

International Social Science Council/Conseil International des Sciences Sociales

CROP newsletter

Comparative Research Programme on Poverty

FRONTIERS OF POVERTY RESEARCH

“Human Rights from Below”: Indigenous Peoples, Poverty, & Human Rights Prof. **Camilo Pérez-Bustillo**

The General Assembly's approval of the amended text of the UN Declaration on the Rights of Indigenous Peoples on September 13th 2007 capped 25 years of formal efforts to secure such an instrument dating all the way back to the founding of the UN's Working Group on Indigenous Populations (WGIP) in 1982. Until its passage the single most authoritative expression of indigenous rights in international law was ILO Convention 169 (1989), which is the specialized instrument of a single UN body which only a handful of state parties (mostly Latin American and Scandinavian) have adhered to. The Declaration reflects both the advances during this historical period in the international recognition of the rights of one of the world's poorest, most excluded, and most marginalized sectors, and the persistent limits and contradictions of such efforts. Indigenous peoples present one of the most firmly established empirical cases that globalization processes have not reduced and have in fact exacerbated poverty and/or inequality among key sectors of the international community¹. Issues regarding the relationship between indigenous peoples, poverty, and human rights thus can also serve as a point of departure for exploring some of the most challenging complexities of the emerging bridge between issues of poverty and human rights as such, from the perspective of “international poverty law” (Van Genugten and Pérez-Bustillo 2001, 2004; Pérez-Bustillo 2007).

My argument here is that the status of indigenous peoples and the extent to which their rights are recognized in the international system, despite and ironically in part *because of* the apparent “marginality” of such issues, reflect the conceptual and structural deficiencies and inequities at the core of hegemonic versions of international law and international human rights.

The high stakes involved in such issues are reflected in the fact that the four states that voted against the Declaration included the United States, Canada, Australia, and New Zealand, and that the 11 states which abstained included Russia, Nigeria, and Colombia. The latter was in fact the only Latin American state that did not vote in favour, reflecting its increasingly evident status as an authoritarian anomaly in the region; this is particularly notable in the specific context of the Declaration since over half of the 4 million people displaced due to its internal armed conflict are of African descent or of indigenous origin.



Prof. Pérez-Bustillo pictured during one of his lectures in CROP's Training Course on Poverty & Human Rights, that was held last summer in Bergen.

The overall trend towards increasing inequities on a global scale, which has led Enrique Dussel to characterize this historical period as the age of “globalization and exclusion” (1998, 2007), and others such as Luigi Ferrajoli (2004, 2005) to define it as that of “global social apartheid”, and its implications, can best be grasped “from the perspective of its victims” (Dussel 1998).

More specifically it is imperative to ground our critique as to the origins and possible trajectory of the global system among those groups most affected by its polarities. This insistence on approaching issues of human rights “from below” is closely related to that suggested by Balakrishnan Rajagopal (2003) as to international law, and by Boaventura Sousa Santos and César A. Rodríguez Garavito (2007) as to the overall relationship between law and processes of globalization. This perspective is rooted in the critical insight suggested by thinkers such as Amartya Sen, Thomas Pogge, and Pierre Sané, and by social movements such as those led by Mahatma Gandhi, the Rev. Dr. Martin Luther King Jr., Nelson Mandela, and by Latin American indigenous peoples such as Mexico’s Zapatistas, that the *essence* of poverty is in fact the absence of meaningful human rights.

This also necessarily implies that poverty can only be effectively addressed and overcome if it is approached from a perspective that understands it to be a violation of such rights. There is an increasingly significant trend in recent jurisprudence from the Inter-American and European human rights systems and from constitutional courts in South Africa and India, among others, which seeks to ground human rights claims closely connected to conditions of poverty, such as those regarding economic, social, and cultural rights, in an underlying right to a dignified life (which is in fact already suggested in Article 23 of the Universal Declaration of Human Rights). Those cases which have explored such issues in greatest depth tend to arise in the context of groups characterized by the most grievous conditions of exclusion, marginalization, and/or discrimination such as the homeless and landless, street children, young women who become victims of femicide, indigenous and tribal peoples, persons belonging to racial, ethnic, and/or religious minorities, undocumented migrant workers, and those diagnosed with AIDS or as HIV-positive. But hegemonic versions of human rights such as the stripped-down neoliberal paradigm promoted by official U.S. policy continue to prevail, and to accord much greater weight to a narrow core of civil and political rights over others of an economic, social, and cultural character.

Willem van Genugten and I have suggested elsewhere (2001, 2004) that the systematic denial of justiciable and enforceable rights to the poor—for example in terms of the economic, social and cultural rights that shape their conditions of life as to education, work, health, housing, land, participation, discrimination, etc.—should be understood as the “poverty of rights” (*id.*) and “inequality of rights” (Pérez-Bustillo 2007) that is

characteristic of excluded and marginalized sectors throughout the world, and which according to Hans Egil Offerdal (2005) results in the denial of their “right to be human” as such. Our approach builds on Hannah Arendt’s (1950) insistence in her seminal critique of the limits of the Universal Declaration on Human Rights that the fundamental human right from which all others flow is the “right to have rights”, which she argued is disturbingly absent from the Declaration (and much of the contemporary normative machinery of international law and international human rights) because of its emphasis on the protection on the rights of those with recognized membership in national communities, and its concomitant failure to recognize the rights of the stateless.

This approach further assumes that contemporary human rights norms are the historical product of the struggles of social movements and their impact on evolving patterns of reflection and discourse, which include those against feudalism, colonialism, imperialism, slavery, racism and national oppression, the exploitation of workers, and the domination of women. The largely unwritten history of the “making” of international human rights (Thompson 1963) is the history of the ebbs and flows in a non-linear trajectory as to the extent of recognition of the rights of those most marginalized and excluded in each historical period. Such an approach also involves a distinct rupture with epistemological assumptions of a positivist, functionalist, and determinist character that are still prevalent in many circles. It also includes an insistence upon a critical understanding of legal definitions of rights in any specific historical period as minimums, not maximums (“floors and not “ceilings”), and thus as points of departure, not destinations in themselves.

All of this includes a recognition of how initially hesitant advances at one moment can be completed at a much higher level of complexity later, as the result of the pressure of vigorous social movements. A key example is the adoption of the Declaration of the Rights of Man and Citizen in 1789 in the context of the early stages of the French Revolution, which despite its classical liberal rhetoric of “liberty, equality, and fraternity”, denied all three of these dimensions of human freedom to millions of African slaves within the French colonial empire, to women, and to males who were not property-owners. The Declaration’s failure to address the issue of slavery was not remedied until the rebellion of slaves in Haiti led by Toussaint Louverture in 1791 compelled the French National Assembly to finally abolish it in 1794 (James 1963; Blackburn 1988); and despite such initial advances in France and then in the United Kingdom

(and only much later in the United States and Brazil) the first enforceable international convention against slavery and the slave trade was not adopted until 1926. Similarly the Nazi genocide was completely “legal” during the period it was carried out, and the first international convention against genocide was not adopted until 1948. As Pierre Sané (2004) has suggested the continuing failure in hegemonic versions of international human rights to fully recognize poverty as a violation of its fundamental principles is the contemporary equivalent of such past experiences as to slavery, colonialism, and genocide and their relative “legality” and/or “legitimacy”.

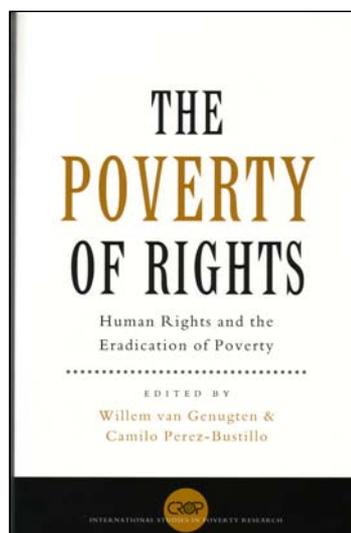
Debates in the international community as to the rights of indigenous peoples thus highlight the extent to which the world system and hegemonic versions of international law and human rights discourses and practices are characterized by inequalities of rights. This is particularly so given the fact that the history of efforts to secure international recognition of the rights of indigenous peoples is completely intertwined with the origins of international law (and what we have now come to understand as “human rights”) as such. The recent adoption of the UN Declaration on the subject is in this sense simply the latest stage in a continuing and still incomplete process of recognition of such rights, which in fact have an existence prior to that of the international community itself. These efforts began with early scholars such as Bartolomé de Las Casas, Francisco de Vitoria, Francisco Suárez, and Hugo Grotius in the 16th and 17th centuries who laid the foundations of what has come to be known as the “Salamanca School”,

which developed the first systematic approach to what we currently define as “international law”, and thereby engendered its most precocious step-child, “international human rights” (Dussel 2007). Their still widely unacknowledged origins are in Las Casas’ arduous efforts to explore, document, and ultimately critique the theological, legal, and ethical bases for the Spanish conquest of the New World (Gutiérrez 1995).

Las Casas’ work drew in large part upon the widespread resistance of indigenous peoples to this processes, and insisted upon the legality and legitimacy of their assertions of self-defense, sovereignty, and finally armed rebellion (id.). The echoes of their defiance continue to resonate today. The new UN Declaration would not exist if there had not been a notable resurgence in demands for the recognition of the rights of indigenous peoples as a result of widespread controversy regarding the implications of the observance of 500 years of the inception of the European conquest of the Americas in 1992, the awarding of that year’s Nobel Peace Prize to Guatemalan human rights activist Rigoberta Menchú, Mexico’s Zapatista rebellion in 1994, and analogous movements in countries such as Ecuador and Bolivia (culminating in the election in 2005 of its first indigenous President, Evo Morales). The significance and limits of the new UN Declaration can only be fully understood in this context.

Contemporary debates in the international community tend to reflect the imperatives of “state logic” and “market logic” (Falk 2000) which continue to be dominant in such contexts. These logics are centered around the defense of the interests of existing nation-states as the most privileged subjects of international law, understood as the framework for governing relations among states, as distinct for example from an international system structured around the “rights of peoples” (Basso 1976; see also the African Charter on Human and People’s Rights, adopted in Banjul in 1981, which is the basis of the African regional human rights system). But according to Falk this dominant statist logic is in turn subordinated to the imperatives of transnational capital, as reflected for example in neoliberal economic policies imposed through the IMF, the WTO, the World Bank, and free trade agreements.

Indigenous peoples fall somewhere along the edges of the traditional understanding of “self-determination” in hegemonic versions of international law. The prevailing, somewhat Orwellian understanding is that all peoples are theoretically equal, but not all have an equal right to self-determination. The new UN Declaration is the latest effort to somehow square this troublesome circle at least in the context of indigenous and tribal peoples. It specifically



Together with Prof. Willem Van Genugten Prof. Pérez-Bustillo edited the “The Poverty of Rights – Human Rights and the Eradication of Poverty”, that was published by Zed Books in the “CROP International Studies in Poverty Research” series.

recognizes (in its Article 3) the right of indigenous peoples to self-determination, which has already been universally accorded to all “peoples” by Article 1 (2) of the UN Charter (1945) and Article 1 of each of the International Covenants as to Civil and Political and Economic, Social, and Cultural rights (1976), respectively.

Deep divisions regarding such issues and their implications were reflected in the complex, multi-layered process leading up to the approval of the Declaration, which included thirteen years of deliberation regarding its specific contents, and the failure to ultimately adopt it, as had been expected, after its initial approval in an earlier version by the new UN Human Rights Council in 2006. Widespread concerns among African states regarding the potentially destabilizing impact of the recognition of the rights of indigenous peoples in the context of current or potential “tribal” conflicts occasioned by inequalities between ethnic and/or religious groups (as have already arisen in Rwanda, Sudan, Nigeria, and most recently in Kenya, and as have been feared in Botswana and Namibia) blocked the Declaration’s final approval on that occasion. This led to months of intensive negotiations which produced several amendments and paved the way for the Declaration’s ultimate adoption in September 2007. Non-governmental groups advocating for passage of the Declaration were excluded from these negotiations, and this led many such groups to complain of the lack of transparency in this process, and to reject the amendments which resulted from it as illegitimate, and in fact a violation of the Declaration’s own crucial insistence in Articles 10, 17, 18, and 19 on the right of indigenous peoples to be consulted regarding matters having an impact upon their rights.

Several of the African states which had initially voted against the Declaration, expressed misgivings regarding its possible implications, or initially abstained or absented themselves from the first vote, either voted for it in the end (Botswana, Egypt, Ghana, Madagascar, Malawi, Mozambique, Namibia, Niger, Senegal, Sierra Leone, Sudan, Tanzania, Tunisia, Zambia, Zimbabwe), abstained (Burundi, Kenya, Nigeria) in the final vote in September 2007, or absented themselves from the General Assembly hall presumably to avoid a recorded vote (14 of the 34 states which absented themselves were from Africa); a total of 28 African states in the end voted in favor and 17 either abstained or absented themselves, with none voting against. The amendments that made the Declaration’s final approval possible in somewhat diluted form included most notably an insistence in language added to the initial draft of paragraph 1 of Article 46 disavowing any exercise of indigenous people’s

to self determination under Article 3 “which would dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent states” (e.g. an implicit allusion to the implications in the indigenous rights context of cases such as Kosovo, Tibet, and the Basque region). The standard for assessing whether military activities conducted on the lands or territories of indigenous peoples are justified was also diluted from a requirement that the state at issue demonstrate a “(significant threat to) relevant public interest”, by striking the first (bracketed) part of the phrase; now simply a showing of a “relevant public interest” is enough. And yet since the rest of this Article continues to insist on free agreement or a request by the indigenous peoples involved in such situations, a state such as Colombia where traditional indigenous authorities insist upon the right to bar all armed groups from operating on their territory felt obliged to abstain in the final vote.

Article 3 of the Declaration on the Rights of Indigenous Peoples specifically contributes to a much-needed bridge between civil and political rights on the one hand and economic, social, and cultural rights on the other by adding that “[b]y virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural rights”. These words reaffirm in essence that the rights of self-determination held by indigenous peoples have both the civil and political dimensions traditionally associated with this concept, and equally important additional dimensions related to their full and equal enjoyment of economic, social, and cultural rights. This in turn means that violations of the economic, social, and cultural rights of indigenous peoples have both an intrinsic significance in and of themselves, in relation to each other- in terms of rights in specific dimensions such as education, work, health, housing, etc. and their interdependence- and an additional significance because they reflect, and serve as indicators, of the extent to which their underlying right to self determination is being respected.

The Declaration is particularly notable from the perspective of poverty research because more than half of its Articles focus on the economic and social dimensions of indigenous rights with a direct relationship to issues of poverty: these include Articles 1, 2, 7-8, 10, 17-24, 26-29, 31-32 and 38-44. These provisions must be understood as part of an overall shift in emphasis in UN policy towards building a bridge between issues of poverty and human rights, which is also reflected in the May 2001 Statement of the Economic, Social and Cultural Rights (ESCR) Committee and in the draft version of the proposed guidelines on human rights and poverty which have been approved by the

Human Rights Council but are still awaiting final approval in the General Assembly, in a situation akin to the limbo to which the indigenous rights declaration was consigned between June 2006 and September 2007. Such standards provide an emerging juridical basis for Amartya Sen's suggestion that poverty must be understood as a deprivation of an individual's ability to control his or her own circumstances (Sen 1999), which translated into the language of rights would imply that poverty takes its most concrete form as the violation of an individual and/or collective right to self-determination in both a literal and metaphorical sense. Meanwhile the Declaration is still only a half-step towards the full recognition of indigenous rights under international law that only a binding convention would provide; in the interim most advocacy efforts will be concentrated at the state and regional level to insure that these are raised up to the new minimum standards contained in it.

This includes key efforts currently underway in Latin American states such as Bolivia and Ecuador to enact national legislation directly incorporating the provisions of the UN Declaration and to reform their national constitutions to fully reflect its implications, and those of broad interpretations of indigenous rights developed by the Inter-American Court of Human Rights in several landmark cases (from Nicaragua, Paraguay, and Surinam) over the last 7 years. The issue in this context is not whether the new Declaration is itself enforceable, but rather the extent to which it incorporates and provides additional support for standards as to indigenous rights which may be enforced or are already enforceable in other settings (global, regional, and national).

Dr. Camilo Pérez-Bustillo is currently engaged as a research professor of the Human Rights Programme in the Faculty of Law, Autonomous University of Mexico City (UACM). He has written extensively on global human rights discourse and practices, and of their historical, philosophical, and ethical origins and doctrines.

Notes

1) See generally (2005) Indigenous Peoples, Poverty and Human Development in Latin America: 1994-2004, a World Bank research report by Gillette Hall and Harry Patrinos [<http://tinyurl.com/8rn7k>], and (2005) Robyn Eversole, John-Andrew McNeish and Alberto D. Cimdamore (eds.), *Indigenous Peoples and Poverty* (which explores such issues through case studies drawn from Latin America and beyond, including settings such as Taiwan, Russia, Southeast Asia, New Zealand, Canada, Australia, the U.S., and Scandinavia; see also recent national Human Development Reports exploring such issues in depth in the contexts of Mexico (2006) and Guatemala (2005) available at the UNDP website, discussed in Pérez-Bustillo (2007).

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RISING FOOD PRICES PRODUCE MORE POVERTY

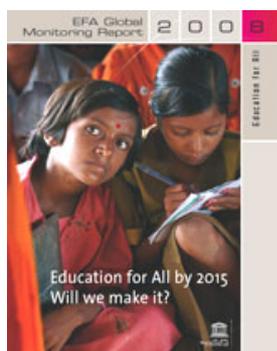
Dr. Tom Skauge, Scientific Director of CROP

The exploding prices of rice and other food products is a serious setback in the struggle to eradicate poverty. The price of medium-grade Thai rice is up 120% so far this year and prices are still spiking. Rice producing countries like Indonesia, Bangladesh and the Philippines have to import rice to be able to feed its own population¹. Globally the prices of food have risen 83% during the last three years. We know that poor people might have to spend as much as 75% of their income on food. Even the World Bank is seriously alarmed, according to President Robert B. Zoellick 100 million poor are seriously affected by the escalating food prices. He warns that the crisis could mean “seven lost years” in the fight against worldwide poverty². If this is the case we might be back where we first started with the UN Millennium Development Goals (MDG).

Two important structures that produce poverty is the extreme inequality of distribution of wealth, and how money is wasted on wars. On a global scale, the top 10% bracket now control 85% of all wealth. Newsweek recently identified the new global super class: an elite which controls not only money, but decision making arenas and premises for development. The CEO of ExxonMobil runs operations in 180 countries.³ The values, visions and actions of this and other elite actors will be extremely important for the success rate of MDG. They have to show more responsibility.

In his latest book, Nobel-Price winner Joseph Stiglitz, estimates the cost of the war in Iraq to three trillion dollar⁴. Based on the data given by Santosh Mehrotra and Enrique Delamonica one can calculate that these resources alternatively could have paid for basic social services for the worlds poor for a period of at least 30 years.⁵

To help put focus on these important issues CROP invites to a seminar about *Poverty Production*, May 20th in Bergen, where Norwegian experts in the field of poverty research will gather to discuss which forces and structures that creates poverty, and how *Education for All* and focus on climate issues can play a part in helping eradicating poverty.



Education for All - Global Monitoring Report⁶

During the spring I have made several research trips. I went to Oxford to meet with Young Lives and Childwatch to finalize the plans for our book on child poverty, and to discuss the possibilities of holding a conference at the end of 2009 to commemorate the 20th anniversary for the *Convention of the Rights of the Child*.

Next I travelled to Paris to participate in ISSC's Executive Committee meeting. One of the important items on the agenda was the World Social Science Forum (WSSF), which will be held in Bergen next year. The CROP Scientific Committee had provided me with much input and advice that I presented at the meeting

I have now just returned from the CLACSO headquarter in Buenos Aires where I held meetings with the CROP/CLACSO Programme. One of the main things we discussed was organizing the first “South-South” workshop that will bring together Latin American and African poverty researchers to discuss *Strategies against Poverty: Designs from the North and Alternatives from the South*. The workshop will be held in Addis Ababa, in December, in collaboration with OSSREA.

During the coming summer CROP and the CROP/CLACSO programme will also provide much input to the Bergen Summer Research School on Global Development Challenges.

For further details about CROP's plans, please refer to our *Annual Report 2007 and Plan of Action 2008-09* that you will find on the CROP webpage.

In conclusion, I am happy to inform you that the *Poverty and Water* book has been published during the spring (see next page for details). CROP and Zed Books sponsor Book Aid International (www.bookaid.org). 200 copies of this new book is distributed free of charge to scholarly libraries and research institutions in Africa. Since the start of the CROP/Zed Books collaboration, several thousand copies of our books have been distributed this way.

Notes

- 1) Time, April 28, 2008, pp. 28-31
- 2) Press-briefing at the IMF-WB spring meeting April 11, 2008, [<http://tinyurl.com/5h4u2m>]
- 3) Newsweek, April 14, 2008, pp. 38-48
- 4) Stiglitz, Joseph & Linda Bilmes (2007) *The Three Trillion Dollar War: The True Cost of the Iraq Conflict*, W. W. Norton, New York
- 5) Mehrotra, Santosh & Enrique Delamonica (2007) *Eliminating Human Poverty: Macroeconomic & Social Policies for Equitable Growth*, CROP International Studies in Poverty Research, ZED Books, London
- 6) UNESCO (2008) *Education for All by 2015 – Will we make it?* [<http://tinyurl.com/yc46sd>]



Zed Books
30 Years - Provoking Ideas

CROP co-publishes the *CROP International Studies in Poverty Research* book series with Zed Books, a well renowned publisher that both specialises in producing books that matter on development related issues and that also has an effective worldwide distribution system of its books. In co-operation with Zed Books CROP is able to distribute its publications free of charge to institutions in the South.

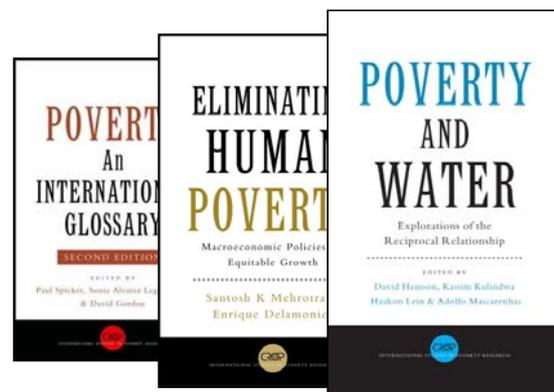
So far 12 books have been published in the series, these titles are the latest additions:

- Poverty and Water: Explorations of the Reciprocal Relationship, 2008
- Eliminating Human Poverty: Macroeconomic and Social Policies for Equitable Growth, 2007
- Poverty: An International Glossary (2nd edition), 2007
- International Poverty Law, 2006

Poverty and Water has just been published, the chapters in the book were first presented at conferences that CROP has held about poverty in relation to access to water in Norway and South Africa. The book is edited by Kassim Kulindwa, Adolfo Mascarenhas (both at the University of Dar Es Salaam, Tanzania), David Hemson (Human Sciences Research Council, South Africa), Haakon Lein (Institute of Geography, NTNU, Norway).

Rarely has such a contentious and complex issue emerged in 21st century development as that of water. This book uses a global spread of case studies to illustrate that water is not simply an issue of physical scarcity, but rather a complex and politically driven issue with profound future implications, both in the developing world and outside it.

The book argues that for the international community to achieve the Millennium Development Goals, governments must step in to protect the rights of the poor. Here, the links between poverty and access to clean water are explored with an eye to political reform that can end the exploitative policies of big business and help shape a more equitable world for all.



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CROP & CROP/CLACSO UPCOMING ACADEMIC CONFERENCES & COURSES

EVENT	MAIN ORGANIZER	DATE & PLACE
Seminar on <i>Poverty, the Environment, Education, Poverty Production, and Child Poverty</i>	CROP & Childwatch	May 20-21, Bergen
Panel on <i>The Labyrinths of Poverty and Inequality in Latin America and the Caribbean</i>	Bergen Summer Research School on Global Development Challenges (BSRS), University of Bergen (UiB) & CROP/CLACSO Programme	August 11, Bergen
Ph.D. Course on <i>Global Poverty: Professions and Societal Development</i> - Supporting and network building	BSRS, UiB, Bergen University College & CROP	August 7-17, Bergen
Course on <i>The Role of Research Universities in Social, Economic and National Development</i> - Supporting and network building	Nile Basin Research Programme & UNIFOB Global	August-December, Bergen
Panel on <i>Poverty research challenging policy in Latin America</i> at Nordic Latin America Conference (NOLAN)	Chr. Michelsen Institute (CMI) & UiB	September 10-12, Bergen

See the whole calendar at www.crop.org