

2nd INTERNATIONAL FORUM ON COOPERATIVE LAW ON “COOPERATIVE LAW AND COOPERATIVE PRINCIPLES”, ATHENS, 26-28 SEPTEMBER 2018

The 2nd International Forum on Cooperative Law follows the one organized in 2016 at Montevideo, Uruguay. The fruitful outcome of the Montevideo Forum – both as concerns the number of participants and the positive feed-back – led to the decision to organize such meetings biannually.

The 2nd International Forum on Cooperative Law will be organized at Athens by Ius Cooperativum, with the support of the International Co-operative Alliance and of two local co-organizers: the Hellenic Open University (Athens) and the Peoples' University on Social and Solidarity Economy (Thessaloniki).

Aim

Under the overall theme of “Cooperative Law and Cooperative Principles”, which is to point to the relevance of the internationally recognized cooperative principles for cooperative law, the 2nd International Forum on Cooperative Law will focus on the place of the cooperative principles in cooperative law, the research and education in the field of cooperative law, and on an exchange of views on cooperatives by lawyers and economists.

The themes of the Forum might include:

- The legal relevance (if any) of the cooperative principles for cooperative law
- The legal relevance (if any) of the cooperative principles for other fields of law (e.g. constitutions, administration law, tax law, bankruptcy law, labor law, competition law, audit regulations, book-keeping and accounting standards)
- Legal requirements (if any) for specific types of cooperatives, either by sector (e.g. agricultural, banking, energy cooperatives), or by governance/structure (e.g. workers' cooperatives, multi-stakeholder cooperatives, social cooperatives)
- The unification of cooperative law at national, regional and international levels
- Cooperative law and the legal framework of the social economy
- Cooperative law and globalization
- Policies on research and education in the field of cooperative law
- Educational programs in the field of cooperative law
- Tools for the research and study of cooperative law.

It is also planned to have a dialogue on any of the above or related themes between economists and lawyers, the motto being: “What can we/what must we learn from each other”?

Call for expression of interest

To express your interest in attending, please send an email to Ifigeneia Douvitsa (at: idouvitsa@iuscooperativum.org) no later than the end of July 2018.

If you would like to speak at the event, you are kindly invited to submit an abstract of 500-800 words to Ifigeneia Douvitsa (at: idouvitsa@iuscooperativum.org), indicating one of the above-mentioned themes, to which it relates, no later than the end of July 2018.

The full papers should be submitted no later than 28th August 2018 and may be considered for publication for the 2nd issue of the International Journal of Cooperative Law.

Organizing Committee

Alexopoulos, Yiorgos (Greece); Douvitsa, Ifigeneia (Greece); Giagnocavo, Cynthia (Spain); Henry, Hagen (Finland); Hiez, David (Luxemburg); Kassavetis, Demosthenis (Greece); Kritsikis, Alexandros (Greece); Nikolaou, Kostas (Greece); Saridis, Isidoros (Greece); Snaith, Ian (United Kingdom)

Scientific Committee

Apps, Ann (Australia); Cracogna, Dante (Argentina); Fajardo, Gemma (Spain); Fici, Antonio (Italy); Geormas, Kostas (Greece); Kintis, Stavros (Greece); Kurimoto, Akura (Japan); Meira, Deolinda (Portugal); Münkner, Hans (Germany); Papageorgiou, Costas (Greece); Tadjudje, Willy (Belgium); van der Sangen, Ger (Netherlands); Vladimirova, Oksana (Russian Federation).

REPORT ON THE 1st INTERNATIONAL FORUM ON COOPERATIVE LAW. MONTEVIDEO, 16th-18th OF NOVEMBER 2016: COOPERATIVE LAW HIGHLIGHTED

David Hiez and Ifigeneia Douvitsa

Several events concerning cooperative law took place in Montevideo (Uruguay) in November 2016 - in particular the 1st International Forum on Co-operative Law (conference of the Law Committee of the ICA). The main event was the IV Co-operative Summit of the Americas with its II Continental Congress on Co-operative Law.

The first surprise for a European man or woman: we were not less than 140 attendees and a quick survey by show of hands indicated that most of them were lawyers. Moreover, the profile was diverse: Professors, young researchers, practising lawyers, cooperative employees, civil servants, and they came from various Latin American countries, Canada, Israel and Europe. Nearly everybody attended or made a presentation to all the sessions, both of the Latin American Congress and of the International Forum. The number of young law researchers and lawyers was very promising for the development of cooperative law.

The coincidence of both events was very fruitful for two reasons. First, with regard to organization, this allowed attendees to mutualize their efforts and profit from the presence of Latin American lawyers, who were far more numerous. In terms of funding, there was less mutualization, but great generosity from ICA Americas and CUDECOOP (the Uruguayan co-operative confederation). They provided the premises, the interpretation Spanish-English-English-Spanish during all three days free of charge and charged only low fees for enrollment. Such arrangements are often the outcome of personal relationships, and the friendship of Hagen Henry (Chair of the Law Committee of the ICA) and Dante Cracogna (Chair of the regional Law Committee of ICA Americas) was the basis of that success. The Europeans in Montevideo have long dreamed that European cooperatives might share that level of attention to research.

The second benefit from the collaboration was intellectual. Instead of having two successive or parallel events, one American and one worldwide, the diverse sessions were mixed or joint. The outcome was very fruitful: the opportunity was available for everyone to learn more about research on Latin American and international cooperative law, and to debate. The whole event was very stimulating, but also very friendly.

Eight sessions were scheduled: three for the Latin American Congress (on the cooperative act, the regulation of financial and banking cooperatives, and the control of cooperatives), two for the international forum (on cooperative law and cooperative principles, and cooperative law and economy), and three joint plenary sessions (on cooperatives in constitutional law, cooperative taxation, and worker cooperatives).

It would take too long to develop all the aspects of the conference. The full program is accessible at: <http://ica.coop/en/events/1st-international-forum-co-operative-law>.

However, we will focus on several points. The keynote speaker for the opening of the conference was Hagen Henry, the best comparativist of cooperative law for many years. He spoke about cooperative law for the 21st century, and developed the major questions of present cooperative law. One of the most exotic session for a European lawyer was about the “acto cooperativo” that we simply translate as “cooperative act”. Inspired by Spanish law, the concept of the “cooperative act” developed in Latin American doctrine in the 1960ies. It has involved both case law and legislation, and is nowadays a pillar of cooperative law. In our understanding, a cooperative act is an act which qualifies the relationship between the cooperative and each cooperator. It seems to be nearly exactly the opposite of the double quality principle developed in Europe. Indeed, instead of presenting two different qualities, two relationships (as a shareholder and as a user of the cooperative’s services), the cooperative act provides for a synthesis of these two sides of the coin. The cooperator is not schizophrenic; he/she is a member for whom the political involvement and the use of cooperative’s services are the outcomes of a single quality: membership. This concept may be an answer to the problems created by the notion of double quality. Indeed, the double quality principle allows the use relationship to operate as a separate contract, which involves the various contracts of traditional types such as employment, loan, or sale.

The second interesting topic of the conference was the control of cooperatives, considered as a mixture of cooperative auditing and state control. It seems that the use of cooperatives for the purpose of public policies was present in all the minds, and made people reluctant to contemplate any state intervention. The situation differs from one state to another, the state sometimes still acts as an auditor of cooperatives. The hostility against the situation is so high that some lawyers contest the principle of external auditing itself, considering that the legitimate audit controls must be made by members. However, most speakers defended auditing, at least with the condition that it is finally, even if indirectly, under the responsibility of the cooperative.

We may as well note a major focus on cooperative banks, and a unanimous hostility to the uniformity of regulation for capitalist and cooperative banks. The critique sometimes culminates in contesting the application for developing countries of regulatory systems established with consideration to northern countries.

Most presentations by the less numerous non-Latin-American lawyers centered, directly or indirectly, on cooperative principles and their connection with cooperative law, notably through constitutional provisions, in a comparative perspective. Another popular topic was the relationship between cooperative law and competition law or tax law. The detail of the contributions was, however, disparate, because of the varied culture of the speakers. This is part of the value of such events, but it shows that the community of cooperative lawyers would profit from a stronger structure.

Apart from the development of communication, two major concrete initiatives aimed at the creation of technical tools to facilitate research in cooperative law, were presented. On one hand, ICA is preparing a database of cooperative legislation. This project is ongoing, with the International Labor Organization and FAO as partners, and the possible support of the World Bank. Its structure and functionality remain vague

(notably its updating), but very promising. A beta version will be online soon, with 40 countries integrated. In the medium term it should be more than a static database, and should stimulate debate.

On the other hand, five European cooperative lawyers launched Iuscooperativum (<http://www.iuscooperativum.org>), a website to facilitate cooperation and dissemination of news, ideas, and stimulate debates among cooperative lawyers. This website will offer a map to provide contact details of cooperative lawyers in as many countries as possible. The website will also contain information on case law or legislation changes, conferences, as well as book reviewss. The Iuscooperativum is also planning to launch an international journal of cooperative law to give voice to, and facilitate the development of, cooperative law worldwide. The website is new, initiated by academics without any institutional support, and relies wholly on your participation to develop.

To sum up our feeling after these three days in Montevideo, we were impressed by the number of lawyers attending, by their attention, and by the variety of the covered topics. That diversity derives from the multiple understanding of what is cooperative law, *lato sensu*, in connection with the traditional branches of law. The event was closed by Hagen Henry and with a closing presentation by Dante Cracogna to synthesize the discussions. They both echoed the opinions expressed during the conference that such events should be organized more regularly. Will that wish be heard by European cooperatives?

Events

INTERNATIONAL COOPERATIVE ALLIANCE COMMITTEE ON CO-OPERATIVE RESEARCH: INTERNATIONAL CONFERENCE, STIRLING, UNITED KINGDOM, JUNE 20 - 23, 2017

CONFERENCE SUMMARY

Ann Apps, Lecturer,
Newcastle Law School,
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The 2017 conference in Stirling, United Kingdom, was a wonderful opportunity for co-operative lawyers from around the globe to meet, network and to learn about IUS Cooperativum. The conference provided lawyers who have travelled from remote countries like Australia, a rare opportunity to meet with lawyers from Europe, Asia and North and South America and to learn more about issues that concern and excite co-operative lawyers.

On the second day of the conference, members of the committee of IUS Cooperativum, Hagen Henry, Ifigeneia Douvitsa and David Heitz invited all lawyers present at the conference to attend a meeting to learn more about the organisation's two key projects – the World Map of Cooperative Lawyers and the launch of the International Journal of Cooperative Law. Approximately 15 persons attended the meeting and were encouraged to join an expanding community of researchers who are interested in co-operative law.

The Stirling conference theme was "Developing Inclusive and Responsible Businesses: Co-operatives in Theory, Policy and Practice". The conference attracted a richly diverse cohort of researchers, educators and practitioners. It also welcomed emerging scholars and hosted a series of special events to mentor and encourage young and new researchers to explore the field of research on co-operatives.

The introductory plenary session on day 1 of the conference addressed the issue of research on co-operatives from the perspective of academics, practitioners and policy makers. The academic panel included two co-operative lawyers, Professor Cynthia Giagnocavo and Professor Akira Kurimoto. The panel identified that while co-operative research has often been siloed into different disciplines with distinct theoretical lenses – there is a trend towards interdisciplinary research. Professor Giagnocavo reminded researchers that co-operatives have adapted to respond to contemporary issues, including "climate change, scarcity of resources, dignified work, changing balances of power, refugees and displacement"; co-operative researchers also need to address these areas. These two messages have relevance to co-operative lawyers who need to consider new opportunities for research across disciplines and to address how legal frameworks for co-operatives may hinder or encourage co-operative solutions to global problems.

Professor Mike Cook also raised an issue that is of interest to co-operative lawyers. He identified an increasing tension between academics who advocate for a distinction between ‘pure’ and ‘hybrid’ co-operative models and those that have a more flexible approach to co-operative identity. Professor Cook questioned whether this tension is productive, when co-operative identity is often a product of a country’s legal, historical and cultural peculiarities. Professor Cook’s views highlight the importance of further comparative research on co-operative law. Prof Akira Kurimoto also reminded researchers that the International Cooperative Alliance’s (Alliance) Blueprint for a Co-operative Decade is a good place to start – particularly the issues around governance and member participation, sustainable development, identity, legal framework and capital. These are all areas of relevance to those who research co-operative law and were topics that were canvassed in papers presented at this conference.

The conference also held a special panel inviting co-operative practitioners to inform researchers about how research was used and where it was needed. Scotmid’s Chief Financial Officer, John Dalley called for research into how co-operatives can co-operate in spite of competition law. Mariane Shiels, Chief Executive of Capital Credit Union in Edinburgh said research on credit unions was welcomed particularly to make the case against some of the restrictive regulations credit unions have to face. This issue is also faced by credit unions and financial co-operatives in other countries and had been taken up by several of the co-operative law research papers presented at this conference.

The Director General of the Alliance, Charles Gould, spoke about the importance of research in shaping policy agendas at a global level, including the role of co-operatives in achieving the United Nations sustainable development goals. Ed Mayo said that work done by Co-operatives UK on co-operative development strategy has found that co-operative innovation tends to emerge regardless of sectors, depending on people’s needs and the ability of co-operatives to meet these needs. However, he stressed the importance of appropriate regulatory frameworks to allow co-operatives to continue to grow and reminded researchers (including legal researchers) that they need to work with co-operative business to influence regulatory reforms.

The topics chosen by the lawyers at this conference dealt mainly with the fourth and fifth challenges raised in the Alliance’s Blueprint for a Co-operative Decade. For the purpose of this brief overview and analysis, most of the conference presentations considered here are divided into the presentations that consider how law influences co-operative legal identity and those that deal with the regulation of co-operative financial institutions.

On the first theme,- presentations by Kurimoto, Douvitsa, De Conto and van der Sangen concerned the overarching legal frameworks and their role in delineating and preserving co-operative legal identity. Akio Kurimoto spoke about the fragmentation of co-operative law in Japan. In his presentation, “*Legal reform’s impact to the co-operative identity*” Kurimoto discussed how bureau pluralism has impacted on the development of co-operative law in Japan and whether recent law reforms are likely to strengthen or weaken co-operative legal identity using the findings of the PECOL (Principles of European Co-operative Law) project as a point of reference. Ifigeneia Douvitsa’s presentation titled “*National Constitutions and Cooperatives: A first approach*” presented some early observations from her study of national constitutions and their influence on co-operative law. Her research shows that there has been an increase from 1900 to 2016 of national constitutions that specifically acknowledge co-operatives. This increase mainly appears in constitutions in Latin American countries and is less prevalent in Europe. Douvitsa

explained her future research agenda to consider the influence of constitutional recognition on the subsequent development of co-operative law in those countries. Mario De Conto provided the findings of his comparative project on overarching legal frameworks – “*The ‘Principles of European Cooperative Law’ and the ‘Framework Law for Latin American Countries’: a comparative analysis*” (Ley marco). The objective of the analysis was to identify the main points of accordance and disagreement between ‘Ley marco’ and PECOL. A key finding is that in Europe there is a trend towards approximation with the investor owned firms, particularly where co-operative laws accommodate non-member investors. This trend is not duplicated in Latin America where an incentive to remain a distinct type of entity is found in the tax treatment of co-operative transactions. Ger J. H. van der Sangen in his presentation, “*Cooperative principles as a toolbox for cooperative law – lessons from the EU law-making process on cooperatives*” also used the PECOL project as a basis for further research. His hypothesis is that the cultural and institutional context of the development of co-operative law in many European countries has led to path dependency. To overcome the hampering effects of path dependency he proposed that the ICA principles and their articulation in the PECOL project are a useful toolbox for legislators when considering any future reform of co-operative law.

In a subset of the first theme, Hagen Henry’s paper, “*Participation. Is it about voting rights only? A Legal Perspective*” provided a thought-provoking reminder about the interlinked nature of the co-operative principles and the importance of taking a broader view of the legal requirements relating to democratic participation in co-operative governance. Using a legal lens, he argues that participation is also about the division of decision-making power between the board and general assembly. It involved the members’ active participation in the co-operative’s economic activities and their legal obligations to meet the co-operative’s capital requirements. Finally, it also involved attention to participation in governance, including the rotation of management roles and ensuring that members have the requisite information, education and training to enable this participation.

On the theme of co-operative finance and banks, presentations by Henry, Hiez and Prud’Homme, Groeneveld and Gaudio grappled with the relationship between co-operative law, co-operative principles and the specificities of co-operative banks in Europe. Hagen Henry’s paper “*What is Special about Cooperative Banks? A Legal Perspective*” approached the issue of whether sector specific laws are required for co-operative banks from the premise that such laws hamper the development of cooperatives. Henry argued that the assumptions underpinning these specificities should be challenged as a harmonized legal identity for co-operatives emerges. David Hiez’s presentation of Hiez and Prud’Homme’s paper on “*The specificities of French cooperative banks related to the general cooperative law*” took Henry’s broader argument to the national level, looking at French co-operative banks and the tendency of French co-operative law to be fragmented and specific, and more so when it comes to co-operative banks. Hiez argued the case that these specificities relate more to practice or process and that as most features of the cooperative entity remain, co-operative legal frameworks should instead be more flexible to adapt to these sector differences. This argument is made in the context of research on a new ideal cooperative legislation for France and the Principles of European Co-operative Law (PECOL) project. Both projects aim to elaborate extensive general provisions or principles and so contribute to the argument in favour of legal frameworks that minimise the need for special provisions or abrogation. Hans Groeneveld presented scientific research on co-operative bank in the paper “*The cooperative credentials of cooperative banks: the relevance of cooperative law*”. The research involved examining several co-operative banking groups

and benchmarking their performance on a number of co-operative principles. The findings were then analysed in the context of the banks relevant national laws. The research suggests that, as co-operative banks adjust their business models and capital structures over time to comply with increasingly onerous regulatory and supervisory requirements, they move further away from their co-operative identity.

Presentations by Gaudio, Solel and Apps continued with the theme of co-operative finance and banks in Brazil, Israel and Australia. Ronaldo Gaudio in his “*Applying PECOL in the current Brazilian regulation of financial cooperatives - challenges of the equalization between efficiency and identity*” presented the findings of his research into the application of PECOL to Brazil’s regulatory structures for financial co-operatives. In his presentation, Gaudio noted the importance of distinguishing between PECOL’s role in guiding the establishment of “adequate legal regimes that preserve the cooperative identity, and the structural elements of the typical model that the regime intends to protect”. Yifat Solel’s presentation, “*Israel’s New Credit Union Law: From Social Protest to Legislation*” told the story of how a group of social activists after five years of effort finally succeeded in their quest to reintroduce legislation to allow credit unions in Israel. Ann Apps in “*The capital conundrum for co-operatives – An Australian legal perspective*” explained how constitutional federalism in Australia has resulted in the separation of non-financial co-operatives, regulated under state law and co-operative financial institutions that are required by law to incorporate as companies under the federal *Corporations Act 2001* (Cth). The removal of credit unions from the sphere of co-operative law has created particular problems for co-operative financial institutions who must not only deal with prudential regulators who do not recognise their distinctiveness, but also find it increasingly difficult to maintain their co-operative status in a legal environment designed for investor owned banks.

There were also presentations by Fajardo-Garcia, Torres and Manrique on the impact of external regulatory frameworks on co-operatives. Gemma Fajardo-Garcia considered the impact of employment law on the legal status of workers in a co-operative in her presentation “*Which legal status to use for cooperative workers?*” Fajardo-Garcia argued that there is a need to distinguish different legal status depending on the type of worker, whether a member or non-member of the co-operative. This study compared Spanish cooperative legislation with legislation in other countries to reveal commonalities and differences between the legal statuses of the various categories of workers in the cooperative and made recommendations for reforms to promote co-operative self-management without detriment to workers’ rights. Francisco José Torres Pérez presented “*Cooperative integration: the dairy group CLUN (Galicia-Spain)*”, a case study on the creation in 2016 of the Galician dairy co-operative group and the impact of Spain’s Law 13/2013, in enabling the integration of small dairy businesses. This presentation provided some insight into different approaches to competition law in different countries and its relevance to the promotion of co-operative business structures. Fernando Manrique López in “*Identifying effective measures and policies adopted in order to favour employment of disabled people: A cross border approach to the cooperative society, and disability in the workplace*” provided an important perspective on the potential role of co-operatives in providing decent work for people with disabilities. This is a significant contemporary issue. The paper provided findings from a research study comparing legislation defining ‘disability’ and the scope and use of the term ‘disabled worker’ in the United Kingdom, Spain, Germany, France, and Italy. One objective of this research is to consider the advantages and potential limitations of co-operatives as a vehicle in the compared countries to assist the integration of disabled workers in mainstream employment.

The presentations by co-operative lawyers at this conference show that co-operative law is an emerging field of research. It was exciting to attend an event that show-cased the work of lawyers from countries around the globe who share a passion and interest in co-operatives and the role that law plays in promoting or hindering the co-operative identity. This overview of presentations may inspire more lawyers to bring their expertise to this field and to join in *Ius Cooperativum* and engage with a growing community of co-operative lawyers in future research projects.