

# Foreword

To our knowledge, this *International Handbook of Cooperative Law* is the first of its kind. This notwithstanding, it builds on past and present similar efforts to present cooperative laws in a comparative way. The 1930s, 1950s and 1980s saw a number of such studies.<sup>1</sup> From among the more recent publications we would like to mention those coordinated by Dante Cracogna on Central and South America and those by José María Montolío on Europe and Latin America.<sup>2</sup> In 2010 Jan Theron made a comparative study on Eastern and Southern Africa.<sup>3</sup> The regional organization of the International Cooperative Alliance (ICA) for Asia and the Pacific has over the years commissioned four “Critical Studies on Cooperative Legislation and Policy Reforms in the Asia and Pacific Region”, the most recent one in 2013.<sup>4</sup>

Where those efforts focused on a particular political or geographical region or on a specific legal tradition, this handbook sets out to provide a worldwide comparative overview of cooperative law/s. This is not the place to discuss these publications; it is however the place to acknowledge the work of those who have contributed to the chain of solidarity amongst comparative cooperative lawyers, which is not very long. The idea behind this handbook is to add to this chain and broaden the basis for cooperative law as a universal science. For it to be universal it must be based on comparative analyses of the various national, supranational and international laws around the world. Beyond this scientific purpose, such studies may be used for a variety of other, often interrelated purposes. Two of these need mentioning: Firstly, cooperative laws are converging (see Part II). Where this convergence is the result of a legal policy choice, its effectiveness is to a large extent a function of a scientific comparison of the laws that are to converge. Secondly, any law needs revising from time to time. For a number of reasons, among which the prohibition of experiments in legislation, the only source of

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<sup>1</sup> Cf. for example, Digby (1933); Valko (1954); Münkner (1989); Münkner and Ullrich (1981a, b).

<sup>2</sup> Cf. Cracogna (2003/2005, 2009a, b); Montolío (1990, 2000).

<sup>3</sup> Cf. Theron (2010).

<sup>4</sup> Cf. at <http://www.ica-ap.coop/sites/default/files/Critical%20Study%20Final%20PDF.pdf>.

inspiration is foreign examples. This is especially true if the aim is to maintain a body of law that distinguishes cooperatives from other business organizations for the sake of diversity as a prerequisite to sustainable development.

Not the least, as a consequence of the world becoming ever more global, and because of the debate on the social and solidarity economy as an alternative approach to confronting economic, social and political challenges, the types of enterprise become objects of competition and the demand for knowledge on cooperative law continues to grow. As concerns the latter, interrelated changes may explain them: firstly, past doubts concerning the functionality of law for the development of cooperatives are disappearing<sup>5</sup>; secondly, the concern about the fading legal identity of cooperatives is increasingly being shared; thirdly, more and more lawyers are rediscovering cooperative law and trying to match their knowledge with the economic, social and societal impact of cooperatives. These changes are in line with the three international instruments on cooperatives, namely the 1995 ICA Statement on the co-operative identity (ICA Statement), the 2001 United Nations Guidelines aimed at creating a supportive environment for the development of cooperatives (UN Guidelines) and the 2002 International Labor Organization Recommendation No. 193 concerning the promotion of cooperatives (ILO R. 193).<sup>6</sup> These instruments either take an adequate legal framework of cooperatives for granted, as is the case with the ICA Statement, or they underline the importance of such frameworks for the development of cooperatives and they set the respective cornerstones, as is the case with the UN Guidelines and the ILO R. 193. The United Nations General Assembly Declaration of 2012 as the International Year of Cooperatives echoed this. The ICA Blueprint for a Co-operative Decade (2013–2020) dedicates one of five chapters (Chap. 4) to the “Legal Framework”.<sup>7</sup> The 2012 Extraordinary General Assembly of the ICA decided to establish a thematic committee on cooperative law alongside its other thematic committees. As the ICA represents some one billion individuals worldwide,<sup>8</sup> its concern for cooperative law counts.

This handbook is an attempt to respond to these developments. It gravitates around Part III with its 31 chapters structured according to the analytical framework set out in Part I. This analytical framework is the result of a choice. It was guided by previous knowledge and by the concern to allow for comparison with other types of enterprises, especially the stock company, which is the current reference point in economics and legal sciences. Part I also explains why the analytical framework limits the notion of cooperative law to organizational law and, with the exception of

<sup>5</sup> As for a discussion of this doubt, cf. Henry (2008), pp. 179–190. As for the role of cooperative law, cf. also Fici (2013), pp. 37–64.

<sup>6</sup> Cf. *International Co-operative Review*, vol. 88, no. 4/1995, p. 85f.; UN doc. A/RES/54/123 and doc. A/RES/56/114 (A/56/73-E/2001/68; Res./56); and “The Promotion of Cooperatives Recommendation”, 2002. ILC 90-PR23-285-En-Doc, June 20, 2002, respectively.

<sup>7</sup> ICA Blueprint available at: [http://ica.coop/sites/default/files/media\\_items/ICA%20Blueprint%20-%20Final%20version%20issued%207%20Feb%2013.pdf](http://ica.coop/sites/default/files/media_items/ICA%20Blueprint%20-%20Final%20version%20issued%207%20Feb%2013.pdf) (1.5.2013).

<sup>8</sup> At, <http://ica.coop/en/ica>, accessed 21 May 2013.

tax law, does not include other areas of law which also influence the organizational aspect of cooperatives, such as labor law, competition law and accounting standards. The country studies are entered in Part III in alphabetical order. This obviously helps the reader to use the handbook. But it is also to indicate that categorizations, especially those by geography, should be the result of comparison and not a frame for the comparison. This also answers, in part, the question why European countries are overrepresented where other regions, as for example Africa and Asia, are underrepresented. In the case of Africa one needs to consider that 17 African countries now have a unified cooperative law, which is presented in Part II, Chap. 2. To some extent the number of countries per geographical region reflects the state of cooperative legal science in the regions. Despite all, the editors hope to offer a representative sample of the cooperative laws around the world. Part II, apart from giving examples of the convergence of cooperative laws, also puts national cooperative laws, more precisely cooperative legislation, into a wider and partly legally binding framework, a cooperative law above the cooperative laws, so to speak. The title of the chapter in Part IV, namely “Trends and Prospects of Cooperative Law”, is largely self-explanatory. It summarizes trends in current cooperative legislations and it identifies some of the factors, legal and non-legal, which might shape future cooperative law/s.

Finally the editors would like to acknowledge the help and support of the organizations and people who made this publication possible. First and foremost we would like to thank the authors of the country reports. They generously shared their knowledge, pro bono, and thus delivered the raw material for the handbook. They also helped us at times identifying authors in countries where we were unable to do so. Attorney Nicoletta Montefusco tirelessly reworded texts to render them in a English that we can all understand. Deolinda Aparício Meira and Rafael Carvalho Cunha assisted us with one of the country studies. EURICSE, the European Research Institute on Cooperative and Social Enterprises, gave valuable financial and spiritual support. Without the interest of the publisher, Springer-Verlag GmbH, our idea would not have been materialized.

The final judgment lies with the readers of whom we wish a great number and from whom we welcome feedback, which we need in order to improve our work in possible future editions or other.

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Dante Cracogna  
Antonio Fici  
Hagen Henry

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Cracogna, D.; Fici, A.; Henry, H. (Eds.)

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