June 2003) WTO Document S/FIN/M/40	294, 299
— <i>Report of the Meeting held on 7 July 2003: Note by the Secretariat</i> (13 August 2003) WTO Document S/FIN/M/41	299
— <i>Report of the Meeting Held on 6 October 2003: Note by the Secretariat</i> (12 November 2003) WTO Document S/FIN/M/42	298
— <i>Report of the Meeting Held on 28 September 2004: Note by the Secretariat</i> (29 October 2004) WTO Document S/FIN/M/46	299
— <i>Report of the Meeting Held on 19 September 2005: Note by the Secretariat</i> (23 September 2005) WTO Document S/FIN/M/50	299
Council for Trade in Services, <i>Communication from the European Communities and their Member States, GATS 2000: Financial Services</i> (22 December 2000) WTO Document S/CSS/W/39	298
— <i>Draft Decision on Movement of Natural Persons Commitments</i> (21 July 1995) WTO Document S/C/W/8	281
— <i>Report of the Meeting held on 21 July 1995: Note by the Secretariat</i> (29 August 1995) WTO Document S/C/M/5	281
— <i>Report of the Meeting held on 28 June 1996: Note by the Secretariat</i> (8 August 1996) WTO Document S/C/M/11	281
— <i>Report of the Meeting Held on 11 and 15 April 1997</i> (2 May 1997) WTO Document S/C/M/18	289
Declaration on Trade Measures Taken For Balance-of-Payments Purposes, (28 November 1979) GATT Document L/4904, BISD 26S/205–209	47
Doha Ministerial Declaration of 14 November 2001, WTO Ministerial Declaration, WT/MIN(01)/DEC/1	147
Group on Basic Telecommunications, <i>Chairman's Note: Market Access Limitations on Spectrum Availability</i> (3 February 1997) WTO Document S/GBT/W/3	289
— <i>Report of the Meeting of 15 February 1997</i> (10 March 1997) WTO Document S/GBT/M/9	289
Measures for the Expansion of Trade of Developing Countries as a Means of Furthering their Economic Development (21 May 1963) GATT Document MIN(63)/7, BISD 12S/36	46
Ministerial Declaration on the Uruguay Round (20 September 1986) BISD 33S/19	277
Negotiating Group on Basic Telecommunications, <i>Questionnaire on Basic Telecommunications: Note by Secretariat</i> (15 July 1994) WTO Document TS/NGBT/W/3	304
— <i>Report on the Meeting of 15 December 1995</i> (22 December 1995) WTO Document S/NGBT/11	285

— <i>Report on the Meeting of 26 January 1996</i> (14 February 1996) WTO Document S/NGBT/12	285, 286
— <i>Questionnaire on Maritime Transport Services: Note by the Secretariat</i> (21 October 1994) WTO Document S/NGMTS/W/2	304
Safeguard Action for Development Purposes (28 November 1979) GATT Document L/4897, BISD 26S/209	47
<i>Services Sectoral Classification List</i> (10 July 1991) WTO Document MTN.GNS/W/120	279
Singapore Ministerial Declaration (13 December 1996) WTO Document WT/MIN(96)/DEC.	139
Working Party on Professional Services, <i>Questionnaire on the Accountancy Sector: Note by the Secretariat</i> (3 April 1996) S/WPPS/W/7	304

ii. Official documents of other international organizations, including UN agencies and organs

Committee on Economic, Social and Cultural Rights, 'Concluding observations of the Committee on Economic, Social and Cultural Rights: Ecuador' (6 July 2004) UN Doc E/C.12/1/Add.100	109
— 'Concluding Observations of the Committee on Economic Social and Cultural Rights: India' (May 2008) UN Doc E/C.12/IND/CO/5	109
— 'Concluding observations of the Committee on Economic, Social and Cultural Rights: Jamaica' (30 November 2001) UN Doc E/C.12/1/Add.75	108
— 'Consideration of reports submitted by States Parties under Articles 16 and 17 of the Covenant: Costa Rica; Draft concluding observations of the Committee on Economic, Social and Cultural Rights' (4 January 2008) UN Doc E/C.12/CRI/CO/4....	109
— 'General Comment 12: The right to adequate food (Art. 11)' (12 May 1999) UN Doc E/C.12/1999/5	109–10
— 'General Comment No. 14 (2000): The right to the highest attainable standard of health' (11 August 2000) UN Doc E/C.12/2000/4	109–10
— 'General Comment No. 15 (2002): The right to water' (20 January 2003) UN Doc E/C.12/2002/11	109–10
— 'General Comment No. 17 (2005): The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author' (12 January 2006) UN Doc E/C.12/GC/17	109–10
— 'General Comment No. 18: The right to work' (6 February 2006) UN Doc E/C.12/GC/18	109–10
— 'General Comment No. 19: The right to social security' (4 February 2008) UN Doc E/C.12/GC/19	109–10
— 'Globalization and economic and social rights of women: article 2, paragraph 2, and article 7 of the International Covenant on Economic, Social and Cultural Rights; Background paper submitted by Mirta Teitelbaum' (11 May 1998) UN Doc E/C.12/1998/6	107
— 'Globalization and its impact on the enjoyment of economic and social rights; Background paper submitted by the International Confederation of Free Trade Unions (ICFTU)' (11 May 1998) UN Doc E/C.12/1998/4	107
— 'Globalization and the human rights set forth in articles 6 to 8 of the International Covenant on Economic, Social and Cultural Rights; Background paper submitted by Alejandro Teitelbaum' (11 May 1998) UN Doc E/C.12/1998/7	107
— 'Globalization v. Globalism: Giving Internationalism a Bad Name; Background paper submitted by Mark Ritchie, President, Institute for Agriculture and Trade Policy' (11 May 1998) UN Doc E/C.12/1998/5	107

- 'Record of the CESCR and INCHRITI Workshop on International Trade, Investment and Finance and Economic, Social and Cultural Rights: The Role of the Committee on Economic, Social and Cultural Rights' (6 May 2000) [http://www.unhchr.ch/tbs/doc.nsf/0/11d06750ac4e7acbc125691f002f01f0?](http://www.unhchr.ch/tbs/doc.nsf/0/11d06750ac4e7acbc125691f002f01f0?Opendocument)
Opendocument 92, 108
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