Interviews

INTERVIEW WITH PROFESSOR DR. DANTE CRACOGNA

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Introducing Professor Dante Cracogna, justifying an interview on cooperative law with him, amounts to carrying owls to Athens or, as the English say, coal to Newcastle. What will our answer to Aristophanes be? Nevertheless, just this much for the record: Professor Cracogna, like Professor Münkner, is one of those academics with a practical hand who have, over decades, tirelessly and against all odds promoted the idea of cooperative law as a subject in its own right. He has generously shared, through numerous publications and otherwise, his knowledge on the cooperative law of his own country, Argentina, and of the countries of the Americas, south, central and north. He has also skillfully explained and bridged the differences between continents and/or legal traditions, all of which are familiar to him. He continues to do so.

Douvitsa & Henrÿ: *Professor Cracogna, we are very grateful that you agreed to be interviewed for this 2nd issue of the International Journal of Cooperative Law (IJCL). Before we start with the interview proper, we would like to evoke your relationship with Professor Münkner whom, of course, we interviewed for the first issue of this journal. Insiders refer to you two as the Popes of cooperative law. Contrary to the history of Popes and Antipopes You seem to have used your status for our benefit by synergizing. We are sure we are right.*

Pofessor Cracogna: Firstly, I appreciate the reference to Professor Münkner with whom I am honored to have had a cordial and beneficial relationship over many years. But if Professor Münkner can legitimately be considered the Pope of cooperative law, I am just a bishop of a remote provincial diocese. I have learned a great deal from his generous teachings by reading his publications, listening to his lectures and talking to him personally. I believe my debt to him is shared by many worldwide.

Douvitsa & Henrÿ: *As the IJCL is still an infant, we would like to ask you similar questions to the one we asked Professor Münkner: Can the revived interest in cooperative law be sustained and if so, what are the most needed actions the international academic community must take to further the field of cooperative law? Are there challenges? May they be overcome? Given these uncertainties, is the publication of a journal like the IJCL a premature undertaking?*

Professor Cracogna: I think that in recent years there has been a renewed interest in cooperative law, to which Professor Münkner has contributed a lot. The maintenance and growth of this interest will depend, fundamentally, on publications on the subject in order to reach an increasing number of people in academia and the law courts as well as the lawyers practicing in the cooperative movement, which will invigorate and strengthen the dissemination and knowledge of cooperative law. In this line, the IJCL will

have an important role, just as the Bulletin of the International Association of Cooperative Law and the Law Journal of CIRIEC-Spain has in the Spanish language.

Douvitsa: *Speaking about the future of cooperative law means speaking about younger scholars and professionals. Would you encourage them to specialize in this field? On what should they focus?*

Professor Cracogna: In the modern world, which has focused predominantly on self-interest and excessive profit, we perceive that young people are eager for a change towards a more equitable, sustainable and environmentally-friendly organization. I think it is necessary to get them better acquainted with the cooperative instrument in order to fulfill this desire, especially in the University where teaching is focused exclusively on profit-driven organizations of the economic activity and cooperatives are almost completely ignored. Knowledge of these entities would provide young professionals a field of work that would meet their personal needs with a more humane and caring viewpoint.

Douvitsa&Henrÿ: *When, why and how did you develop an interest in cooperative law? Did anybody inspire/encourage you to do so?*

Professor Cracogna: My father, manager of an agricultural cooperative and member of the board of an insurance cooperative for many years, has indeed been a source of inspiration and at University I was fortunate enough to meet some professors who encouraged my interest in the subject. I believe that the influence of people close to us stimulates our vocation and each of us is, to a certain extent, a product of what others have given us - although sometimes we may not have responded adequately to those incentives.

Douvitsa & Henrÿ: *One of your intellectual children and "political" achievements is the Ley marco para las cooperativas de America Latina (Framework law for cooperatives in Latin America). Its history spans over a long period of time; a second edition in 2008 followed the 1988 one. Obviously, socio-economic and political circumstances changed several times. The details of the processes, which eventually led to the adoption of the current Ley marco, would fill volumes. Could You please present us a summary? We would especially like to know your assessment as to the effects of this legally hard to qualify instrument on cooperative legislation in Latin America. If it is, as we think it is, at least of a persuasive nature, then it would not only constitute a model for the substantive cooperative laws, but also an example of a new way of law-making by having private organizations and public authorities, the cooperative organizations in Latin America and the Parlamento Latinoamericano (group of parliamentarians who endorsed the Ley marco), co-create law. This is not dissimilar to the International Labor Conference integrating in 2002 the text of the 1995 International Cooperative Alliance Statement on the cooperative identity (ICA Statement) with slight changes (which might be interesting to analyze) into the text of the International Labor Organization Recommendation No.193 concerning the promotion of cooperatives (ILO R. 193).*

Professor Cracogna: The Framework Law for Cooperatives in Latin America was anticipated by important precedents that provided favorable grounds for its conception. In this regard it is important to highlight the work carried out at the time by the Cooperative Division of the Organization of American States (OAS) advising the Governments of the region on cooperative legislation and the Continental

Congresses on Cooperative Law sponsored by the Organization of Cooperatives of America (OCA). The purpose of this Organization-which no longer exists-was to contribute to the advancement of cooperative legislation in the continent and to this end promoted, among other actions, the groundwork for a framework law that would serve as guidance for the modernization of the national laws on the subject. It was not about providing a model law to be copied, but a project based on cooperative principles and best practices experienced by different countries. To this end, a group of specialists were summoned to several meetings, and carried out consultations with the cooperative movement and academia, resulting, after two years of labor, and numerous drafts, in a document that the OCA approved in the Congress held in Bogotá in 1988. From there it was widely disseminated and its influence is evident, in varying degrees, in practically in all the cooperative laws that were subsequently sanctioned, beginning with the Colombian law of that same year. The revision of the Framework Law, promoted twenty years later by Cooperatives of the Americas, was intended to update the document taking into account the Statement on the Cooperative Identity of the ICA and the new developments in cooperative law world-wide. This was backed by the ILO, especially by the Head of the Cooperative Service at that time, my friend Hagen Henrÿ. It is heartening to observe that this effort has been rewarded, because when analyzing the legal reforms carried out later in the countries of the region, there is clear evidence of the influence of the Framework Law. Indeed, the fact that the Latin American Parliament – a consultative body consisting of representatives of the parliaments of the countries of the region – has approved the Framework Law in 2012, helps to give it greater relevance.

Douvitsa & Henrÿ: [1] *The role of the state in cooperative development has varied over time, in your part of the world as also elsewhere. At the international level (the ICA Statement, the 2001 United Nations Guidelines aimed at creating a supportive environment for the development of cooperatives (UN Guidelines) and the ILO R.193) we agree that the principle of equal treatment must apply to the relationship between the state and cooperatives. The dual nature of cooperatives – they are associations of persons cum enterprise – indicates the complexity when it comes to applying this principle. From the perspective of a European (cooperative lawyer) it appears that, exceptions put aside, the Latin American state has been inclined to exercise more influence on cooperatives than its European counter-part and has been criticized for that. If true, doesn´t this criticism overlook a radical historical difference whose effects are still with us? I refer to the fact that in Europe the first cooperative laws built on an existing or at least nascent cooperative reality, whereas the first cooperative laws in your part of the world were conceived as an instrument to create this reality. Your answer might also address the other side of the coin, so to speak, i.e. the principle of political neutrality of the cooperatives that the ICA deleted from its list in the 1960ies.*

Professor Cracogna: This is an interesting question that provides material for an extensive answer. In fact, on the issue of relations between the State and the cooperatives there are countless papers. In Latin America, there are two different regions; the so-called "Southern Cone" that covers the south of Brazil, Argentina, Uruguay and Chile, with populations that are mainly the product of European immigration that brought cooperative experiences from their countries of origin and put them into practice before law-makers concerned themselves with cooperatives. For example, in 1889 in Argentina, when the first

[1] Professor Münkner kindly provided ideas concerning especially this question.

provisions on cooperatives were introduced in the Commercial Code, cooperatives already existed, as the Commission that drafted the reform bill pointed out. Consequently, in these countries, cooperative acts approved between the end of the XIX Century and the beginning of the XX Century have generally followed the European model. Conversely, in the rest of the continent the legislation follows the pattern that Professor Münkner calls "Indo-British." This model, which could be called "promotional" or "interventionist", has effectively prevailed in most Latin American countries, with all the difficulties it may entail. There is however a healthy trend towards greater autonomy in recent years influenced by the 4th principle of the Statement on the Cooperative Identity of the ICA as well as the UN Guidelines of 2001 and ILO Recommendation 193, in addition to the Framework Law.

Henrÿ: *You seem to put greater emphasis on the UN Guidelines than on the ILO R.193. Is my impression correct? If so, what are your reasons to do so?*

Professor Cracogna: Both documents are of significant importance as they constitute clear and defined guidelines for cooperative legislation and policy, considering that ILO Recommendation 193 expresses the will not only of governments but also of workers and entrepreneurs on a global scale. Perhaps the references to workers and workers´ cooperatives – understandable in the ILO Recommendation- may subtract some degree of scope from it, but this in no way lessens its relevance.

Douvitsa & Henrÿ: *There are many more cooperative lawyers in Latin America than in Europe, hence more interest there than here. True? Not so true? If true, what is your explanation?*

Professor Cracogna: I would not presume to assert that there are more cooperative lawyers in Latin America, although I could say that we have been carrying out various activities aimed at raising lawyers ' interest in Cooperative Law. In fact, we have carried out this activity because university education in general does not cover this topic. In recent years we have managed to get some law faculties to include subject matter on cooperatives in their syllabi, which has resulted in an increase in the number of lawyers interested in cooperative law. We believe that we must continue on this incipient path and promote a growing production of publications on the subject, as well as the organization of meetings for dissemination and exchange.

Douvitsa&Henrÿ: *Indisputably, the higher number of cooperative lawyers in Latin America has led and continues leading to more publications on cooperative law and to the hatching of innovative ideas. One of them, albeit not new anymore, is the acto cooperativo– often misunderstood as cooperative act (law) - on which You have written with great authority. It is now part of most cooperative laws in your region and it is also part of the Ley marco para las cooperativas de America Latina. Why has it not become an object of export/import? Other examples could be the elaboration of a specific founding document for cooperatives (statute of association) and the work on good cooperative governance.*

Professor Cracogna: The concept of the “cooperative act” has been the subject of doctrinal development that began in the 1950’s. At that time, it became apparent that the activity that cooperatives carry out with their members is virtually an internal operation, without the conflict of interests that arises if the service has a purpose other than the realization of the social object. These points characterize a legal act of a specific nature, which differ from those made by other subjects of law, at the same time also recognizing that cooperatives can also perform non-cooperative acts, even with their own members, when those acts do not relate to their social object. From these initial findings, the theory of the cooperative act evolved; at

first introduced into case law in a timid way because it lacked the legal support that finally appeared at the beginning of the 1970's and spread to many countries in the region. This is not an exotic concept; it provides a legal interpretation of the cooperatives' specific activity, even if the law does not mention it. The law merely recognizes a cooperative act; it does not create it. It may be compared to what in Spain is defined as an "actividad cooperativizada". Its effects have to do with the applicable regime which is, firstly, the cooperative legislation and the statute of the cooperative, then with the other relevant sources of Cooperative Law and, finally, in an ancillary manner, with the rules governing the figure that the activity assumes (sale, mandate, commission, loan, etc.). Greater and better communications will help to make the cooperative act better known and understood, thus contributing to building a real understanding of cooperative law worldwide.

Douvitsa & Henrÿ: *In November 2019 you will organize another (Latin American) Continental Congress on Cooperative Law. It will be a special one, as it is to commemorate the first one organized half a century ago. What do you remember of the first congress? Is it possible to draw a line between then and now or are these 50 years rather marked by discontinuities? You may want to broaden your answer and describe the development of cooperative law in general, world-wide, in time and space. Can we delineate any patterns?*

Professor Cracogna: I consider that the First Continental Congress on Cooperative Law held in the city of Mérida (Venezuela) in 1969 with the sponsorship of the University of the Andes as a milestone of great importance for the development of Cooperative Law. For the first time scholars and lawyers from different countries interested in the matter, convened by the legal committee of the OCA, met to analyze the issues that at that time were in the limelight. Precisely one of these topics was the "cooperative act" which generated a productive debate with conclusions that were published in the "Letter of Mérida", the closing document of the Congress. This concept was incorporated two years later in Brazilian Law 5764 and two years later in Argentine Law 20.337; subsequently it was widely included in Latin American legislation. This concept constitutes the recognition of the peculiar nature of cooperatives, different from both profit-driven and non-profit activities, so it requires a different legal treatment, subject to specific legislation and to the statutes of a particular cooperative. The use of other standards should be supplementary, making sure that those standards conform to the nature of the cooperative. In short, the very meaning of the phrase "co-operative act" defines the singularity and difference of cooperatives. Of course, this applies to all kinds of cooperatives and also affects other legislation linked to cooperatives, such as laws on labor, competition, consumer, taxation, etc.

Henrÿ: *Dante, we met for the first time in the mid-nineties of last century at the International Labor Organization in Geneva on the occasion of a preparatory meeting on …. I was a novice then – as far as cooperative law is concerned. You knew that, but you never let me know that you knew. When I dared, in this situation, to start writing what became the "Guidelines for Cooperative Legislation" (in French), your comments on the various drafts were always prompt (to avoid greater damage, I suppose), sharp and in an inimitable way diplomatic, constructive and encouraging. What is the secret behind remaining composed when confronted with stupidities, written or presented orally? Innumerable times thereafter we met, worked together (on the Ley marco para las cooperativas de America Latina, the "International Handbook of Cooperative Law", the organization of conferences etc.), exchanged views - by far not always on cooperative law!*

Professor Cracogna: Life provides us with great opportunities to enrich ourselves with the knowledge and friendship of other people; in this sense Providence has been very generous with me, as Hagen remembers. Undoubtedly, having had the opportunity to share that seminar in Geneva was a gift for which I`ll always be thankful, which I still enjoy at present, constantly renewed by new academic and personal experiences that I trust will continue for many years.

Douvitsa & Henrÿ: *By their internationally recognized objectives, cooperatives must not let the economic and social aspect of the promotion of their members or of their activities for the benefit of third parties drift apart. The same obligation is put on the cooperative legislator. The parallel with the purpose of the International Labor Organization's Constitution is obvious. So is the congruence between the objective of cooperatives and those human rights laid down in the binding 1966 United Nations Covenant on economic, social and cultural rights. This balance is not easy to establish and maintain; the weight given to one or the other will vary. However, the latter variations will determine, to a large extent, whether cooperatives are included in the social (and solidarity) economy. Southern Europe and Latin America seem to include them; other European countries, North America and Australia do not. If this statement is not too simplistic, what is your explanation of the phenomenon and what are the implications for cooperative law?*

Professor Cracogna: It is generally recognized that the Social Economy is well-rooted principally in countries such as France, Spain, Italy and Portugal. However, in recent years, the European Union has also paid special attention through various documents and there has been intense activity by the European Commission on the Social Economy. In Latin America something similar has happened, although other currents of similar meaning have also emerged: solidarity economy; popular economy; labor economy; etc., without a clear differentiation between them. The general idea is that these denominations have a generic character, something vague, capable of sheltering numerous and sometimes somewhat heterogeneous organizations, among which are the cooperatives. Apparently, this does not lead to theoretical or practical problems, as long as such organizations are not indiscriminately confused with each other. Cooperatives have an economic and legal profile clearly defined by the co-operative principles and the co-operative law. Nevertheless, this does not prevent cooperatives from exhibiting some common traits with other organizations that are different from them. Nor does it mean that they cannot maintain collaborative relations and make common cause to face certain economic and social problems. But cooperatives have their own economic and legal logic.

Douvitsa & Henrÿ: *Commonly, we share phenomena whereby the distinctive features of cooperatives are being diluted through what I call the companization of cooperatives and the convergence of all forms of enterprise. This is the main reason why the ICA at its last General Assembly in Buenos Aires in 2018 established an Identity Committee whose task it is, among others, to monitor such moves by legislators and regulators. Recently, there has been a case of an amendment to the taxation of cooperatives in your country, which might be classified as an example of companization.*

Professor Cracogna: Characterizing the serious danger currently facing cooperatives as "companization" is a warning, because it points to the widespread tendency to equate, or assimilate, cooperatives with the companies or investor owned enterprises, denying their particular nature. Under the pretext of equal treatment with other enterprises, the intention is to undermine the singularity of cooperatives. If this danger is not clearly perceived, in a few years cooperatives will cease to exist as such, for the justification

of their existence will have been lost. Precisely, the intent to apply a tax treatment identical to that of profit-driven capital firms constitutes a way of denying the cooperative difference and, therefore, its very reason for existing; this is what has happened recently in Argentina which for the moment, we have managed to forestall. Therefore, the ICA's decision to establish a Cooperative Identity Committee to monitor these issues is a wise decision that is in line with the Plan for a Cooperative Decade, which defined identity as one of its axes.

Douvitsa & Henrÿ: *Would you like to develop additional ideas?*

Professor Cracogna: I would like to highlight the importance of the Congress on Cooperative Law that will take place on November 20th to 22nd, 2019, in San José de Costa Rica, coinciding with the fiftieth anniversary of the already mentioned Mérida Congress. The heritage of this first Congress is very valuable and has been enriched by successive Congresses held in Puerto Rico, Argentina, Brazil and Uruguay. The San José meeting will allow us to review the progress achieved in fifty years and to update current thinking on continental cooperative law with the future in mind. Although it is a regional Congress, the participation of stakeholders from all over the world is welcome, in the belief that the wide-ranging and borderless dialogue would help to strengthen the universal character of cooperatives and their presence in the legal framework of all countries.

Douvitsa & Henrÿ: Thank you, Professor Cracogna, for this interview.