# Guidelines for Cooperative Legislation

second, revised edition

by

Hagen Henrÿ

2nd revised edition, 2005
First published, 1998



---

*Hagen Henrÿ*
*Guidelines for Cooperative Legislation, second revised edition*

Geneva, International Labour Office, 2005

ISBN 92-2-117210-4

Also available in French : *Directives concernant la législation coopérative*
*(ISBN 92-2-217210-8)*

---



---

Photocomposed by the International Labour Office, Geneva, Switzerland
Printed in Switzerland ATA

## Foreword

These "Guidelines for Cooperative Legislation" are a rewrite of the "Framework for Cooperative Legislation" of which a revised version was presented to and endorsed by the International Co-operative Alliance (ICA) General Assembly 2001 in Seoul. The basic features of this revised version remain unchanged. The adoption of the United Nations Guidelines aimed at creating a supportive environment for the development of cooperatives in 2001 (UN Guidelines), of the International Labour Organization (ILO) Recommendation No.193 on the promotion of cooperatives in 2002, [1] the revision of a great number of cooperative laws, as well as comments by readers inspired the author when reviewing the text.

In legal terms, the most remarkable evolution over the past years has been the emergence of a public international cooperative law.

A short recall of the history of this paper helps to understand its rationale. Under the ILO-DANIDA programme on cooperative development in rural areas the International Labour Office initiated in 1993 a specific programme, called COOPREFORM. This programme supported ILO member states in revising their cooperative policies and legislation. Under this programme the ILO commissioned in 1996 a working paper on cooperative legislation from the present writer, called "Framework for Cooperative Legislation". Originally in French, this working paper gradually became available also in Arabic, Chinese, English, Portuguese, Russian and Spanish. [1]

On the initiative of the ICA and in particular the European Legislative Expert Group of ICA, the Committee for the Promotion and Advancement of Cooperatives (COPAC) [II] sought the agreement of the ILO to have this working paper revised and prepared as Guidelines for those involved in cooperative legislation.

With this initiative the original working paper ceased to be discussed only in or by the Countries of the South. This was a decisive step towards overcoming a rather unfortunate divide. The cooperative movement is one. The cooperative principles are one. So, basic cooperative legal matters should also be one.

---

[1] cf. bibliographical data under "ILO, Canevas". A Turkish version is also available

[I-XI] See endnotes pp. 91-94

Beyond institution-specific reasons, COPAC members share common concerns and interests when suggesting these Guidelines:

- all COPAC members engage in cooperative policy and legislation advice
- the 1966 ILO Recommendation No.127 concerning the role of cooperatives in the economic and social development of developing countries, its successor, ILO Recommendation No. 193, and the 1995 ICA Statement on the Co-operative Identity (ICA Statement) [2] imply cooperatives to be granted legal person status by legislators. In order to show how such a specific legal person might be structured, the present Guidelines could serve as an example
- the UN Guidelines, elaborated by COPAC, contain a section on cooperative legal issues which reflects the cooperative principles advocated by the ICA and ILO
- there is a set of public international legal instruments which will be treated in more detail below and which pre-shapes national cooperative laws. COPAC and its members are well advised to help to recognize the legal nature of these international instruments.

The present Guidelines are meant to be a check list of items to be considered when amending or making a cooperative law. Whilst taking a clear position on certain, if not all, issues the Guidelines also make mention of other options and their consequences. They are not, however, a recipe to follow, nor are they intended to contribute to scientific discussions on cooperative law.

The Guidelines leave space for country specifics and for the particularities of the national legal systems and make no suggestions as to the form or arrangement of a cooperative law. The ILO rightly rejected the idea of presenting with the initial working paper a model law. In the past, model laws contributed to making cooperative legislation in many countries ineffective. Among the many reasons for this state of affairs the consequences of excessive mimicry stand out. Experience shows that laws, inspired mainly by foreign ideas, have often ended up as phantom laws. Model laws bear the risk of simply being transferred or copied without the legislator adapting their underlying legal concepts to the national particularities. Guidelines, on the other hand, incite the legislator to construct a cooperative law, which respects the local context.

It is hoped that these Guidelines will contribute to bringing cooperative laws in line with the universally recognized cooperative values and principles.

[2] 1995 International Co-operative Alliance Statement on the cooperative identity, reproduced in: International Co-operative Review, Vol. 88, no. 4/1995, 85 f.

Heterogeneous cooperative laws diminish the competitiveness of national cooperative movements, make cross-border operations of cooperatives difficult and decelerate regional integration. [3] Harmonization is both a consequence of and a prerequisite for regional and international economic integration. If cooperatives are to remain competitive, the question is not whether they should follow this trend but how they can safeguard their peculiarities within this trend.

The claim that the Guidelines are of universal applicability does not contradict the call for country-specific cooperative laws. While it is true that cooperatives are centered on members whose behaviour is closely tied with cultural specificities, whereas (stock) companies are centred on a universal notion of how to manage capital, it is equally true that culture is no longer a matter of geography and that only a document for universal use will carry the necessary weight to counterbalance the uniformization and companization of all forms of business organizations, driven by some globally acting networks for which legal diversity is a little welcome cost factor.

The advantages of cooperatives, as compared with companies, especially as far as their sustainable development functionality is concerned, [4] need to be advocated through a common global effort. Instead of denying the contradiction between globalization and cultural diversity, cooperators, being more affected by this contradiction than other economic actors, should take advantage of it.

By proposing guidelines for universal use, COPAC also expresses its view that cooperatives are neither something of the past nor an instrument for use in certain countries only. Cooperatives are one of many forms of doing business which has all the potential to cope with new challenges. Not only will the future show whether the trend towards "companization" of business enterprises continues or whether old and new problems like unemployment, health care, services for the elderly, environmental protection, leisure time management etc. will continue to be tackled by cooperatives. The future will also show that cooperatives are a suitable form of performing in a changed business world. [5] Where knowledge production and management gradually replace those of goods and services, individual persons become the centrepieces of the production process since knowledge is generated, applied and passed on by people. Organizations like cooperatives, which put people at their centre, should therefore not be afraid of soon becoming outdated.

---

[3] cf. Schwettmann, A Harmonised …, op.cit.

[4] cf. Henrÿ, Co-operative Law and Human Rights, op.cit.; Henrÿ, Cooperative Law as an Instrument …, op.cit.; Penn, op.cit.

[5] cf. the highly inspiring article by Snaith, "Virtual…", op.cit.

Although these Guidelines promote a model where, according to the identity principle, members were the co-founders and the members are co-financing the cooperative enterprise of which they are the co-owners, co-administrators/managers, co-controllers, co-users, co-beneficiaries and for the debts of which they have co-liability and where member promotion is preferred over producing high returns on invested capital (principle of member promotion), they also give in to new economic necessities in a number of adaptations of these principles. Thus, the Guidelines try to capture five lines of legal development, which divide cooperative systems, within countries and/or between countries. These five lines are

- legislations, which do not allow for any deviations from the cooperative principles
- legislations, which provide for state-assisted and for independent cooperatives
- legislations, which allow one group of cooperators to follow the cooperative identity principle and another one to depart from it
- legislations, which support the idea of cooperatives belonging to the social economy alongside an independent business-minded sector[6] and
- Legislations, which alongside cooperatives, also regulate a simplified form of cooperative.

It is commonly accepted that the role of government in cooperative affairs be restricted to four functions: legislation, registration, dissolution/liquidation, and monitoring the application of the law by the cooperatives. Therefore these Guidelines take as a premise that the main objective of a cooperative law be to guarantee minimum government involvement, maximum deregulation, maximum democratic participation and minimum government spending by translating the cooperative principles into a legally binding framework for the organization of self-determined self-help.

Since discussions on the original working paper started nine years ago, governments have changed, legislations have been adapted, and cooperative movements have evolved in the sense described here. Although the speed and extent of these developments differ significantly from one place to the other, it is believed that the trend of evolution underlying these Guidelines remains unchanged. This is why the spirit of transition to be found here and there in the Guidelines is maintained.

[6] cf. Chuliá, op.cit.; Münkner, Reform des Genossenschaftsrechts …, op.cit.

It is hoped that by - necessarily - generalizing these Guidelines are still useful in specific legislation cases. They are written from a western lawyer's point of view. The author wishes to express his excuses to those who live under different conceptions and invites them to continue discussing the issues contained in the Guidelines in order to make them more universal, for the sake of our common goal of adequate cooperative legislations.

Finally, it must be emphasized that these Guidelines are the result of a truly cooperative effort, despite of the fact that responsibility for their contents rests entirely with the author. [III]

We would also like to thank Ms. Joan Macdonald in reviewing and editing this book and Ms. Claire Piper, ILO COOP, for the cover design and formatting of the text.

Jürgen Schwettmann
ILO Cooperative Branch

Maria-Elena Chavez Hertig
COPAC

## Acknowledgements by the Author

Without wanting to diminish the support given by the persons and institutions just mentioned, I would like to extend special thanks for support and encouragement to the following persons (in alphabetical order): *Mr. Thomas Carter*, who returned an extensively annotated copy which made me rethink a great number of assumptions, suggestions and formulations; *Dr. Dante Cracogna*, who was the first to comment the draft of the working paper and never got tired while accompanying me with his pertinent suggestions all the way through; *Mr. François Espagne*, who rightfully suggested to clear the paper of remaining Teutonic roots; *Mr. Aboudou Touré Chéaka*, who eloquently defended my working paper in a seminar and acquainted me with African cooperative secrets; *Dr. Joseph Fazzio*, under whose responsibility the International Labour Office commissioned the initial working paper; *Dr. José María Montolío*, who generously provided me with his scholarly comparative writings on European and Latin American cooperative law and with highly useful remarks; *Prof. Dr. Hans-H. Münkner*, who, many years back, convinced me to work on cooperative law, inspired me through his writings and never refused to help; *Dr. Jürgen Schaffland*, without whom these Guidelines would still be an unfulfilled dream; *Mr. Jürgen Schwettmann*, Head of the Cooperative Branch of the ILO, who gave valuable advice on the initial working paper, cared for its translations and immediately supported the idea of revising the paper; *Pr. Emmanuel Kamdem*, Senior Cooperative Specialist of the Cooperative Branch of the ILO, who provided valuable contributions to the initial draft document and, finally *Prof. Ian Snaith*, who brought a British touch to the Guidelines and who inspired me with his writing on cooperatives and virtual enterprises.

It goes without saying that the institutions involved in the publication of these Guidelines deserve special recognition for the freedom they granted me for writing and rewriting this paper.

Kauniainen/Finland, February 2005
Hagen Henrÿ

# Table of Contents

**Annexes**

# Introduction 1

Cooperative law is a reflection of economic, social and political circumstances.

Over the past twenty years employment has decreased in number and its nature has been transformed fundamentally. Population patterns and demographic structures have changed. Economic decision-making processes have been concentrating. Rapidly accelerating urbanization has aggravated the ensuing social problems. These developments have occurred amidst a reciprocal process of globalization and technological innovations and amidst growing concern for sustainable modes of production and consumption.

For various ideological and structural reasons, the prevalent state model prior to the 1980s catered for a gamut of social and economic needs. Since the early 1980s this model has been questioned. Internal budget constraints, external debt burdens and the end of the ideological world-divide led, as a first reaction, governments, international donor organizations and non-governmental organizations to advocate a minimalist state model. [7] Today, they agree that development requires an effective state [IV] – everywhere – limited in its powers to creating market-enabling political and legal frameworks and concentrating government action on those public goods which the market cannot or does not provide effectively or efficiently.

More and more governments understand that structural adjustment measures, which are implied by these changes, compel them to reduce their role in the economic and social sphere, to decentralize and liberalize administrative, political and economic structures, to move from planned to market economies and to balance the development of the different sectors of the economy. These measures will fall short of success if not complemented by the development and strengthening of institutions based on self-help and self-responsibility. Thus, cooperatives are increasingly [V] being rediscovered as a means in their members' hands to achieve goals which companies do not find profitable and which governments are no longer able or willing to achieve.

[7] cf. Boer, op.cit. 935 ff.(936)

At the same time, this rediscovery has been shedding light on the fact that the gap between cooperative values and principles, on the one hand, and legal reality on the other, leaves cooperative self-help potential under-utilized, if not unutilized. Current cooperative law reforms are to rectify this state of affairs and thus provide institutional support to structural adjustment measures. The challenge for the national legislator is two-fold:

- reinstate, based on the universally recognized cooperative values and principles, the distinctive features of cooperatives whilst
- responding to appeals by the international community for more cultural diversity in legislation, as legal reforms are marked by a harmonization within and across the boundaries of economically defined regions. [VI]

The international community supports these legal reform initiatives.

# Preliminary considerations 2

## 2.1 Why a cooperative law?

In certain countries, such as Denmark and Norway, cooperative movements prosper without being ruled by their own law. But there are no cooperative movements prospering without any legal rules applicable to them. Some of the main reasons for this are:

(i) The existence of a cooperative law is a necessary, though not a sufficient condition for getting a cooperative policy to work.

(ii) The rule of law is a fundamental element in the new approach to development, which emphasizes the respect for human rights. This presupposes that the legal relationship between citizens and the state is founded on acts of parliament.

(iii) International cooperation and global economic agents use law in an ever increasing manner as a means of information and communication. Law is a reference point and a guide mark.

(iv) In complex societies, where social control can no longer be based on close personal relationships, regularization of social relationships has proved to be the most adequate means of regulating the activities of economic agents who are not personally linked to one another. By definition, this is especially true where economic relations are not entertained by physical persons only but also by legal persons. In order to provide for legal security, the law has to establish the criteria for the definition of these persons, the power of their organs and their liability in lieu of that of the members or the individual shareholders.

(v) Law is a suitable and tested means to represent and maintain a just balance between the autonomy of the cooperators and the cooperatives, on the one hand, and the powers of the state, on the other.

(vi) Law adds to stabilizing the political system. [8]

(vii) National laws are a necessary means to implement the public international cooperative law.

## 2.2 Cooperative Principles

The UN, the ILO and the ICA, i.e. those universal organizations which have a mandate to further the development of cooperatives, promote the following cooperative values and principles: [9]

- voluntary, open membership within the limits of the social objective defined in the bylaws/statutes of the cooperative in question, and the right to freely withdraw.

The interpretation of this open-door principle – i.e. negative and positive non-discrimination as regards gender, social origin, race, political affiliation or religion – must take into account the associative character of cooperatives. The free will of the members to work together constitutes one of the keys of their motivation. This is incompatible with any attempt to impose certain persons as members

- self-help, self-determination, self-administration, self-control and self-responsibility through democratic means ("one member/one vote"). This principle embraces that of cooperative autonomy, meaning that cooperatives should be allowed to regulate their internal affairs free of outside influence, be it by government or any other agent.

The matter is also linked to that of positive discrimination of cooperatives by the state. It is now commonly accepted that negative discrimination of cooperatives violates basic rights and rules on fair competition and thus distorts market conditions. More and more, it is also held that positive discrimination, i.e. the granting of privileges and advantages, prevents cooperatives from becoming competitive. Competitors are not willing to enter into business relations with entities which are known to be fed by the state. Regional and universal economic organizations, like the European Union and the World Trade Organization, increasingly insist on states abiding by international competition law. In addition, positive discrimination is often the justificatory basis for infringing upon the autonomy of cooperatives and it bears the risk of false cooperatives being created

- economic contribution by the members to the activities of their cooperative

[8] cf. Partant, op.cit., 155; Watkins, op.cit., 54 ff.

[9] as for the sources cf. fn. 1 and 4.

- information to the members by the cooperative's officers
- intercooperative cooperation and
- concern for the community. The ICA added the principle of "concern for the community" during its Centennial Congress in Manchester in 1995. The long-standing debate on the question whether cooperatives should exclusively serve their members or whether they should also serve their communities was, however, not re-opened. Nothing prevented the members of a cooperative in the past from working in a voluntary manner in favour of their community. As specified by the 7th ICA principle, they may continue to do so "through policies approved by their members", i.e. on a voluntary basis. By design, cooperatives are to further their members' interests. This design is not suited to further the interests of society at large. According to the cooperative ideal, the well-being of the members of cooperatives should contribute to that of the community. Questions linked to finding sustainable modes of life, i.e. modes which care for ecological balance, economic security, social justice, and participation in the political decision-making processes require that the interests of the members of cooperatives be constantly redefined.

## 2.3 Public international cooperative law

The ICA Statement, the UN Guidelines and ILO Recommendation No.193 [10], containing the cooperative values and principles, form the core of the public international cooperative law. This law has to be respected when legislating.

The binding force of these instruments for national legislators has long been questioned. The ICA is a non-governmental body whose decisions do not bind states. UN Guidelines do not have the binding force of treaties or conventions. An ILO recommendation, as the name implies, serves as a guide for Member States and compliance cannot be enforced in the same way as ILO conventions can. However, governments are accountable to the ILO Committee of Experts on the Application of Conventions and Recommendations.

It is to be noted, in addition, that ILO Recommendation No. 193 was adopted by an overwhelming majority (two abstentions only) [11] and that the UN Guidelines were adopted by consensus.

[10] cf. fn. 1 and 4.

[11] cf. Roelants, op.cit., 1

If it ever were, the view that these instruments are not legally binding is not tenable anymore, because:

- the ICA definition of a cooperative and the cooperative values and principles, as laid down in the ICA Statement, form an integral part of ILO Recommendation No.193 (Points 2., 3. and annex); the UN Guidelines make reference to "cooperative values and principles" (Point 4.) and
- ILO Recommendation No.193 is a concretization of cooperative-relevant *binding* Human Rights instruments, [VII] which contain all the basic prerequisites for cooperative legislation.

Those who are not convinced that these instruments form the core of the public international cooperative law must at least recognize that the cooperative values and principles constitute a public international *customary* cooperative law. The cooperative values and principles have a long history of being applied by cooperators and of being considered by those who have to decide whether certain facts are to be recognized as reflecting cooperative values and principles. The ICA, as the guardian of these values and principles, is the largest non-governmental organization worldwide. Its non-ideological and apolitical approach to cooperative development over a period of 110 years has contributed to its being recognized and respected by all quarters.

## 2.4 Socio-economic, political and administrative factors

In order to thrive cooperatives need a favourable socio-economic, political and administrative framework. The current development model is based on political and economic freedom. The state must ensure respect for human rights, including the rule of law, the freedom to choose one's economic activity, free access to national and international markets, private property as well as a clear distinction between the public and the private sector based on the principle of subsidiarity.

Apart from exercising the functions of legislation, registration, deregistration, and general normative control, the state in a market economy must not interfere in the economic affairs of cooperatives.

This statement needs three clarifications:

(i) This type of relationship between the state and economic organizations is not cooperative-specific. It determines the legal nature of the cooperative law and it is the foundation of the non-discriminatory treatment of cooperatives and their members, be it to their advantage or to their disadvantage (prohibition of positive and negative discrimination).

(ii) After decades of interference in the affairs of cooperatives, and in times when the living conditions of disadvantaged people in a number of countries are further deteriorating, the state must not withdraw instantly and/or completely from economic affairs.

Under such circumstances the legal policy on genuine cooperatives might have to be accompanied during a specified period of time by a policy of disengagement of the state and of promotion of cooperatives.

(iii) It would be an illusion to think that the modern market economy needs only a simple political and legal structure. Quite to the contrary. It functions because of its highly complex political and legal structure. [12] The balance between non-intervention and a policy of laissez-faire, which would be destructive in the long term to the cooperative system as a whole, can only be maintained by a complex legal system. The law must provide for the existence of the greatest possible number of different private agents and induce their participation in the decision-making in economic matters. With regard to cooperatives, and given past experiences, this implies the prohibition for governments to convert cooperatives into transmission belts for national policies and, in particular, for policies accompanying structural adjustment programmes. The private character of cooperatives should prevent their being used as instruments for political, developmental, social or other goals. Any such use of cooperatives endangers their economic efficiency.

State administration related to cooperatives must thus be as restrained as that related to the private sector in general. Thus, for example, one single, possibly decentralized, register for companies and cooperatives could be envisaged. For the rest, government should be concerned with providing a well-functioning business environment at all levels, for example effective and efficient tax administration, an independent judiciary, an efficient banking and insurance systems, and with promoting chambers of commerce, industry and agriculture as well as professional organizations (trade associations). In addition, it should include cooperative issues in the learning curricula at all levels and in its extension services and it should encourage business advisors to make cooperatives part of their expertise.

[12] Hösle, op.cit., 13

This necessary (re)distribution of roles between the state, the cooperatives, their movement and other private actors might be facilitated by setting up a national council for cooperatives, which could reconcile state sovereignty with the independence of the cooperatives. Conceived as a discussion forum and as a consultative body, this council should in no case take on a mission of tutelage.

The application of a policy of non-intervention in the economic activities of the private sector depends essentially on the organization of the politico-administrative system and the willingness of its office holders. Thus, to the extent the constitutional system permits it, decentralization and de-concentration of power should be favoured, so that decisions can be taken and applied at the local level where cooperatives mainly operate. This could also mean entrusting local administration with the application of the cooperative law, even if it is a so-called "traditional" administration.

In theory, the administration is only an instrument in the hands of the government. Frequently, however, administrators acquire such independence as to be able to effectively oppose changes in policy orientation. The passage to a market economy brings about the transition from a more or less direct intervention in the management of dependent cooperatives to the recognition of cooperatives as independent structures. Administrators are required to apply more subtle rules. They might not always have the necessary qualifications and/or they might not be prepared to exercise the necessary flexibility to do that.

## 2.5 The systemic nature of laws

Cooperative legislation is part of cooperative law. Cooperative law is constituted by all national, supranational and international normative, administrative and judicial acts and the praxes commonly accepted among cooperators as they bear on the formation, the structure, the operations and the dissolution of cooperatives. Thus, the rule on the non-discretional and non-discriminatory exercise of administrative power and on the justiciability of all public acts, constitutional and administrative norms, rules on local and regional administration, real estate and private law in general, irrigation, water, investment, commercial law, company, tax, competition, labour, bankruptcy, and credit laws, regulations on imports, exports and pricing, on contracts, inheritance, accountancy, banking, consumer protection and social security, transports and marketing, etc. must all be severally and jointly conducive to and supportive of genuine cooperatives if cooperative legislation is to be effective.

When drafting the law the legislator must therefore make sure that other legal provisions do not run counter to his project. It will be particularly important to be vigilant regarding the provisions contained in competition law and in social and labour laws. The latter two are marked by the wish to

guarantee minimum social protection and to establish a balance between unequal partners, and they are at times incompatible with the right to self-determination of cooperatives and their members.

These aspects require resorting to a general legal expert who looks after the compatibility of the different texts. The ministry of justice is normally the guardian of the harmony of the legal system.

# Cooperative Legislation 3

## 3.1 Scope of the cooperative law

Before elaborating the law, the legislator will have to consider its scope. Is the law to apply to all forms of self-help or to organized forms of self-help only?

It is suggested that the scope of the cooperative law be limited to one specific, organized type of self-help. State structures do not allow for the reproduction of knowledge necessary to administer unorganized self-help groups, let alone a combination of these and organized groups on the basis of one single law. In addition, legislation on all forms of self-help in one law would necessarily tend to neglect the informal, non-organized in favour of the formal sector. Besides, the administration of a comprehensive law on all forms of self-help would be extremely costly.

When distinguishing between organized and non-organized self-help groups it is important to differentiate between cooperatives as voluntary associations of persons, i.e. a mode of organizing a group, and communities, i.e. a way of life. [13] Cooperatives may only prosper if their members are autonomous in their economic activities and if economic life in general is kept separate from other social activities. Societies where the community is considered as an indivisible entity find it difficult to integrate the concept of legal personality, which allows for abstract bodies to exist independently of their members. They find it, for example, difficult to understand that the financial liability of cooperators may be limited to their shares.

Where the concepts of association and community are confused, it may happen that the implementation of the cooperative law will be hampered by community-type mechanisms. This mixture tends to be harmful to both the cooperative and the community-type group in which cooperative members often continue living.

The distinction between associations and communities must not be confused with that between cooperatives and simplified cooperative structures, as proposed in these Guidelines. With the latter distinction the Guidelines draw on a trend to be observed in recent cooperative laws. These include chapters on "simplified cooperative structures", i.e. organizations that function

[13] cf. Henrÿ, Co-operation in ..., op.cit.; Henrÿ, Genossenschaften als juristische Personen …, Towards Adjusted…, op.cit.

according to cooperative principles without fulfilling all the requirements of a fully-fledged cooperative. Other laws do exempt such structures from a number of otherwise compulsory requirements. Such structures might not need, for example, a supervisory committee (where required), a full-time manager, an elaborate accounting system or a chartered accountant as an auditor. [VIII] The distinguishing criteria might be the turnover, the membership size or the degree of interrelatedness with third parties. This concept is gradually replacing that of "pre-cooperatives" according to which these entities had to either convert into "full" cooperatives or to dissolve after an unsuccessful probationary period of time. Some countries do discuss in this context the appropriateness of having separate legislation for so-called new (generation) cooperatives.

There is an interesting parallel in legal history. In the past, legislation on companies with limited liability, like for example the German GmbH, was introduced because stock companies proved to be organizations too complex for many entrepreneurs.

## 3.2 Nature of the cooperative law

### 3.2.1 Public or private law?

The legal nature of the cooperative law depends on the definition of its objective. If it is to regulate the activity of the cooperative sector, it will be part of public economic law and should include, besides rules on the formation, structure, operations and dissolution of cooperatives, also rules on the establishment, the set-up and the powers of a supervisory authority. If, on the other hand, it is to only propose to potential cooperators a mode of organization which will permit them to develop their activities in an autonomous manner, then it will be part of private law.

The insertion of the cooperative law in one or other of these fields reflects a political choice. In the context of structural adjustment to the requirements of human rights, democracy and the rule of law, private law is the logical choice since the legislator is not seeking public involvement in the activities of cooperatives.

### 3.2.2 Development law

The history of cooperatives has been frequently marked by their being used as instruments to serve the goals of the state, more often than not synonymous with one political party, a family or even a single person. In the context of development the end of this instrumentalization allows for a more genuine reflection of the special legislative needs of the Countries of the South. Their mainly externally geared, accelerated socio-economic change suggests a specific, development enhancing and this change accommodating law. The legislators of these countries

might have to define the kind and the scope of issues to be dealt with in a cooperative law in a different way than legislators in other countries.

In the past, development efforts of states often ended up in managing cooperatives on a day-to-day basis in order to make them fit modern, mostly imported law. What was originally meant to be provisional often became institutionalized. [14] Public funding brought about tight control, thus closing the vicious circle of government involvement and a growing dependence of the cooperative system on the state. Not masters of their destiny, cooperatives saw state officials survey their formation and operations, define their activities or organize their vertical integration and use the cooperative law to shape society at large. [IX]

On the other hand, cooperatives were granted tax privileges, they had easy access to credit or state controlled support. In so far as these privileges violate the equal treatment principle or are granted because of the mere sake of the cooperatives being cooperatives, these privileges should not be granted anymore. The 4th ICA principle indicates which shape the relationship between government and cooperatives ought to take in this context.

Such constraints and privileges can no longer be part of cooperative law. Not only are they incompatible with the fact of cooperatives belonging to the private sector;[X] they are also incompatible with development requirements.

The proponents of the transplantations of so-called modern law which was to secure this kind of "development" were, if at all, guided by the theory of the "development of law". Law was seen as a technique apt to be developed. They ignored the theory of "development law", which is rather concerned with finding out how development could be induced and supported by law. Law is not to create social reality but to structure it.

The widely ignored "development law" theory pre-shaped the current human rights approach to development, at least as far as law is concerned. The Human Right to Development replaces the classical notion of development with that of development through cultural diversity.

Mistakenly, the challenge of designing a development enhancing law is frequently thought to be solvable by allowing for deviations from the cooperative principles through government decrees on key areas of

[14] as for the legal history of these developments, which were closely related with the so-called British-Indian Pattern of Cooperation, cf. Münkner, The British-Indian Pattern …, op.cit.; Henrÿ, 100 Years …, op.cit.

cooperative development.

Development law is a body of law which not only shapes socio-economic activities. It must at the same time bear the features of development by channelling rapid socio-economic change into a direction which is beneficial for those concerned by the change. A number of key rules must therefore be in the form of graduation clauses, i.e. clauses whose application ceases once the aim which was to be reached through that rule is reached.

## 3.3 Choice of the adequate legal instrument

The choice between the different legal instruments, i.e. the constitution [15], laws, ordinances, decrees, regulations, government orders, (government) model bylaws etc., is not a free one. The principle of cooperative autonomy and the rule of law determine the choice. The autonomy of cooperatives will only be achieved and/or maintained by respecting the principle of subsidiarity. Only matters which surpass the competence of an individual cooperative, which are of a democratically defined public concern or involve third party interests may be regulated through public norms, while everything else must be left to be determined through bylaws/statutes. This notwithstanding, the cooperative law should be sufficiently detailed to avoid its character being altered through government rules. This is of particular importance in countries where laws take effect only once the relevant government decree of application is issued.

According to the rule of law, questions relating to cooperative principles must be regulated by law, whereas decrees or other administrative acts are limited to operationalizing the law, especially in matters that are of a temporary nature or which are subject to frequent changes, such as for example rules on fees and fixed interest rates.

Once inscribed in the law, a rule cannot be overturned unless a competent court of law so requires or the law is revised. However, rules of whatever legal nature cannot nullify those contained in other texts having the same or a higher legal ranking. This is an additional reason for the importance of taking into account the systemic character of cooperative law.

## 3.4 One cooperative law or several laws?

In view of the wide range of self-help organizations with differing activities, needs, membership bases, stages of development, sizes, degrees of complexity and inter-relatedness with competitors, it must be decided

[15] Bangladesh, Columbia, Guyana, Italy, Mexico, Namibia, Portugal, Spain, Thailand and Turkey, for example, recognise cooperatives in their constitutions

whether there shall be one law for all types of cooperatives (for example service, workers, consumer), all types of activities (for example agriculture, housing, fishery, cattle raising, savings and credit, transport, supply, marketing etc.), all types of professions (for example fishermen, craftspeople, medical doctors, lawyers etc.), single-purpose and/or multi-purpose cooperatives and all levels of cooperative organizations, one law with separate parts for every or some types of cooperatives/activities or several distinct laws. It might even be that there is no need for a separate cooperative law at all if the civil code, commercial or other laws provide for the regulation of cooperatives.

For the legislative procedure this choice has an immediate incidence for example on the designation of the lead ministry in charge of the formulation of the law or the amendments to the law.

Worldwide one finds any thinkable combination, from many laws to no law. The trend is towards having one single general law covering all types of cooperatives because it is believed that:

- one law for all types of cooperatives, possibly with specific parts for specific types of cooperatives/activities, for example housing or savings and credit cooperatives, best guarantees the autonomy of cooperatives, i.e. their power to regulate their own affairs as far as possible through bylaws/statutes, since the degree of detail in such a law will be lower than in a multitude of laws
- this low degree of detail diminishes bureaucracy
- one single law avoids the fragmentation of the cooperative movement that might occur where different types of cooperatives were registered under different acts and placed under the supervision of different public authorities with, perhaps, heterogeneous policies
- one single law creates legal security for those dealing with cooperatives. Legal security relates rather to structural and liability aspects than to a specific type of cooperative or activity
- in the context of development constraints, one single law is the most adequate tool to reach congruency between development-oriented, member-oriented and self-sufficiency goals of cooperatives.

However, in the light of the recent discussions on how to restore cooperative distinctiveness, it is being considered, especially in the industrialized countries, [16] to have different laws.

[16] cf. Münkner, Reform des Genossenschaftsrechts …, op.cit.

## 3.5 Language of the cooperative law

Understanding the law is a prerequisite of its implementation. It is not unusual that the primary addressees of the cooperative law neither master the official language in which the text is written nor understand the legal terminology. The promulgation of the law in vernacular languages, the use of an accessible style or the adoption of a law that one can understand as far as possible without having to resort to other texts are some of the means to improve access to the cooperative law.

But the cooperative law cannot and must not be an exception within its legal system. Its language must be consistent with that of the other legal texts so as to ensure the cohesiveness of the legal system.

## 3.6 Format of the cooperative law

The format of the cooperative law might seem of secondary importance. Nevertheless, it must be noted that form and content are one. The degree of detail should therefore be reflected upon.

A brief law, only defining an organizational framework for cooperatives, necessarily refers to other provisions, making it less intelligible and therefore relatively difficult to understand. From a practical point of view, a detailed law thus seems preferable. However, in reality detailed texts, while avoiding cross references to other texts, develop a degree of detail which risks impeding the autonomy of cooperatives by limiting notably the space they may fill with their bylaws/statutes. On the other hand, detailed laws prevent an excessive resort to government instruments.

The time dimension has to be taken into consideration as well when deciding on the format. Often, details in the cooperative law pertain to time-bound political, social and economic issues which change more or less rapidly over time, thus requiring adaptations of the law. Frequent changes of the law not only consume resources but they also affect public opinion about the value of a law. They do not match the long-term perspective of cooperative development, for which legal stability/continuity is vital, and they meet the inertia of administrators.

## 3.7 Sequence of the matters to be contained in the law

There are many ways to present the sequence of the different sections of a law. They have no influence on the legal value of the sections. However, the "life" of a cooperative or the subject matters may predetermine to a certain extent this sequence. On the other hand, one may also think about the sequence of the different sections from the point of view of those who shall apply the law, i.e. the members, the organs or their representatives. These Guidelines try to marry these two approaches by suggesting a sequence which follows the phases of a cooperative from its formation to its

dissolution, on the one hand, while regrouping those sections which pertain to either single members or to the organs, on the other. This results at times in repetitions.

## 3.8 An ABC of a cooperative law

As legal entities cooperatives have to be subject to legislation. Their structure, functioning and especially their position vis-à-vis third parties have to be regulated.

The following main topics of a cooperative law will be presented here:

- Preamble
- General provisions
- Formation and registration
- Obligations and rights of the members
- Organs/bodies and management
- Capital formation, accounts, surplus distribution and loss coverage
- Audit
- Dissolution
- Simplified cooperative structures
- Horizontal and vertical integration
- Dispute settlement
- Miscellaneous, transitory and final provisions.

### 3.8.1 Preamble

If the legal system of the country permits it, and by clearly stating the legal nature thereof, the cooperative law could start with a preamble.

The preamble will guide the interpretation of the law, which is all the more important where genuine cooperatives are not yet solidly implanted. The preamble could indicate the following matters:

- the role and the function of cooperatives in society in general and in the economy of the country in particular
- the character of cooperatives as private and autonomous organizations having access to all lawful activity
- the involvement of the government which will be limited to the formation, dissolution and promotion of cooperatives and to general normative control

- equal treatment of cooperatives and their members with regard to other business organizations; i.e. they will not be discriminated against, either negatively nor positively, in order to avoid distortions between competitors and the formation of bogus cooperatives. Equal treatment in the legal sense means identical treatment with other business organizations, where possible, but different whenever the specific nature of the cooperatives so requires. As an example, one might point to the taxation of two items which are typical for cooperatives: surplus and patronage refunds. Surplus produced on transactions with the members is the result of a cooperative specific way of calculating costs (near costs) and patronage refund, paid pro-rata of the business of the members with their cooperative, is a deferred price reduction or a correction of the price calculation at the end of the financial year, should the economic risk included in the original cost calculation not have materialized. If surplus may therefore not be compared with profit, it should not be taxed as such.

### 3.8.2 General provisions

#### *3.8.2.1 Definition of terms used in the law*

A glossary of key legal terms used in the law could be included in the text, annexed to it or contained in a separate document. This is all the more necessary where this kind of law is new or marks a change of policy, or where a single general text replaces several more detailed ones. Such a glossary would also have the merit of facilitating communication at the international level.

#### *3.8.2.2 Application of other norms*

Because of a wide-spread false assumption the law must clearly indicate that the registration under the cooperative law does not exempt cooperatives from abiding by the rest of the legal order. Cooperatives are not exempt from obeying other legal norms, especially not from obeying those regulating their activity.

#### *3.8.2.3 Definition of cooperatives. Field of application of the law*

The universally recognized definition of cooperatives as contained in the ICA Statement and in ILO Recommendation No.193 reads as follows: "A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise."

In addition to uniting voluntarily the potential members should also come together on their own initiative.

Rather than copying this or another definition, it is advisable to formulate their own one where the local context so requires, whilst paying respect to the universally recognized cooperative values and principles.

The definition will also depend on the legislator's choice between a single law governing all types of cooperatives and several specific laws.

The definition and the subsequent rules must reflect those features which best distinguish cooperatives from other forms of business organizations, namely the cooperative identity principle and the principle of member promotion. The identity principle means that members were the co-founders and that the members are co-financing the cooperative of which they are the co-owners, co-managers, co-controllers, co-users and co-beneficiaries and for the debts of which they have co-liability. The principle of member promotion means that the betterment of the situation of the members is preferred over producing high returns on invested capital. The combination of these two principles constitutes the dual nature of cooperatives. They are groups of persons (associations) and economic enterprises at the same time or, more precisely, they are a group of persons who have an enterprise, i.e. cooperatives are not investor controlled enterprises, but associations of persons who work towards common objectives through a joint enterprise. Although this enterprise must be run in a profit oriented way, it is distinct from capitalist enterprises in that it is oriented towards its members' interests and not towards its own interests.

The definition of cooperatives is not only to differentiate them from capital-centred organizations but also from non-profit organizations, from charity organizations and from other possible forms of self-help organizations.

The definition should be written into the law as this helps

- the government to carry out the normative functions of the state
- to distinguish genuine cooperatives from false ones
- to determine the rights and obligations of the members, as well as those of the organs of the cooperative
- to specify the qualifications and duties of cooperative officers concerning capital management and serving the interests of the members

- to state minimum rules concerning accountancy and audit in order to further the efficient use of financial and human resources
- to resolve the conflicts that might arise between cooperative law and labour law or between cooperative law and competition law
- to adequately assess the tax status of cooperatives and their members
- to justify equal treatment of cooperatives, in the sense explained earlier
- to regulate the relationship between private and public entities
- to facilitate the evaluation of the economic, social and political impact of cooperatives and,
- to promote international cooperation for the development of cooperatives.

The definition of cooperatives is not limited to primary cooperatives. It also applies to secondary and tertiary cooperatives if they are allowed to carry out an economic activity.

Finally, considering the number of groups and organizations based on self-help, mutual aid or solidarity, those structures which do not come under the cooperative law could be listed in the law by way of a so-called negative definition, especially if they are regulated by other laws of the country.

#### *3.8.2.4 Cooperative principles*

The universally recognized cooperative principles may be included in the preamble or in the definition of the cooperative, by listing them or by making reference thereto.

A reference has the merit of being more flexible and of not imposing a revision of the law should the principles change, but it makes the application of the law more complicated because it refers to external texts. Another solution is to draw up a list of the cooperative principles, taking care not to give this list a limiting and definite character. This could be translated by the use of expressions such as "among others ..." or "in particular ...". Thus the reference would include possible changes and allow for additional principles.

Whatever the solution, it is important that the nature of the referred to or cited cooperative principles be expressly stated and that the cooperative

principles not be written as if they were legal norms, because that would limit the legislator in making adaptations of these principles to the national circumstances and, in fact, respect for these principles would be rather improbable. It would also limit the autonomy of cooperatives. Likewise, legal rules must not be written in the form of principles because in that form they are not applicable and will most likely call on government to replace the legislator by issuing norms where it should limit itself to issuing regulations, which make legal norms operational, where necessary. [17]

### 3.8.3 Formation of cooperatives

#### *3.8.3.1 Registration*

The recognition, and thus the protection, of cooperatives by the state manifests itself in the registration of their name and all other information justifying their status as a legal person in a public register.

Noting what has happened during the last decades in a number of countries, it appears that the law must foresee severe sanctions against any abuse of the name "cooperative".

The granting of the status of legal entity is, as a rule, motivated by the wish to favour the participation of private persons in joint economic activities since these are judged to be more viable. The fact that their personal responsibility and, in particular, their financial liability, is not committed beyond the amount of the shares subscribed, unless decided otherwise in the bylaws/statutes, is certainly an encouraging factor for people to become members of legal entities. One might object that the distinction made between the organization and its members contradicts the cooperative principle according to which the cooperative may not be dissociated from its members. But if members are not to bear personal liability for the activities of their cooperative, then only such a distinction will allow for a shift of liability to an independent entity with legal person status.

#### *Types of registration*

There are two basic types of registration:

- the quasi-automatic registration and
- the registration after approval by a public authority.

According to the first option, which complies best with the rule of law, a cooperative must be registered once the conditions laid down in the

[17] as for the difference between principles and legal norms cf. Chuliá, op.cit, 36 f.

law are fulfilled.

If, for whatever reason, prior approval is necessary, the discretionary power of the approving authority must be strictly and effectively limited by law.

### *Registration authority*

The separation of state powers, the legal nature of the cooperative law, the definition of cooperatives and the use of the registration procedure as a means of an a priori control are elements to consider when choosing the registration authority.

Recognition of cooperatives as economic organizations of the private sector would permit having all types of enterprises registered in one single register. Even though registration is an administrative task, it could be exercised by the judiciary. But experience has also shown that an authority specialized in cooperative matters, and possibly helped by personnel seconded by the cooperative movement, is more apt to handle registration issues properly.

The legislator has to ensure that the registration be conceived as a local service and that the potential cooperators have to deal preferably with a single authority only when applying for registration. Where different authorities are involved, these should communicate amongst themselves and vest the power to deal with the potential cooperators with one of them.

### *Registration procedure*

In no case must the registration procedure hinder citizens from forming groups in the way that suits them best.

No registration will be made without a request from an elected representative of the nascent cooperative. This request must be filed within a brief time limit, fixed by law, after the constitutive general assembly.

Documents to be attached to the application for registration:

- the minutes of the constitutive general assembly, with the signatures or finger prints of all founder members. If the bylaws/statutes were adopted on the basis of model bylaws/statutes, the minutes must document a detailed discussion of these model bylaws/statutes
- a sample of the signatures of the persons with the right to represent the cooperative
- several copies of the bylaws/statutes with the signatures or

the finger prints of all founder members

- the report of an economic feasibility study concerning the planned activities of the cooperative and a statement as to the qualifications of the board members. This study should be carried out by a cooperative apex organization or another recognized structure. Where there are no such structures yet government may temporarily carry out this task. The task must not be given to the registration authority in order to avoid it being judge and party at the same time.

The objective of this requirement, which is not imposed on the founders of other business organizations, is not to hamper the freedom of potential cooperators, but to see to the interests of the members of the future cooperative and potential business partners, since the risks these are running are greater than those usually permitted for other types of enterprises, because cooperatives have no minimum capital requirement and, generally, their capital base is weak. The legislator must, however, refrain from such preventive measures if it cannot exclude abuses of power in connection with this study:

- a list of the persons entitled to file the application for registration and to notify all subsequent changes to be made to the registry
- a document showing that an adequate portion of the total amount of the member shares has been paid up and stating the period of time within which the remainder must be paid.

The implementation of a speedy and impartial registration procedure is a first step by the state towards facilitating the development of a genuine cooperative movement. To this effect, the following procedure is proposed:

- a deposit receipt stating the application for registration and listing the documents presented, duly signed and dated, will be given upon presentation of the above-mentioned documents
- registration will be concluded within a short time period. One certified copy of the bylaws/statutes, mentioning the number and date of registration will be given to the cooperative. It will be proof of the official recognition of the cooperative as a legal person
- a refusal to register must be justified in writing and notified to the group that requested registration
- in the case of such a refusal, the founders may appeal before

a court (to be specified) which should give a decision within a brief time period

- if within the required time limit, no refusal has been notified, or if the court has not given its decision, registration will be presumed. The registration authority will also in this case, within a fixed and brief time period, send a certified copy of the bylaws/statutes, indicating the number and date of the presumed registration to the cooperative
- whichever its type, the registration should be published within a fixed and brief time period by means of an easily accessible medium, generally used by the local authorities. In case the registration is not published within the time limit set, the cooperative will be presumed registered and the person not having fulfilled his duties will be financially liable for the consequences
- the fees for the registration and publication must in no case be prohibitive.

Where the registration becomes effective with its publication only, cooperatives must have the right to demand that the time periods mentioned be brief and respected by the registration authority.

Only registered, in some cases registered and published, or known information is binding on third parties. After registration, cooperatives must therefore make sure that any subsequent changes in the registered data be notified to the registration authority, failing which, the persons not having fulfilled this duty will be held financially liable for the consequences.

### *Nature and effects of the registration*

By registering (and publishing the registration, where necessary), the state confers legal person status to the cooperative. The status signifies that the cooperative is responsible and liable as a legal entity, independently of its members and with perpetual succession. The members will not be, for example, individually responsible for any acts performed in the name of the cooperative, nor will they be liable beyond the amount of the subscribed shares for the debts of the cooperative, unless otherwise decided through the bylaws/statutes.

As a legal entity, the cooperative has rights and duties. It can acquire property rights, contract debts, develop an economic activity and be party to law suits. As with companies and in accord with the legal system in question, this legal capacity will be infinite or limited by the objective of the cooperative concerned.

The legal person status includes the right to own subsidiaries in another legal form than a cooperative. The establishment of such independent bodies should not, however, discard members from the decision making.

The frequently used formula according to which cooperatives were "the mandatories of their members" does not adequately portray the legal status of cooperatives. On the one hand, they are legal persons. Once registered, acts performed on their behalf exclusively commit them, i.e. cooperatives are independent of their members. On the other hand, because of the close involvement of the members in the decision making processes of the cooperative, a feature which distinguishes cooperatives from other business organizations, cooperatives may not act beyond the mandate which the members may modify at any time.

The status of acts performed on behalf of the cooperative during the period from its constitution until its registration (and the publication thereof, where necessary) must be clearly defined.

In order to favour the rapid development of cooperatives as part of overall public development programmes, most of the legislations adopted during the 1960s in the Countries of the South provided for the possibility of provisional registration of mainly "pre-cooperatives". After thirty years of experience one must, however, admit that most of these pre-cooperatives, often preferred because of their light structure and their exemption from a number of constraints, have not evolved towards autonomous cooperatives. On the contrary, their dependence on external support increased with the intention of turning them into cooperatives. The control which had to follow this support has discredited government as a promoter of cooperatives in many a country.

In addition, provisional registration gave birth to considerable confusion, especially among banks and other creditors with whom it was supposed to facilitate relations, because the legal nature of a provisional registration remained unclear.

#### *3.8.3.2 Membership*

Membership issues are the single most important ones to be dealt with by the law as cooperatives are member-centered organizations.

##### *Membership qualifications*

The universally recognized definition of cooperatives allows for both physical/natural and legal persons to be members of a cooperative. With the exception of rules for service cooperatives, many legislations do however exclude legal persons from membership in primary cooperatives. As long as the democratic principle of "one member/one

vote" is respected in real terms, such limitations should not be included in the law. To ensure this respect one might consider limiting the total voting power of legal person members in those primary cooperatives which also have natural person members, so as to not allow these legal person members to outnumber the votes of the natural person members or to take decisions by themselves.

According to western legal concepts, physical/natural and legal persons only may hold rights and hence be members of a cooperative. This definition is based on a cultural assumption which individualizes physical persons. Other societies are organized on the basis of extended families, or even larger groups, as the smallest entity. These entities may be admitted as members in cooperatives, provided they are stable. One would have to make certain, however, that the decision-making procedure within the cooperative is not affected by admitting such groups as members and that the democratic rights of individual members are not infringed upon.

The admission of such groups as members might even facilitate the functioning of the cooperative in certain circumstances by permitting it to respect the decision-making procedures of the existing social environment, notably in matters concerning the management of natural resources.

### *Restrictions concerning age*

The admission of legal minors is generally an exception to the civil law of the country concerned. Without preventing economically active minors from membership, the possibility of minors to affiliate themselves to a cooperative needs careful studying of the implications in terms of responsibility and financial liability, the right to vote and the eligibility to posts of responsibility. In order to avoid joining a cooperative becoming a means of access to a position which would not legally be accorded to minors individually, their number and rights must be limited. Notably, minors must be prevented from being able to control the cooperative. Exceptions might be made for school and student cooperatives.

### *Minimum number of members in primary cooperatives*

To respect the freedom of association, restrictions on the number of members of a cooperative should be limited. The economic viability of cooperatives with too few members is, however, generally speaking, precarious. Under such conditions, granting them legal personality might go against the interest of their potential partners and creditors. This is why most legislations do require a minimum number of members, at least three.

The experiences of a country might require that different minimum numbers be fixed according to the type of cooperative. Thus the number might be higher for consumer cooperatives than for producer cooperatives, the number for service cooperatives falling in between.

### *Maximum number of members in primary cooperatives*

In theory, the "open-door principle", a shorthand term for the 1st ICA principle, does not authorize any restriction on the number of members. In practice, the number of members must be compatible with the objective of the cooperative in question. Just as with the minimum number of members, it is difficult to define absolute upper or relative limits for the different types of cooperatives.

One might note that, in general, the problems of administration grow with the size of membership. The more members, the more difficult it is to maintain a democratic mode of administration, and the less members identify with their cooperative. Decentralization by means of regional assemblies and/or assemblies by sections, combined with a more effective administration, may make up for some of the negative consequences of large memberships, but they may not make them disappear.

The problems vary also with the type of cooperative. Thus, a high number of members in a consumer cooperative has little influence on the decision making processes, whereas the necessarily high number of members in a savings and credit cooperative requires rather complex work mechanisms. Producer cooperatives will most likely suffer if the size of membership outgrows certain limits. The question will have to be left to the members for decision, if necessary.

### *Admission of members*

#### *Principle*

Within the limits of the objective of the cooperative in question and according to the open-door principle, all persons who request membership should be admitted. The associative character of the cooperative must, however, permit the members to have a say. Mutual acceptance by the members is a condition sine qua non for the success of the cooperative.

The policy adopted by cooperatives in matters of capital distribution has an influence on the number and quality of the members. The risk of membership applications motivated by the search for a lucrative investment may be avoided by not distributing the profit gained on transactions with non-member users and/or by reimbursing shares in the event of termination of membership or liquidation at nominal value only.

The residence of the applicant should not be decisive for admission unless the objective of the cooperative has it as one of the keys for its success, in which case the bylaws/statutes should foresee the necessary clause.

A good number of cooperative laws permit the exclusion from membership of persons who do not have a clean police record. Unless the punished behaviour is likely to harm the cooperative, the members should assume their general social obligations by helping to reintegrate such persons into society.

### *Admission procedure*

Given the associative character of cooperatives, the admission of new members must be decided by the general assembly. For practical reasons, the board of directors may decide, but the general assembly will keep, if it wishes, a right of confirmation or veto, to be exercised during the first general assembly following the decision taken by the board.

In order to be able to determine with certainty the rights and obligations of the members, it is important to specify in the law that final act which constitutes membership.

Applications for membership must be dated and confirmed upon receipt. A refusal must be justified in writing and the applicant must be notified immediately. The applicant must have the right to appeal to a court of law (to be defined). If the cooperative has not met the time limit set by the law, membership is presumed.

### *Resignation/withdrawal of members*

The right of the members to resign or withdraw must be guaranteed by the law which must see to it that administrative acts or the bylaws/statutes of the cooperative do not have an adverse effect.

Withdrawal may be restricted until a minimum period of membership has expired, or be subject to discharging the mainly financial obligations incurred towards the cooperative or third parties. These conditions must in no case be excessive, and the required time period (for notification, reimbursement of shares, etc.) must be reasonable.

The effect of the resignation/withdrawal is the postponement or immediate termination of the rights and obligations of the resigning member. Remaining under certain conditions financially liable, the resigning/withdrawing member has a right to have his shares reimbursed, in principle at nominal value. However, the cooperative must have the possibility to temporarily (term to be specified) withhold the reimbursement if an immediate reimbursement would seriously

affect its functioning. In this case, the cooperative will pay a limited interest on the sum to be reimbursed.

*Exclusion and suspension of members*

Given the open-door principle, exclusion must be an exceptional measure. It can take place when members do not withdraw voluntarily even though they no longer fulfill the conditions of membership, if they seriously violate the by laws/statutes or if their behaviour is detrimental to the cooperative.

Depending on the kind of misconduct, the cooperative might also decide a partial or total suspension of the rights of a member for a certain period of time.

In both cases, the member concerned must be heard and, at his request, the motives for the decision of the cooperative must be communicated to the member in writing. The member may appeal before the general assembly of the cooperative, use the dispute settlement procedures provided for in the law or in the bylaws/statutes and/or he has the right to appeal to a court of law (to be defined).

The terms and effects of an exclusion or suspension are the same as those for resignation.

### 3.8.4 Obligations and rights of members

#### *3.8.4.1 Principle*

Again, the sequence by which the matters are dealt with in the law is not indicative of any ranking. It does however at times reflect the weight given to a specific item. Thus, emphasis is put here on the members' obligations which are far less discussed than members' rights. Membership is linked to rights. These are conditioned by the discharge of obligations. The cooperative law and subsidiary legislation must ensure that this rule be respected, even in cases where general social rules tend to override these rights and obligations. In no case must family ties, race, age, religion or any other affiliation to a group affect the independence and the equality of the members.

#### *3.8.4.2 Obligations*

*Personal obligations*

By belonging to a cooperative, members commit themselves:

- to respect the bylaws/statutes as well as the decisions taken by the general assembly, whether they voted for their adoption or not
- to abstain from any activity detrimental to the objective of

their cooperative. Membership in several cooperatives having the same objective and territory of activity must not automatically be considered as harming the cooperative(s)

- to participate actively in the life of the cooperative. This obligation may not, however, be enforced.

### *Financial obligations*

Membership in a cooperative implies the following financial obligations:

- each member must subscribe to and pay for the minimum number of shares fixed in the bylaws/statutes
- each member is financially liable for the debts of the cooperative, at a minimum with the amount of money to be paid for the shares subscribed by him
- each member might have to purchase additional shares or make supplementary financial contributions to the cooperative. In order to compensate, at least in part, for the inherent financial weakness of most cooperatives, and in order to incite the members to actively contribute to the success of their cooperative, the law or the bylaws/statutes may impose an obligation on the members to make supplementary payments in case the cooperative is unable to pay its debts. This may result in an unlimited financial liability of the members. The amount of these supplementary payments may be the same for each member, it may be proportional to the transactions made by each of the members with the cooperative over a specified period of time, according to the method used for surplus distribution, or it may be determined according to the number of shares held by each member.

If not specified in the law, the type of financial liability of the members must be dealt with in the bylaws/statutes in order to protect the interests of third parties.

Because of the legal person status of cooperatives, the financial liability of members commits the members towards their cooperative only, and not towards the creditors of the cooperative. It extends beyond the termination of membership, for a period of time to be specified in the law or in the bylaws/statutes. As a rule, a member must contribute to the discharge of only those debts which are on the balance sheet at the time of the end of his membership.

### *Other obligations*

One might envisage obliging the members to use, to a certain extent at least, the services or installations of their cooperative. Although favouring the development of the cooperative in the short run, such a rule would in time have a negative influence on the competitiveness of the cooperative and it might violate competition law in those cases where the members themselves run a business. Therefore, rather than reasoning in terms of legal obligations, one might consider that the members have the moral duty to work with their cooperative. Furthermore, it is up to the cooperative to offer sufficiently attractive services to its members.

Exceptions are possible, particularly in the case where the members decide to make an important investment, the success of which depends on the members using that facility. Members could then temporarily be forbidden to look elsewhere for the rendered services.

In order to guarantee certain stability in specific cases, the cooperative might have to conclude individual contracts with each of its members.

## *3.8.4.3 Rights*

### *Personal rights*

Each member has the right to:

- ask for those services which form the objective of the cooperative
- ask for education and training by the cooperative according to the bylaws/statutes or the decisions of the general assembly
- use the installations and services of the cooperative
- participate in the general assembly, propose a motion therein, and vote
- elect or be elected for an office in the cooperative or in that of a higher level structure of which his cooperative is a member
- obtain at all reasonable times, from the elected bodies of the cooperative, information on the situation of the cooperative and
- have the books and registers inspected by the supervisory committee, if any.

Jointly (necessary number to be determined) the members can also:

- convene a general assembly and/or have a question inscribed on the agenda of a general assembly or
- ask for an additional audit.

*Financial rights*

The members have the right to:

- receive a share of the surplus at economically reasonable intervals in the form of a patronage refund, paid pro rata of their transactions with the cooperative, and/or a limited interest on the paid-up shares
- ask, when terminating their membership, that the paid-up shares be reimbursed at nominal value. Losses or devaluations may be deducted from this amount. The limitation to the nominal value is to prevent members from withdrawing for speculative reasons. As mentioned above, the reimbursement may be deferred in case it would otherwise endanger the viability of the cooperative. However, this deferment must not undermine the right to withdraw
- receive, in the case of liquidation, a share of the remaining sum, if any, unless these funds were declared indivisible by the bylaws/statutes and as required by strict cooperative principles (cf. 3rd ICA principle). In this case, the remaining monies must be credited to another cooperative, a vertical cooperative structure or to a charitable organization.

### *3.8.4.4 Provisions relating to member employees*

The employer/employee relationship in cooperatives is a complex issue when the employees are members of the cooperative and, consequently, their own employers. These members might find contradictory interests in terms of working hours, salary, trade union rights etc. The problem presents itself at varying degrees of intensity in the different types of cooperatives:

- in service cooperatives, it is seldom that members are employees of their cooperative
- in consumer cooperatives, the employees are frequently members of their cooperative. However, the substance of the cooperative is not identical with that of the labour contract. To prevent the interests of member employees from dominating, the voting rights of these members must be

limited in cases relating to work conditions, or the general assembly must delegate its decision-making power in these matters to the board of directors. Besides, member employees will refrain from encroaching upon the interests of the employer since they are themselves their own employer

- in producer cooperatives the conflict is obvious. Here, the substance of the labour contract is cooperatized. It is identical to the substance of the cooperative. With the exception of the rules on social protection, workplace and product safety, the labour law must not normally be applied to these relationships because the members freely consented to organize their work according to cooperative principles instead of seeking a work relation. [18] Some legislations do see, however, the cooperative – a separate legal person – as the employer and the individual members as employees with an employment contract with the cooperative while, as members, they have a separate contract with it, concluded with the acceptance of the bylaws/statutes when becoming a member.

### 3.8.5 Organs and management

#### *3.8.5.1 Principle*

The functioning of cooperatives, as opposed to that of companies, depends on the participation of the members who must be able to exert an effective influence on the affairs of the cooperative. Nevertheless, as a legal entity, the latter must be able to keep a certain independence. The law must therefore provide for the principle of democracy and the principle of economic efficiency to be applied simultaneously, ie. it must cater for the two elements of the definition of cooperatives, the association element and the enterprise element. Therefore, the internal organization, the sharing of powers between the different organs, the elections to offices as well as all important decisions must reflect the will of all members, regardless of their financial contribution. Broadly speaking, matters relating to the associative character of the cooperative are to be dealt with by the general assembly, matters pertaining to the enterprise of the cooperative are to be dealt with by a board of directors, whereas the day-to-day running of the enterprise should be delegated by the board of directors to a (professional) manager who works under the supervision of the board of directors. This demarcation of powers is to

[18] cf. ILO, Meeting of Experts …and ILO, Labour Law and Cooperatives

avoid inefficiencies that arise where a non-informed membership retains too much of the management powers and it is to prevent a loss of cooperative identity where the membership loses its effective control because the management uses its information without properly consulting with the membership.

A clear power-sharing allows also to more easily establish civil liability and penal responsibility of those in charge of running the cooperative.

Every cooperative must at least have :

- a general assembly and
- a board of directors, which is sometimes also called "management committee".

Although the formation of a cooperative does not require the existence of a control unit, it is advisable to at least provide for the possibility of its nomination and leave the decision to the members. Cooperatives which have such an independent organ, a "supervisory committee", "supervisory commission" or "control commission", which acts on behalf of the members as a mini general assembly so to speak, seem to function better than those without it because the members often lack the necessary qualifications to exercise an effective and continuous control over the board of directors and the management, if any. [19]

This dual system does not replace internal control mechanisms of the board of directors, such as internal auditors, nor does it replace the obligatory external audit of the cooperative.

As for the optional post of manager, it is not an organ of the cooperative since its powers are delegated by the board of directors.

#### *3.8.5.2 General assembly*

##### *Composition*

The ordinary and the extraordinary general assembly, composed exclusively of the members of the cooperative, is the supreme decision taking body of the cooperative. Third parties who have invested in the enterprise may possibly participate in the general assemblies, but they should not have voting rights.

An ordinary general assembly must convene at least once a year; an extraordinary general assembly may take place at the request of the persons entitled to do so according to the law or the bylaws/statutes.

[19] for details cf. Henrÿ, Cooperative Law as an Instrument …, op.cit.

If the size of a cooperative in terms of territorial coverage or the number of members is such that the necessary quorum is difficult to attain or the proceedings of the general assembly become too cumbersome, or where in a multi-purpose cooperative diverse interests so require, regional assemblies and/or assemblies by sections may be formed. These decentralized assemblies elect their representatives to a delegates' assembly which replaces the general assembly. The agenda of these meetings as well as the mode of deliberations and voting will be decided at central level so as to ensure the same standards throughout the cooperative. In order to reinforce communication between the different parts, members of the board of directors and of the supervisory committee, if any, should participate in the meetings of these decentralized assemblies.

These basic rules about the general assembly fit with the reality of most cooperatives. Generally, cooperatives are locally rooted, in the physical sense of the term. While this is a safeguard against quick shifts of their activities in search for comparative business advantages, one must not exclude the cooperatives from being run without a physical centre. New ways of communication and production neither require a stable physical production unit or an administrative centre, nor the physical presence of the members in order to hold a general assembly. Where this is required, the members may decide so in their bylaws/statutes. Otherwise, they should be free to discuss and vote via, for example, the internet. What matters is the democratic control by the members, not their physical presence at meetings, although this may still help to generate and regenerate the necessary reciprocal confidence.

### *Powers*

As already mentioned, the dual character of cooperatives as associations and enterprises is indicative of the way in which powers must be shared amongst the general assembly and the board of directors. According to the definition of cooperatives, the members use the cooperative enterprise to attain certain economic, social or cultural objectives. The board of directors/management must have the necessary working margin which is indispensable for efficient management, whereas all decisions concerning the cooperative as an association must be taken by the general assembly.

Starting from this basic distinction, one may draw a list of exclusive powers of the general assembly. These powers may not be transferred to any other body or person, not even by a unanimous decision of all the members.

Among these powers the most prominent one is the right and obligation to adopt and to modify the bylaws/statutes within the limits of the law

and the universally recognized cooperative values and principles. This is why the bylaws/statutes are dealt with in a separate paragraph.

### *Bylaws/statutes*

#### *Principle*

The general assembly, or the constitutive first meeting of the founder members, may stipulate on a matter through its bylaws/statutes where the law is silent, where the legislator leaves it a choice amongst several options, invites it to specify legal provisions or when the members decide to rewrite certain clauses of the law in order to make them easier to understand and/or more easily operational.

What has been said concerning model laws is, mutatis mutandis, equally valid for the bylaws/statutes. Although the adoption of model bylaws/statutes, recognized by the authorities, makes registration of organizations easier because of their supposed conformity with the law, their adoption should not be made compulsory.

#### *Contents of the bylaws*

#### *Minimum obligatory content of the bylaws*

The bylaws must deal with the following items:

- the name and the trade name of the cooperative, which may be freely chosen as long as there is no confusion possible with the name of another legal entity already registered and as long as the public is not left in doubt about the limited financial liability of the cooperative and the type of financial liability of the members
- the locality of the head office, if any, its postal address and, possibly, the conditions for its transfer to another locality
- the definition of the objectives of the cooperative , including the indication of whether the cooperative is a single-purpose or a multi-purpose cooperative
- the conditions and procedures for admission, resignation, exclusion and suspension of members as well as eligibility criteria of membership. These criteria must reflect the particular character of the cooperative in question, as also its being a primary, a secondary or a cooperative of an even higher level
- the value and minimum and maximum number of the shares to be subscribed by each member. The general assembly ensures that the economic means of the least affluent

members form the basis for the decision and that the share value is high enough to support the envisaged objectives of the cooperative and to incite the members to exercise their control rights

- the procedure and conditions for the subscription and payment of the shares. Shares may be contributed in cash, kind, labour, service or by leaving a part of the surplus, to which a member is entitled, with the cooperative
- the type of financial liability of the members for the debts of the cooperative
- the administration of the cooperative registers and the documents to be kept
- the conditions and procedures for convening and holding general assemblies (form of notice, fixing and notifying the agenda, election of the president of the session, preferably not a member of the board of directors, quorum and voting, etc.)
- the limited size of the board of directors, the conditions of eligibility to the various offices, the duration of the mandates and the reimbursement of their expenses and the expenditures of the manager, if any. The rights and obligations of officers, mode of decision taking
- the conditions and procedures for convening the board of directors and, if any, the supervisory committee (quorum, voting etc.)
- financing: capital formation, constitution of the legal reserve and of the statutory funds
- surplus distribution and contribution to cover losses
- the distribution of the capital in case of resignation, exclusion or liquidation
- definition of the financial year
- auditing (cooperative-specific financial, management and social audit and advice)
- conditions and procedures for voluntary dissolution
- dispute settlement procedures
- specification of any other legal matter and finally
- the procedure for modifying the bylaws/statutes.

### *Additional, non obligatory content of the bylaws*

Without being compulsory, the bylaws may also include rules on:

- the duration of the cooperative
- its geographical area of activity
- its affiliation to one or several secondary or higher-level cooperative organizations
- the nomination of a supervisory committee
- the nature and volume of transactions possible with non-member users. A balance must be found between the efficiency and the autonomy of the cooperative. This may translate into a definition of a threshold (percentage of total turnover which the transactions with non-member users must not exceed). These transactions must be kept separately in the accounts of the cooperative
- the remuneration of office holders. While it is true that according to cooperative principles office holders should not be remunerated, it is also true that thus financially weaker members may not be able to afford to take office. Remuneration should not be paid as a function of the turnover or the profit/surplus of the cooperative
- the number of additional or supplementary shares per member and the conditions of their subscription and payment
- the acceptance of non-member investments and the rights attached thereto
- the formation of regional and/or assemblies by sections, their decision making, voting and number of delegates to represent the regional or sectional assemblies at the central level
- voting by proxy
- the establishment of education and other statutory funds
- the establishment of commissions/committees, their tasks, their term, the qualifications of their members and
- any other matter falling within the autonomy of cooperatives.

### *Other powers*

In addition to drafting and modifying the bylaws/statutes the general assembly has the power to decide the following matters:

- keeping of minutes of its meetings
- distribution of powers between the different organs according to the above-mentioned principles, and the adoption for each of them of internal regulations
- election and dismissal of the members of the supervisory committee (if any) and the board of directors unless the latter is to be chosen by the supervisory committee. The more powers the board/management has, the easier it must be to remove it from office
- surplus distribution and loss coverage
- amalgamation, scission, conversion of the cooperative into another legal entity or dissolution of the cooperative
- decisions concerning the possible limitation of loans, deposits or investments
- nomination of auditors, the duration of their mandate and their remuneration
- examination of the auditor's report as well as of the annual report (including the yearly activity plan)
- giving or refusing the final discharge of board members
- adoption of the annual budget
- final admission, expulsion or suspension of members
- education and training of members and employees
- extension of the duration of the cooperative
- the decision on whether the board of directors may appoint a professional manager, member or not of the cooperative
- the possible creation of sub-committees with specific tasks, and the duration of their mandate.

### *Decision making*

### *Quorum*

The mode of decision making must respect the principles of democracy and economic efficiency. Fixing a quorum, i.e. the minimum number of

members who must be present or represented for the general assembly to validly sit, deliberate and vote, constitutes a compromise between these two principles.

This quorum, most often expressed either in a percentage of the number of members at the time of convening the general assembly or in an absolute figure, or in a combination of the two, may vary according to the topic on the agenda of the general assembly.

Provision must be made for cases where the general assembly repeatedly fails to gather the required quorum. As a rule, a second meeting with the same agenda may decide regardless of the number of members present or represented.

### *Voting*

The basic rule for primary cooperatives is 'one member/one vote'. This also applies to members being legal persons. Exceptionally, (a limited number of) plural voting rights may be granted through the bylaws/statutes. The volume of transactions with the cooperative or other criteria might be used when allocating these rights. In no case, however, may plural voting rights be granted on the basis of the amount of capital invested by a member. The plural voting rights may not be exercised when taking decisions on important matters, as specified by the law. In no case must one single member be in a position to take decisions by virtue of the number of voting rights he is holding or representing.

In secondary and higher-level cooperative organizations, a system of plural voting rights may be applied without the above mentioned restrictions, but in line with democratic principles (cf. 2nd ICA principle).

The law must regulate the criteria for granting voting rights to delegates, i.e. members elected by regional or sectional assemblies, if any, to the assembly of delegates.

The participation of non-member investors in the general assembly, should they have voting rights at all, must be regulated in such a way as to ensure that they cannot outweigh regular members. It must, however, be emphasized that voting by non-members constitutes a severe deviation from cooperative principles.

For the above-mentioned reasons, the voting rights of member employees will also have to be restricted to exclude them from voting on issues related to their employment.

If voting by proxy is to be allowed, the proxy must be a member of the cooperative and should not represent more than two or three members,

himself included. Voting by mail or via the internet might be a way to involve the greatest possible number of members in the decision making process, whenever the physical presence of the members is not necessary. At least important decisions should be taken by ballot in order to limit the influence of certain members, mainly the president of the assembly. Elections should always be held by ballot.

#### *Majorities*

Generally, decisions may be taken by simple majority if the required quorum of members is present or represented. Resolutions concerning the "association contract", be it a modification of the bylaws/statutes or a decision on merging/amalgamating, dividing, dissolving, converting or on affiliating the cooperative with an apex organization, must be taken by a qualified majority, generally at least a two-thirds majority.

### *3.8.5.3 Board of directors*

#### *Composition*

As the executive organ of the cooperative, the board of directors must function according to precise legal rules. The board members are not only the representatives of the current cooperative but they are also under the obligation to preserve its assets for the members to come.

#### *Provisions relating to the board of directors*

The law must contain rules on:

- the eligibility criteria and on the question whether or not all board members must be members of the cooperative. In cases where non-member investors sit on the board of directors, one must ensure that they are not able to take decisions on their own nor constitute a blocking minority
- incompatibilities, be they of an economic, personal, political or other nature; for example, incompatibilities between belonging to the supervisory committee, if any, and the board of directors of the current or that financial year which is subject to control by the supervisory committee, if any. Also, members of the same family (to be defined) must not sit on the supervisory committee and the board of directors of the current or that financial year which is subject to control by the supervisory committee
- the duration of the mandate and the possibility to be re-elected
- the quorum and the mode of voting

- the qualifications of the members of the board of directors. These qualifications must be technical and personal. The board members may compensate a deficit in the first case by hiring a professional (non-member) manager, but nothing will replace a lack of confidence of the members in their representatives. Independently of whether the cooperative has a professional manager or not the board must be professional, i.e. the board members must have those qualifications which are necessary for their specific cooperative. [20] One of the differences between cooperatives and capital-centered companies is that the responsible persons must be able to manage the capital of the cooperative, while at the same time provide services to the members, within the limits set by the bylaws/statutes and the decisions of the general assembly

- liability of the board members. This liability may be excluded where it relates to a decision of the board concerning which a board member expressed his dissenting opinion immediately after he knew about the decision. The liability may be stricter where the board or single board members receive a salary from the cooperative.

### *Powers*

The list of powers/obligations of the board of directors covers, by default, all the matters which do not explicitly come under the authority of the general assembly. It includes the power/obligation to:

- represent the cooperative in all acts of civil life and to administer and manage the cooperative. This power is limited by the legal capacity of the cooperative and the decisions taken by the general assembly. Thus, the latter may for example fix a financial ceiling above which the board of directors cannot by itself commit the cooperative, or decide that certain decisions of the board of directors must be taken unanimously

- keep the registers and books of the cooperative and the minutes of its own meetings

- make certain that the accounts and the balance sheet are drawn up according to the rules in force, always keeping in mind the specific character of cooperatives

[20] cf. Henrÿ, Cooperative Law as an Instrument …, op.cit

- verify that the audit is conducted regularly and within the prescribed time limits before discussing the conclusions with the supervisory committee, if any, and/or the general assembly
- convene the ordinary and extraordinary general assemblies and prepare their agenda according to the bylaws/statutes
- prepare the management report (including an activity plan for the following year) and the annual budget
- admit, exclude or suspend, possibly provisionally, members
- co-opt in the case of a vacancy new members unless this power is explicitly given to the general assembly
- facilitate the exercise of the rights of the members and make certain that they assume their obligations
- facilitate the work of the auditors
- nominate, if necessary, a manager or director, member or not of the cooperative, and ensure that the manager or director carries out the assigned duties correctly. In practice, this employee must assume the management functions which are not explicitly reserved to be performed by the board. He may employ and direct the necessary number of personnel. Where the work of the board of directors requires making use of the professional knowledge or know-how of the manager, he may be integrated into the board of directors as a member
- file, if necessary, an application for the opening of bankruptcy procedures
- make certain that its functioning be transparent by adopting internal regulations, unless drawn up by the general assembly
- assume several and joint responsibility/liability in case of wrongdoings and finally
- take on any other right or obligation, assigned by the general assembly or contained in the bylaws/statutes.

#### *3.8.5.4 Supervisory committee*

##### *Composition*

Where the law provides for the possibility of nominating a supervisory committee and where the statutes/bylaws so stipulate, this supervisory

committee carries out the control function in the interest of the members. Consequently, it is exclusively composed of members of the cooperative.

*Provisions relating to the supervisory committee*

Just as for the board of directors, the supervisory committee must be directed by a certain number of provisions, in particular on

- the eligibility criteria and the prohibition to sit at the same time on the board of directors of the current or a financial year which may be subject to control by the supervisory committee. The presence of several members of a family (to be defined) in one or several organs must be avoided
- the qualifications of the members of the supervisory committee. In order to be able to effectively control the board of directors and the management, if any, the members of the supervisory committee must have the necessary time and skills
- the duration of the mandate
- the quorum and the mode of voting
- the financial liability.

*Powers*

The supervisory committee's principal task is to control the activities of the board of directors, of the management, if any, and those of any commission. In order to be able to carry out this task, it will have access to all information at all times. Since it is only answerable to the general assembly, it may only take orders from that organ.

Besides these broad rights it can have a number of particular ones. For example, should the board of directors fail to properly convene a general assembly, the supervisory committee could do so and it might elect the members of the board of directors in cases where they are not elected by the general assembly or in the case of a vacancy, if it is impossible for the general assembly to take a rapid decision, subject to confirmation by the latter.

### 3.8.6 Capital formation, accounts, surplus distribution and loss coverage

#### *3.8.6.1 Financial resources*

*Principle*

The autonomy of cooperatives will not become reality unless they have

the necessary economic independence and, in particular, financial independence.

The general withdrawal of public funds from the private sector and growing competition put cooperatives in a difficult situation in many a country. Today's markets are global, dominated by capital, through which the main means of production, i.e. knowledge, is/will be accessed. Competitiveness presupposes a capital base that is difficult for most cooperatives to constitute, given the nature and the structure of their capital. The capital varies with the number of members. As a rule, cooperative members have only limited financial or other resources. As additional contributions do not increase their voting power, and as interest payments are limited, members are generally not inclined to invest more than their obligatory share.

The difficulties in raising a sufficient amount of capital are seen by many as the principal drawback of cooperatives. If governments want to avoid cooperatives being restricted to low productivity, easy to imitate activities, they must see to it that the inherent weak capital base of cooperatives be raised to a level where they may stand the harsh winds of national, regional, international and indeed global competition. Especially in industrialized countries, legislators have therefore opened the way to capital formation similar to that of stock companies, putting however the cooperative identity at risk.

The autonomy of cooperatives flows mainly from a system of carefully balanced internal and external financing, the latter for example through non-member business, non-patronizing member investments, non-member investments. The conflict between user and investor interests, which is to be avoided by the cooperative model, is likely to emerge through any such external financing mechanism.

### *Internal financial resources*

### *Member shares*

The member shares do not constitute a gainful investment. The paid-up shares constitute money which the members put at the disposal of their cooperative for the time of their membership in order for the cooperative to attain the jointly fixed objective/s.

Shares are nominative, indivisible, non-transferable (unless decided otherwise by the general assembly), not attachable and non-negotiable.

In primary cooperatives the amount of capital held by one member must be limited so that the principle of equality of the members in real terms is not endangered. When this balance becomes disturbed through the termination of a membership, the cooperative must redistribute the shares.

In order to rebalance the relationship between the overall economic situation and the nominal value of the shares, cooperatives should be allowed to re-evaluate their shares under strict supervision of the competent authorities.

### *Additional member shares*

It may be advantageous to encourage members to subscribe to additional or supplementary shares. These may be conceived in such a way as to not entail an additional financial liability, as to grant the right to fixed interest payments, as to be reimbursable upon request, and/or as to grant a right of participation in the reserves upon withdrawal from membership where the reserves are otherwise indivisible.

### *Further means to improve the internal financing*

To counterbalance the inherent financial weakness of cooperatives, the legislator might fix a limit below which the share capital must not fall, even if this means that a withdrawing member is not immediately reimbursed his share, or that the remaining members are obliged to contribute to the recapitalization by making supplementary payments. Such a system of separating the amount of share capital from the number of members brings cooperatives closer to the financial structure of capitalist enterprises.

On the contrary, the constitution of a reserve fund is a genuine cooperative way to at least partly overcome the inherent financial weakness. It must be obligatory. If indivisible, at least until liquidation, such a fund assures minimum stability and limits the risk of voluntary liquidation driven by speculation. The reserve fund cushions both against a lack of liquidity and against the loss of value of the obligatory shares. The reserve fund must not sit idle , but be used.

The legal reserve fund could be supplied by

- the transfer of a minimum percentage of the surplus gained on transactions with the members until the fund reaches at least an amount equivalent to the share capital. This use of the positive results is all the more interesting if the sums transferred to the reserve fund are not taxed, as opposed to that part of the surplus a member may receive, even when that part is transformed into a credit, a deposit or an additional funding by that member. This should at least apply as far as the reserve fund is indivisible
- the transfer of the total profit gained on transactions with non-member users.
- the transfer of the results of activities not related to the

objective of the cooperative, such as for example the sale of fixed assets.

Furthermore, the legislator should encourage the establishment through the bylaws/statutes of education, training or any other funds. The designated use of these funds should be made compulsory.

#### *External financial resources*

Debentures and negotiable subordinated bonds have been allowed by a number of legislations for quite some time already. Provided some rather technical precautions are taken and the amount of external investment does not create a factual dependence of the cooperative on that capital, these do not influence the members' autonomy since no voting and/or participatory rights are attached to them.

Another way of attracting external financing is the issuance of transferable investment certificates for members and non-members, granting a right to participate in the distribution of the surplus and in the distribution of the assets in case of liquidation. Where these certificates do not grant any decision-making power or, in the case of members, any additional decision-making power, they might represent a still acceptable case of deviation from cooperative principles. Where, however, these certificates do grant voting rights, even to a limited extent only, the cooperative principle of identity is in danger.

When it comes to external financing, the distinctive features of cooperatives are easily at risk. Ideally, cooperative members are the sole investors and users (cooperative principle of identity). Non-user members and non-member users have been accepted as "deviations" from the identity principle. The admission of investment members and non-member investors is a further step away from this identity principle. Where, as some legislations provide for, cooperative shares may be traded at the stock exchange and members' shares have a symbolic value only, capital holders become anonymous and the (capital) structure of the cooperatives may not be distinguished any more from that of stock companies. In addition to violating the identity principle, these developments put the cooperative principle of the promotion of the members at risk.

### *3.8.6.2 Surplus distribution at the end of the financial year*

As already mentioned, it is important to distinguish between profit and surplus. By definition, cooperatives ought to calculate the prices for transactions with their members near costs. [21] In order to cover market

[21] Cf. the term "near cost" is used here in a different way than in economics in general.

related risks, a small profit margin must be included which will, however, be returned to the members at the end of the financial year, should the risk not have materialized, and should the balance sheet show a profit. This redistribution, in the form of patronage refunds, calculated pro rata of the transactions with the cooperative, thus constitutes a deferred price calculation/reduction. Therefore, instead of speaking of "profit" in this connection, one should speak of temporary surpluses. Where there is no profit , such "profit" may not be taxed.

The surplus will be distributed in the following manner:

- transfer to the legal reserve fund
- transfer to the statutory funds, if any
- interest payments on the paid-up shares and the investments, at a rate not higher than that paid by commercial banks for certain kinds of deposits
- patronage refunds to the members calculated pro rata of their transactions with the cooperative
- possibly premium payments to employees.

Any payment to members is conditional on their having fulfilled their obligations, especially the obligation to pay up their shares.

#### *3.8.6.3 Reimbursement of capital*

In the case of resignation/withdrawal or exclusion, the shares are reimbursed at their nominal value, in order to avoid membership motivated by speculation. Where the economic interests of the cooperative are seriously threatened by an immediate reimbursement or where it would lead to reducing a minimum capital requirement, it may (temporarily) be withheld.

As a rule, the same type of reimbursement of shares applies in the case of liquidation. The remaining liquidated assets are transferred to the cooperative movement, to a charity organization or, in the exceptional case where the legal reserve fund is divisible, they are distributed among the members according to the method used in distributing a surplus at the end of the financial year, whereby seniority of membership might be considered as an additional criterion.

#### *3.8.6.4 Transactions with non-member users*

Depending on its objectives and its situation, each cooperative must decide whether it wants to offer its services to non-members as well.

In cases where membership comes from a pre-existing group, for example savings and credit cooperatives founded within an enterprise or

a district, non-members of such groups might not be admitted as users.

If non-member business is admitted, it is important not to let it jeopardize the independence of the cooperative. As already mentioned, the volume of transactions with non-members must consequently be limited so as not to restrain the autonomy of cooperative members. This might be done by fixing a percentage of the total turnover, above which no transactions may be made with non-members.

For the purpose of taxation, distribution of the surplus and supplying the legal reserve fund, book keeping must distinguish between the transactions made with members and those made with non-members.

### 3.8.7 Audit

The implementation of a system of internal and external, timely and regular audit of the financial, management and social standing of the cooperatives by qualified and independent auditors, combined with advice on how to improve operations, is a condition sine qua non for the existence of any cooperative system.

As it becomes difficult to involve the members directly in the running of the cooperative enterprise, it becomes ever more important to provide for transparency of the management in order to preserve the democratic nature of the cooperatives. The establishment of a supervisory committee, as suggested above, and an extended audit are means employed to this end.

The establishment of an effective audit system, independent from the state and the cooperatives, whose services will be accessible by all cooperatives, should be made an obligation. An audit fund might be created to allow those cooperatives which need auditing most to be able to afford it.

The purpose of the audit is to check that everyone respects the rules of the game. It is a periodical control of whether the attribution of the legal person status continues to be justified. It helps to monitor the interests of third parties, managers and members. As such, it is a general tool for any kind of enterprise.

The specificity of cooperatives requires the auditor to make additional investigations to ensure that cooperatives comply with their task of promoting their members. Especially where economic developments require a management system of cooperatives that does not allow for direct participation of the membership, the audit must also include a control of whether the democratic rights of the members were respected.

The fact that the objectives of cooperators differ from the purely financial interests of company stockholders must especially be taken into account by the auditors who have to be trained accordingly.

The audit of a cooperative can thus not be made only on the basis of accountancy documents. The auditors have to verify whether the overall objectives, which the members set, were reached or at least furthered, and that the decisions of the management were taken in conformity thereto (management audit in order to establish a social balance alongside the financial or economic one). Scrutiny of the minutes of the meetings of the board of directors might give useful information. The members must be consulted and their opinion used in drawing up the final report. Generally speaking, the auditor must have access to all material, premises and persons able to inform him about the operations of the cooperative. The external auditor will also have access to the findings of the internal auditors.

The auditors should not limit their activity to that of an ex post control but they should also give advice on how to improve the management and administration of the cooperative.

Whereas internal audit is to be performed permanently, the frequency of the external audit might be decided on the basis of the turnover, the kind of activities, the size of the capital, the volume of non-member business or other criteria.

The internal audit will be carried out by a group of members. Their number, the duration of their mandate, the required qualifications, powers, duties and salary as well as their civil and penal responsibility must be determined by the general assembly. Internal auditors may not be or have been a member of a cooperative organ which is or may be subject to their control.

The external audit will be carried out by a higher-level cooperative organization or by private, preferably chartered, auditors. If the cooperative movement is not yet able to provide this service and if private services are not affordable, a public authority may temporarily audit cooperatives. In no case must an administrative unit in charge of the promotion or the registration of cooperatives audit cooperatives.

The auditor's report is to be submitted to the board of directors and to the supervisory committee, if any, with a view to them explaining it to the general assembly. It must be made available for inspection by the members. The auditors must have the right to participate in the general assembly and, should the board of directors or the supervisory committee not have convened the general assembly, or not have (sufficiently) explained the contents of the auditor's report, the auditors have the right to do so.

The conclusions drawn from the audit must be communicated to the competent authority.

### 3.8.8 Dissolution

#### *3.8.8.1 Dissolution without liquidation: Amalgamation, scission and conversion*

*Principle*

The autonomy of cooperatives permits them to dissolve without any restriction, provided the interests of third parties are preserved. Thus, creditors may object to the dissolution as long as they have not been satisfied.

The law must lay down the steps to be followed, from the quorum and the majority required for such a decision to the modifications to be entered into the public register.

According to the freedom of association principle, members opposing the dissolution must have the right to resign.

*Amalgamation*

There are two types of amalgamation:

(i) one or several cooperatives are absorbed by another one, something which is at times psychologically difficult for the members of the absorbed cooperatives, or

(ii) a new cooperative is born by merging two or more cooperatives. In this case, new bylaws/statutes will have to be adopted.

Often, expectations as to the economic effects (rationalization of management and administration, economies of scale, etc.) are not met because of identification problems related to the enlargement, which in turn entails demotivation and difficulties in decision-making, etc. Before deciding to amalgamate the cooperatives should therefore considers integrating horizontally.

*Scission*

Only those cooperatives that have a divisible legal reserve fund may split. The others have to dissolve, after which the members may set up two or more new cooperatives. In the case of a scission, members, assets and debts have to be split.

*Conversion*

Only those cooperatives that have a divisible legal reserve fund may be converted into another form of business, within the limits of the

provisions relating to the new organization. In the case where the legal reserve fund is indivisible, the members have the possibility of dissolving their cooperative and constituting a new organization.

#### *3.8.8.2 Dissolution with liquidation*

In the case of dissolution with liquidation, too, the decision may freely be taken by the members. A special quorum and a qualified majority are, however, required due to the importance of the decision. Several legislations require that at least two consecutive general assemblies be held and decide on the question.

The dissolution may also be pronounced by an authority, ex officio at its own initiative or upon request by an interested person. Such a decision can in particular intervene when the general assembly has not pronounced its dissolution, despite the fact that

- the duration of the cooperative, laid down in the bylaws/statutes, has come to term
- the objective of the cooperative has been attained or is impossible to attain
- the conditions for registering the cooperative are no longer given, for example when the number of members remains below the required minimum during a specified period of time
- the cooperative has repeatedly violated laws, regulations and/or its own bylaws/ statutes
- the cooperative is bankrupt, after having taken into consideration the possible obligation of the members to make supplementary payments. If there is no legislation concerning bankruptcy or if it turns out to be insufficient, it will be necessary to include provisions in the cooperative law
- the cooperative has not had any activity during a given period of time or
- there is any other reason, to be specified by law in order to avoid arbitrariness.

The liquidation procedure, from its official beginning, the nomination of the liquidators, the establishment of the opening and closing balances, the transactions with the creditors, the distribution of assets or the attribution of liabilities etc., to the publication of the deletion of the cooperative from the register, must be regulated.

The liquidation process should not be allowed to go on forever thus preventing the cooperative from being wound up finally and cancelled from the register.

### 3.8.9 Simplified cooperative structures

As already mentioned, even though the experiences with pre-cooperatives can be criticized, this does not mean that the provision for a less complex form of organization than cooperatives is not necessary. The French groupement d'intérêt économique (GIE) and the Cameroonian common initiative groups may serve as models. [XI]

Unlike with pre-cooperatives, it is not a question of granting a temporary status to organizations which should eventually become cooperatives, but to recognize the diversity of needs and organizational capacities. The state might, in a simplified procedure, recognize such groups, taking into account their reduced size, turnover, share capital, degree of interrelatedness with third parties etc., which might require less strict rules on accountancy, audit and internal administration (number of organs, number of members of the organs, documents to be kept etc.).[22]

### 3.8.10 Horizontal and vertical integration

The freedom of association includes the right of cooperatives to unite horizontally and to form apex organizations, ie. unions, federations and/or confederations.

Joining forces horizontally is to avoid concentration and a way to preserve the independence of the individual cooperatives whilst creating the advantages of economies of scale.

As for vertical integration, the number of tiers should be decided by the cooperatives, keeping in mind the cost/benefit relation of the structures. The state should refrain from any intervention, except monitoring these organizations' compliance with their obligation to support and represent their members. Especially, cooperatives should not be forced to integrate on the lines of administrative subdivisions or on the lines of activities if they freely choose otherwise.

Consequently the cooperative law must define the legal form of the different levels of this cooperative pyramid and specify the activities which each level should exercise. The rights and obligations of the higher-level cooperative organizations include

- representation of the members at national, regional and

[22] cf. chapter 3.1

international level

- promotion, education and training
- advice, financial, insurance and economic services (marketing, supplies, exports, imports, etc.)
- development of inter-cooperative relations
- research and development
- arbitration
- control and audit, and finally
- dissemination of the cooperative law.

The very idea of the vertical structures defines also their functions as being subsidiary to those of their members, i.e. the activities of the higher-level cooperatives should complement those of their affiliates.

In order to establish a system of partnership between the state and cooperatives, in full respect of the freedom of association, the state should promote an independent and competent cooperative movement.

### 3.8.11 Dispute settlement

Disputes within the cooperative movement, i.e. disputes involving exclusively members, the organs of the cooperatives, the cooperatives themselves or their apex organizations, should be subject to reconciliation, mediation and/or general or special arbitration procedures before the parties may access a general or a special court of law.

Because of the importance of good personal relations for the success of cooperatives, most legislations therefore provide for the obligation to resort to such out-of-court procedures before submitting a dispute to a court of law. This is stipulated either by law or through the bylaws/statutes of the cooperatives.

Generally, the parties prefer these procedures to official ones because they are cheaper, more expedient and also because they allow for the consideration of local human and social issues. Especially because of the latter, the legislator should recognize such procedures and attempt to preserve traditional modes of dispute settlement.

The rule of law out-rules any obligation to submit disputes to government authorities for final solution.

In no case may access to court as a last remedy be prohibited.

### 3.8.12 Miscellaneous

#### *3.8.12.1 Government decrees of application*

The statutory powers of the government must be limited to setting rules for the application of the law only. Each section of the government decree should state that clause of the law on which it is based.

#### *3.8.12.2 Sanctions*

The cooperative law must establish a list of acts liable to penal sanctions, indicating the articles of the penal code.

This should prevent cooperatives from taking on the role of a judge, a duty which is not within their competence. Their own sanctions are those foreseen by the bylaws/statutes and by individual contracts. The daily functioning of cooperatives is guaranteed by the possibility of dismissing the members of the board of directors and of the supervisory committee and by applying sanctions to those who do not fulfil their obligations.

#### *3.8.12.3 Repeals, transition, applicable law in case of lacunae*

## 3.9 Legislative procedure

Since the very idea of cooperation is based on participation, it is suggested that a participatory approach to cooperative law making be adopted. This method constitutes the organic link between the generation, dissemination and implementation of the law. The right to participate in the definition and design of law, the right to share ideas of justice to create legal structures, and the right to use law to change law is an undeniable human right. [23] This participatory approach must, however, be embedded in the procedures laid down in the respective national constitution in order to ensure that the text fits into the legal system and is respected by non-cooperators as well.

After having been suggested for some time, [24] participatory law making is now being practised. The procedures followed in Cameroon in 1992, in the Indian State of Punjab in the 1990s and in Canada during the same period stand out as examples. Several countries (e.g. Belgium, Burkina Faso, France, Hungary, Mali and Namibia) have even institutionalized this participatory approach by establishing a national council for cooperatives or a similar organization.

---

[23] cf. Paul/Dias, op.cit.

[24] Münkner, Participative Law-making ..., op.cit.

The difference between legislating for member-based entities, like cooperatives, and that for other entities must also be considered in the legal procedure.

This procedure also requires to identify the real law makers in today's world and to take into account the functional notion of law. The term "law" includes all legal norms (acts of parliament, government regulations) judicial and administrative praxes and the praxes of the cooperators as they bear on the operational environment of cooperatives.

Special attention must be paid to an adequate relationship between the law and government instruments. Not only do these instruments tend to be too detailed, thus exceeding their function to make the law operational, but they are also being used to circumvent the rigidities of the law in a situation which requires flexibility and quick adjustment to the necessities of development. Together, the law and the decree of application must leave the necessary space for the cooperatives to be able to express their autonomy through their bylaws/statutes.

## 3.10 Dissemination of the cooperative law

The cooperative law, by and of itself, does not change anything. Besides the many other conditions to be fulfilled in order for an effective and efficient cooperative movement to emerge and/or to thrive, the law must be applied. In order to be applied the law must be understood.

Knowing that in a good many countries the official language and, a fortiori, the legal vocabulary are not mastered by the addressees of the law, who are often even illiterate, and knowing that the difficulties related to the implementation of the law are not limited to language issues, one understands that maximum attention must be focused on the dissemination of the cooperative law. This task rests as much with the state as with the cooperative movement.

Some countries have started to develop laypersons' guides in the main vernacular languages and to organize nationwide popularization campaigns. In a similar move, cooperative apex organizations of most industrialized countries have produced guides to or commented versions of the legislation, and the internet is increasingly being used to popularize and explain the legal provisions.

## 3.11 Implementation of the law

The successful implementation of the law depends mainly on an adequate institutional back-up, like efficient registration, audit and promotional services with qualified manpower. Where these requirements are not given and cannot be created within a reasonable time frame, the legislation might be premature.

# International dimension of cooperative legislation

# 4

Just like any other law reform, especially in the field of economic law, the reform of cooperative legislations has become a field of international cooperation. Governments feel more and more bound by the public international cooperative law and the locus of legislation is shifting from national parliaments to supranational and international mechanisms, which leads to the harmonization of cooperative laws at regional levels and even worldwide.

As a rule, international cooperation in the field of legislation favours the transfer of Western legal know-how which has been on numerous occasions of little use outside its own cultural context. It is somehow paradoxical that at the very moment when lawyers start to take an active role in the process of development and when appeals for respect for cultural diversity multiply, the confusion between the concepts of Law and laws [25] reaches a climax.

On the other hand there are numerous obstacles on the way that could lead to the adoption of cooperative laws which are better adapted to their cultural context. In order to surmount these problems one must start to

- redefine the role of lawyers in development cooperation by rejecting the widespread conception according to which law is a technique without technology
- reject the idea of Western law being universal. Its merits, as well as those of the other laws, must be uncovered by using available comparative legal methods
- formulate and apply a theory of the Human Right to Development
- recognize each country as the agent of its own development and thus cease to treat countries as objects of development
- universalize the process of public international law making
- cease to consider cooperative law as a means of development aid and,
- search for ways of resolving the conflict between different legal systems within and between states.

[25] as for this distinction cf. as early as Montesquieu

The search for a cooperative law which better reflects the cultural particularities of a given country is a challenge that the international community must accept. It is a delicate task because it could be conceived as going against the present globalization of economies, and it could bear the risk of disintegrating the cooperative movements by giving away too much of their common features. But, as suggested throughout the text, the choice is not between a unitary system and cultural diversity. The choice is cultural diversity in human unity.

# Bibliography

This bibliography contains both literature cited in the footnotes/endnotes and literature recommended for further reading.


Arranz, Alejandro, José Manuel Garcia de la Cruz : "*Trabajo autónomo, generación de empleo y economía social in Economía Social y Empleo, Revista de debate sobre economía pública, social y cooperativa*", (CIRIEC, Julio 1996), 96 ss.

Les associations paysannes en Afrique : *Organisation et dynamiques*, dir. par Jean-Pierre Jacob et Philippe Lavigne-Delville, (Paris, Karthala, 1994).

Beuthien, Volker : *Genossenschaftsrecht: woher – wohin?* (Göttingen, Vandenhoeck & Ruprecht, 1989).

___ *100 Jahre Genossenschaftsgesetz - wie genossenschaftlich ist die genossenschaftliche Rechtsreform?* (Marburg: Institut für Genossenschaftswesen, 1989).

Birgegaard, Lars-Erik and Björn Genberg : *Co-operative Adjustment in a Changing Environment in Sub-Saharan Africa* (Geneva, ICA, 1994).

Blackburn, Nadine : "Desarollo de nuevas herramientas para asegurar la continuidad de las entidades cooperativas financieras", in *Revista de la Cooperación Internacional*, Vol. 32, no. 2/1999, pp. 39 ff.

Boer, Leen: "The state in a changing world" in *Third World Quarterly*, 1997. 935 ff.

Bogdandy, Armin von : *Gubernative Rechtsetzung. Eine Neubestimmung der Rechtsetzung und des Regierungssystems unter dem Grundgesetz in der Perspektive gemeineuropäischer Dogmatik* (Tübingen: Mohr Siebeck, 1999).

*Boletín de la Asociación Internacional de Derecho Cooperativo*, no. 22 (1995), nos. 23&24 (1995) and no. 25 (1996).

Burgo, Unai : "La desnaturalización de las cooperativas" in *Boletín de la Asociación Internacional de Derecho Cooperativo* 2002, pp. 51 ff.

Carlsson, A. : *Cooperatives and the State. Partners in Development* (Stockholm, Institute of International Education, 1992).

Castaño, Josep y Juan José González: *Manual de constitución y funcionamiento de las cooperativas* (Barcelona , Bosch Editor , 1996).

Chéaka, Aboudou Touré et Jérôme G.L.C. Sacca-Kina : "Problématique de la législation coopérative en Afrique francophone au sud du Sahara" in *Boletín de la Asociación Internacional de Derecho Cooperativo*, nos.23 y 24, 1995, pp. 219 ff.

Chukwu, S.C. and S.Y. Berko : "Nigeria's New Cooperative Decree: New Dawn or Old Wine in a New Bottle?" in *The World of Cooperative Enterprise* 1995, pp. 141ff.

Chuliá, Francisco Vicent : "El futuro de la legislación cooperativa" in *CIRIEC españa, Revista Jurídica de Economía Social y Cooperativa*, 13/2002, 9 ss.

*Comparative Study of Cooperative Law in Africa*, ed. by Hans-H. Münkner (Marburg, Marburg Consult für Selbsthilfeförderung, 1989).

Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee and the Committee of Regions on the promotion of co-operative societies in Europe (COM, 2003).

Congreso Cooperativo : *La Empresa Cooperativa: Perfil Económico, Jurídico y Social* (San José/Costa Rica, Universidad de Costa Rica, 1992).

*Cooperative Development and Adjustment in Anglophone Africa*, ed. by Bernd Harms and Adelheid Kückelhaus (Feldafing, German Foundation for International Development, 1997).

*Cooperative Law in East, Central and Southern African Countries*, ed. by Hans-H. Münkner and Gabriele Ullrich (German Foundation for International Development, 1980).

*Cooperative Law in Southeast Asia*, ed. by Hans-H. Münkner and Gabriele Ullrich (German Foundation for International Development, 1981).

*Co-operatives: "From Controls to a Regulatory Framework"*. A Tribute to Late K.K. Taimni, ed. by Sanjeev Chopra (Mussoorie, Centre for Cooperatives & Rural Development, 1999).

*Cooperatives: Policy Issues for the SAARC Region*, ed.by Sanjeev Chopra (Mussoorie , Centre for Co-operatives & Rural Development, 1998).

Cracogna, Dante: *Problemas actuales del derecho cooperativo*; id., "Manual de legislación cooperativa" (Buenos Aires, Intercoop Editora, 1992).

___ "Trends in Cooperative Legislation in Latin America" in *The World of Cooperative Enterprise*, 1995, pp. 161 ff.

___ *Manual de legislación cooperativa* (Buenos Aires, Intercoop Editora, 1998).

*Creating the Space: Financial Disengagement of Government from Cooperatives*, ed.by Sanjeev Chopra, Dehra Dun (Book World, 1998).

Cronan, G.T.: "Trends in Australian Cooperative Legislation" in *The World of Cooperative Enterprise*, 1995, pp. 151 ff.

Diaby-Pentzlin : "Rechtsprojekte auf dem Weg zur Endogenisierung" in *Entwicklung und Zusammenarbeit*, 1996, pp. 310 ff.

Divar, Javier D. / Gadea, Enrique : "Los valores cooperativos y la participación de los trabajadores en la empresa" in *Boletín de la Asociación Internacional de Derecho Cooperativo*, 2002, 37 ss.

Fénéon, Alain : "Bilan et perspectives de l'OHADA" in *Revue Juridique et Politique, Indépendance et Coopération*, 2001, 243 ss.

Gadea, Enrique : "Consideraciones para la delimitación de la sociedad cooperativa" in *Evolución del escenario económico* (Bilbao, Universidad de Deusto, 1996) 163 ss.

*Genossenschaften und Kooperation in einer sich wandelnden Welt. Festschrift für Prof. Dr. Hans-H. Münkner zum 65. Geburtstag*, ed. by Michael Kirk, Jost W. Kramer and Rolf Steding (Münster, LIT 2000).

*Genossenschaftswesen*, ed.Laurinkari (München, Oldenbourg, 1990).

Gómez Urquijo, Laura y Marta de los Rios Añón : "La sobrevivencia del modelo cooperativo en un contexto de competencia" in *Revista de la Cooperación Internacional*, Vol. 32, no. 1/1999, 55 ss.

Gonzáles, Emilio : "La Sociedad Cooperativa Europea (SCE)" in *Boletín de la Asociación Internacional de Derecho Cooperativo*, 1996, 53 ss.

Hamm, Walter : "State and Co-operatives in a Market Economy" in *International Handbook of Cooperative Organizations*, ed. by Dülfer, Göttingen, Vandenhoeck & Ruprecht, 1994, pp. 823 ff.

Hanel Alfred : "Ordnungspolitische Aspekte der Genossenschaften in Entwicklungsländern" in *Genossenschaftswesen*, ed. by Laurinkari, München, R. Oldenbourg, 1990, pp. 337 ff.

Henrÿ, Hagen : "Structural Changes in Co-operative Movements and Consequences for Co-operative Legislation in Western Europe – Finland" in *Structural Changes in Co-operative Movements and Consequences for Co-operative Legislation in Different Regions of the World*, ed. by Ashish Shah (Geneva, ILO, 1993), pp. 91 ff.

___ "Co-operative Law and Human Rights" in *The relationship between the state and cooperatives in cooperative legislation* (Genève, ILO, 1994), pp. 21 ff.

___ "Co-operative Organization and Competition Law in Finland" in *Cooperative Organization and Competition Law*, Report (Geneva, ILO 1995), pp. 71 ff.

___ "Cooperative Legislation in Finland: Trends and Implications" in *The World of Cooperative Enterprise*, 1995, pp.177 ff.

___ "Labour law and cooperatives: General observations" in *Labour Law and Cooperatives. Experiences from Argentina, Costa Rica, France, Israel, Italy, Peru, Spain and Turkey*, (Genève, International Labour Office 1995), pp. 3ff.

___ "Cooperation in Cooperative Legislation – Some Provisional Remarks" in *Cooperative Development …*, op.cit. pp. 208 ff.

___ "Labour Law and Cooperatives? Cooperative Law and Labour!" in *Journal of Cooperative Studies* 5/1998.

___ "Role of the State in Cooperative Development – the Case of the Countries of the South" in *Cooperatives: From Controls to a Regulatory Framework*, op.cit., pp. 114 ff.

___ "Genossenschaften als juristische Personen – Konsequenzen für die internationale Beratung bei der Genossenschaftsgesetzgebung in Afrika" in *Genossenschaften und Kooperation in einer sich wandelnden Welt. Festschrift für Prof. Dr. Hans-H. Münkner zum 65. Geburtstag*, Hrsg. Michael Kirk, Jost W. Kramer, Rolf Steding, Münster u.a. (LIT Verlag 2000), pp. 417 ff.

___ "Rechtsberatung bei der Genossenschaftsgesetzgebung in Afrika" in *Recht in Afrika. Law in Africa. Droit en Afrique* 2000, pp. 25 ff.

___ "Internationale Genossenschaftsstandards aus der Sicht eines Gesetzgebungsberaters – ein Beispiel für die Komplexität der Übertragung kulturfremder Rechtsideen" in *Genossenschaften: Historische Wurzeln – Aktuelle Leitbilder – Zukunftsperspektiven*, Hrsg. Hans-H. Münkner, (Marburg, Institut für Kooperation in Entwicklungsländern, 2001), pp. 39 ff.

___ "Trends in cooperative legislation worldwide" in *Osuustoimintatutkimuksen vuosikirja 2001-2003: Osuustoiminnan lainsäädäntö, arvot ja kansainvälinen solidaarisuus. Taloudellisen yhteistyön ja osuustoiminnan tutkimuksen seura Kooperatiivi ry.*, Helsingin yliopiston Maaseudun tutkimus- ja koulutuskeskus, Mikkeli 2003, pp. 27 ff.

___ "La legislación cooperativa ante la globalización financiera (con énfasis en la referida a las cooperativas de ahorro y préstamo)", in *ACI. Revista de la Cooperación Internacional* 2004, Vol.36, no.2-2003, pp. 119 ss.

___ "Wartosci I zasady spóldzielcze w legislacjach spóldielczych. Panstw Czlonkowskich Unii Europejskiej dotyczacym Statutu Spóldzielni Europejskiej' in *Miedzynarodowy Zwiazek Spóldzielczy Miedzynarodowa Organizacja Pracy*, National Co-operative Council of Poland, Warsaw 2004, pp. 3 ff. (Übersetzung von/translation of/traduction de: Co-operative values and principles in the cooperative legislations of the EU Member States and in the EU Regulation on the Statute for a European Cooperative Society (SCE)

___ "100 Years Cooperative Credit Societies Act, India, 1904. A worldwide applied model of cooperative legislation", Hrsg. Hans-H. Münkner (Marburg, 2005), (im Druck).

___ "Cooperative Law as an Instrument of Good Governance" in *Sri Lanka Journal of Co-operative Development*, 2005 (in print).

___ *Cooperative law between global realities and cooperative needs. How to make both ends meet?* manuscript with the author.

Hösle, Vittorio, "Soll Entwicklung sein? Und wenn ja, welche Entwicklung?" in *Entwicklung mit menschlichem Antlitz. Die Dritte und die Erste Welt im Dialog*, ed. by Leisinger and Hösle (München, Beck 1995), pp. 9 ff.

Hofkens, F.: *Consolidated Experience in Farmer Cooperatives on Legal and Economic Conditions* (Leuven, 1993).

International Cooperative Alliance: The International Cooperative Alliance Statement on the Cooperative Identity. Background paper. "Into the Twenty-First Century: Cooperatives Yesterday, Today and Tomorrow" (also published in *Review of International Co-operation*, Vol. 88, no.3, 1995, pp. 29 ff.), Vitoria-Gasteiz: Consejo Superior de Cooperativas de Euskadi, 1996.

*International Handbook of Co-operative Organisations*, ed. by E. Dülfer in co-operation with J. Laurinkari, (Göttingen, Vandenhoeck & Ruprecht, 1994).

International Labour Organisation: *Meeting of Experts on Cooperatives*, 1993.

___: *Structural changes in cooperative movements and consequences for cooperative legislation in different regions of the world*, Genève, 1993.

___: *Creating a favourable climate and conditions for co-operative development in Asia* (K.K.Taimni) , 1994.

___: *Creación de un clima positive y condiciones favorables para el desarollo cooperative en América Latina*, Genève, 1996

___: *The relationship between the state and cooperatives in cooperative legislation*, Genève, 1994.

___: *Labour Law and Cooperatives. Experiences from Argentina, Costa Rica, France, Israel, Italy, Peru, Spain and Turkey*, Genève, 1995.

___: *Cooperative Organisation and Competition Law*, Genève, 1995.

___: *Creating a favourable climate and conditions for cooperative development in Central and Eastern Europe*, Genève, 1996.

___: *Créer un environnement favorable au développement coopératif en Afrique*, (Münkner et Shah), Genève, 1996.

___: *Meeting of Experts on Cooperative Law*, Genève, 1996.

___: *Atelier régional sur les réformes coopératives en Afrique francophone et Ha?ti*, Genève, 1996.

___: *Promotion of cooperatives* Genève, 2000.

___: *Promotion des coopératives*, Rapport V (2), Genève, 2001.

___: *Canevas de législation coopérative*, Genève, 1997. Other language versions : Subsídios para uma legislaçao cooperativa 1997; Framework for Cooperative Legislation, Genève, 1998; Russian version Moscow, 2000 ; Cuadernos de legislación cooperativa, Genève, 2000 ; Chinese version, Genève, 1998 ; Arabic version, Genève, 2001.

Issert, J. : *The Legal Status of Agricultural Cooperatives in the European Countries*, (Plunkett Foundation, 1978).

Jacobi, Bertil and Peter L.Vesterdorf : "Cooperative societies and the Community rules on competition" in *European Law Review*, 1993, pp. 271 ss.

Kenfack Douajni, Gaston : "Les conditions de la création dans l'espace O.H.A.D.A. d'un environnement juridique favorable au développement" in *Revue Juridique et Politique. Indépendance et Coopération*, 1998, pp. 39 ss.

Kibora, A. Souleymane : "Rôles et fonctions des unions et fédérations coopératives en Afrique de l'Ouest" in *Genossenschaften und Kooperation* ..., op.cit., pp. 537 ss.

Kirsch, Martin : "L'harmonisation du droit des affaires en Afrique – outil technique de l'intégration économique" in *Annuaire de droit africain*, T.8 (1994), pp. 57 ss.

Lees, M.: "Corporate Governance in European Cooperatives" in *The World of Cooperative Enterprise*, 1995, pp. 59 ff.

*La législation en vigueur dans les pays de la Communauté européenne en matière d'entreprises coopératives, dans la perspective du marché commun*, Luxembourg, Office des publications officielles des Communautés européennes, 1993.

Lindenthal, R.: *Structural adjustment and cooperatives in developing countries*, Genève, ILO, 1994, pp.4 ff.

*La loi de modernisation des entreprises coopératives. Aménagement ou mutation?*, Dossier. Avec contributions par Moreau (Une réforme en profondeur de la loi du 10 septembre 1947); Piot (Les incidences de la loi du 13 juillet 1992 sur les statuts coopératifs particuliers); Chomel (Le texte de la loi du 10 septembre 1947 modifiée (1992)); La réforme allemande de 1973 et la question des sociétaires non coopérateurs – interview du Pr.Hans-H. Münkner; Napolitano (Deux lois récentes sur la coopération italienne); Vienney (Identité coopérative et statuts juridiques); Vayssade (Postface: Des réformes nationales au projet de société coopérative européenne), in *Revue des Études Coopératives, Mutualistes et Associatives*, nos. 44-45, 1992/1993, pp. 32 ss.

Lubasi, Vincent: "Trends in Cooperative Legislation in East, Central and Southern Africa" in *The World of Cooperative Enterprise* 1995, pp. 135 ff.

Luttermann, Claus: "Die Europäische Genossenschaft" in *Zeitschrift für Vergleichende Rechtswissenschaft*, 1994, pp. 1 ff.

MacKinnon, Mary Pat: *The Road to New Federal Cooperative Legislation: The Canadian Experience*. Paper presented to the ICA Sub-Regional Workshop on "The Advancement of Legislative and Co-operative Policy Reforms" February 23-26, 1999.

Maugé, Karin : *État des lieux des lois sur les coopératives et sur les autres organisations d'auto-assistance à caractère économique dans dix pays d'Afrique francophone*, Genève, BIT, 1997.

Mena, Carlos Naranjo : *Visión general sobre el marco jurídico del cooperativismo ecuatoriano*, ICA conference, San José/Costa Rica, 1998.

Mengin, Jacqueline : "Entreprises associatives. Une situation d'ambivalence" in *Archives de Sciences Sociales de la Coopération et du Développement*, 1986, pp. 94 ff.

Model Law for Credit Unions developed by the World Council of Credit Unions, Inc., 2000.

Montolío, José María : *Legislación cooperativa en América Latina*, Madrid, Ministerio de Trabajo y Seguridad Social, 1990).

___: "Leyes de cooperativas de las comunidades autónomas: Determinación de un modelo" in *Revista de Estudios Cooperativos*, 1998, pp. 235 ss.

___: *Legislación cooperativa en la Union Europea*, 2nd ed. (Madrid, Ministerio de Trabajo y Asuntos Sociales, 2000).

Münkner, Hans-H.: *New Trends in Cooperative Law of English-Speaking Countries of Africa*, Institut für Kooperation in Entwicklungsländern, Studien und Berichte Nr.4, (Marburg, 1971).

___: *Towards Adjusted Patterns of Cooperatives in Developing Countries*. Results of a symposium on "Ways Towards an African Cooperative", (Bonn, Friedrich-Ebert-Stiftung, 1984).

___: Cooperative Principles and Cooperative Law, (Marburg, Institute for Co-operation in Developing Countries, 1974).

___: Neuf leçons de droit coopératif, (Bonn, Friedrich-Ebert-Stiftung, 1982).

___: Ten lectures on cooperative law, (Bonn, Friedrich-Ebert-Stiftung, 1982).

___: "Participative Law-making: A New Approach to Drafting Cooperative Law in Developing Countries", in *Verfassung und Recht in Übersee. Law and Politics in Africa, Asia and Latin America*, 1986, 123 ff.

___: "Comparative Study of the Relevant Law on Cooperative Societies and other Self-help Organizations in Africa" General report, in *Comparative Study …*, op.cit., pp.17 ff.

___: "Die Bedeutung eines angemessenen Genossenschaftsrechts für die Genossenschaftsentwicklung in der Dritten Welt" in *Genossenschaftswesen*, Hrsg. Laurinkari, (München, Oldenbourg 1990), pp. 516 ff.

___: *Wie arbeitet eine Förderungsgenossenschaft? 8 Lektionen Genossenschaftsrecht*, (Marburg, Marburg Consult für Selbsthilfeförderung, 1990).

___: *Die Rechtstypik der Genossenschaft in den Partnerstaaten der EG*, (Münster, Institut für Genossenschaftswesen, 1993).

___: "Structural Changes in Cooperative Movements and Consequences for Cooperative Legislation in Western Europe" in *Structural Changes in cooperative movements and consequences for cooperative legislation in different regions of the world*, (Genève, ILO 1993), pp. 57 ff,

___: 'Organizational Structure of Cooperative Societies" in *International Handbook …*, op.cit., pp.656 ff.

___: "Genossenschaftsgesetze, Internationale" in *Handwörterbuch des Genossenschafswesens*, 800 ff.

___: "British-Indian Pattern of Cooperation" in *International Handbook of Cooperative Organizations*, ed. by Eberhard Dülfer, in cooperation with Juhani Laurinkari, Göttingen: Vandenhoeck & Ruprecht, 1994, pp. 57 ff.

___: *Basic Cooperative Values to Fill a Conceptual Vacuum* (Marburg, 1995).

___: *Chances of Cooperatives in the Future*. Contribution to the International Cooperative Alliance Centennial 1895-1995, (Marburg, Institute for Co-operation in Developing Countries, 1995).

___: *Reform des Genossenschaftsrechts als Reaktion auf die Herausforderungen des wirtschaftlichen und sozialen Wandels. Beitrag zur Expertentagung des Wissenschaftsfonds der DG Bank*, (Frankfurt a.M., 3./4.Februar, 2000).

___: "Rediscovery of Cooperatives in Development Policy". Reprint from *CO-OP Dialogue*, vol.10, no.1, January, 2000, pp. 8 ff.

___: "Der rechtliche Rahmen der Genossenschaft in ausgewählten Staaten Europas – Gemeinsamkeiten und Unterschiede" in *Die Zukunft der Genossenschaft in der Europäischen Union an der Schwelle zum 21. Jahrhundert*, herausgegeben von Wolfgang Harbrecht, Nürnberg, 2001, pp. 39 ff.

___: *Co-operatives and Organised Labour*, (Marburg, Institute for Co-operation in Developing Countries, 1991).

von Muralt, Jürgen : "UN System and Cooperatives" in *International Handbook …*, op.cit., pp. 898 ff.

Neale, W.L.: "The European Cooperative Statute … Who Needs It?" in *The World of Co-operative Enterprise*, 1995, pp. 169 ff.

Okani Abengue, Cl.R. : "Commentaire à propos de la loi coopérative du Cameroun" in *Juridis Info*, no.13, 1993, pp. 30 ss.

Ott, Ursula : "Das Europäische Genossenschaftsstatut und grenzüberschreitende Kooperationen – Joint Ventures im Bereich der landwirtschaftlichen Kooperativen" in *Zeitschrift für das gesamte Genossenschaftswesen*, 1997, pp. 248 ss.

Partant, François : *La guerilla économique. Les conditions du développement*, (Paris, Seuil ,1976).

Paul, James C.N./Dias, Clarence J. : *Law and Legal Resources in the Mobilization of the Rural Poor for Self-Reliant Development*, (New-York, International Center for Law in Development, 1980).

Penn, G. Awa Eddy: "Cooperative Legislation and Citizens' Rights: The Case of Cameroon" in *The relationship between the state and cooperatives in cooperative legislation*, (Genève, ILO 1994), pp. 5 ff.

Piechowski, A. : "Cooperative Legislation in Poland: An End to the « Permanent » Incertitude ?" in *The World of Cooperative Enterprise* 1995, pp. 185 ff.

Ravoet, G. : "The Challenge Facing European Cooperative Banks" in *The World of Co-operative Enterprise*, 1994, pp. 65 ff.

Recommendations générales relatives à la réforme des politiques et législations coopératives de la Conférence Panafricaine Coopérative, (Cotonou, juillet 1996).

*Revue des Études Coopératives, Mutualistes et Associatives*, 1992/1993, nos. 44-45, with a « dossier » on cooperative legislation, pp. 32 ff.

Reyes, Antonio J.Sarmiento: *Aspectos generales del Proyecto de ley marco para las cooperativas de América*, (Marburg, Institute for Co-operation in Developing Countries, 1993).

Reyes Lavega, Sergio y Danilo Gutiérrez : "Situación de la legislación cooperativa uruguya", in *Cracogna/Krueger/Bogado/Reyes Lavega/Gutiérrez, Régimen Legal de las Cooperativas en los países del Mercosur*, (Buenos Aires, Intercoop Editora Cooperativa Limitada, 2003), pp. 115 ss.

Roelants, Bruno: "The first world standard on cooperatives and on their promotion". Recommendation 193/2002 of the International Labour Organisation in *RECMA, Revue internationale de l'économie sociale*, no. 289, 2003, pp. 1 ff.

Schwettmann, Jürgen: *A Harmonised Legal Framework for Cooperatives*, contribution to the ICA Legal Experts meeting, (Prague, 30 Sept. to 1 Oct. 2000).

___: "Cooperatives and Globalisation: An ILO Perspective" in *Review of International Co-operation*, Vol. 95, no. 1/2002, pp. 26 ff.

Shah, Ashish: "Cooperative law: An instrument for development" in *International Labour Review*, 1992, pp. 513 ff.

___: "Cooperative Legislation in Developing Countries – A Conceptual Framework for the Future" in *The World of Cooperative Enterprise* 1995, pp. 125 ff.

___: *Staatliche Genossenschaftsförderung und Genossenschaftsrecht in ASEAN*, (Marburg, Marburg Consult für Selbshilfeförderung, 1999).

Sharma, G.K.: *Cooperative Laws in Asia and the Pacific*, Delhi, 1997.

Snaith, Ian: "Cooperative Law Reform in the United Kingdom", in *The World of Co-operative Enterprise*, 1995, pp. 201 ff.

___: "Virtual Co-operation: The Jurist's Role" in *Genossenschaften und Kooperation* …, op.cit., 391-403

Steding, Rolf: "Die SCE – eine neue Chance für den Genossenschaftsgedanken im Wirtschaftsleben? – Reflexionen zum Entwurf einer supranationalen genossenschaftlichen Rechtsform für Unternehmen" in *Genossenschaften und Kooperation* ..., op.cit., pp. 361 ff.

Taimni, K.K.: *Creating a favourable climate and conditions for cooperative development in Asia*, (Genève, ILO, 1994).

___: *Cooperatives in the New Environments: Role of the Registrar of Cooperative Societies in South Asia*, (Mussoorie, Centre for Cooperatives & Rural Development, 1998).

Tan Kin Lian: "The Unique Cooperative Response to Globalisation" in *Review of International Co-operation*, Vol. 95, no. 1/2002, pp. 14 ff.

Thirkell. D.: "People: The Key to Good Governance" in *The World of Cooperative Enterprise*, 1995, pp. 115 ff.

*Transnational Cooperatives, Perspectives of admission of members abroad and cross-border mergers*, (Copenhagen, The Federation of Danish Cooperatives, 2000).

Vezina, Martine y Daniel Côté: "Perfil internacional de los bancos cooperativos: un panorama notable" in *Revista de la Cooperación Internacional*, Vol. 32/33, no. 3/1999 – 1/2000, pp. 33 ss.

Watkins, W.P.: *Cooperative Principles Today and Tomorrow*, (Manchester, Holyoake Books, 1986).

von Wild, Christian: "Credit Unions in den USA - ein historischer und aktueller Vergleich mit deutschen Genossenschaftsbanken" in *Genossenschaften in Europa - damals - heute - morgen*, Hrsg. Historischer Verein bayerischer Genossenschaften e.V., (München: Bayerischer Raiffeisen- und Volksbanken-Verlag, 2000), pp. 264 ff.

*The World of Cooperative Enterprise*, 1994 and 1995, with a series on cooperative legislation in different countries and regions of the world

Yeo, Peter: *Cooperative Law in Practice: A handbook of legislation for cooperative development*, (Oxford, Plunkett Foundation, 1989).

Zerche, Jürgen: "Aufbaiu des Genossenschaftssektors in den Ländern der Europäischen Gemeinschaft" in *Genossenschaftswesen*, ed.by Laurinkari, (München, Oldenbourg, 1990), 385 ff.

Zsohar, A.: "The Development of Cooperative Legislation in Hungary" in *The World of Cooperative Enterprise*, 1995, pp. 193ff.

In addition the author consulted the laws of the following countries/supranational and international organizations:

Antigua and Barbuda, Australia, Bangladesh, Belgium, Bhutan, Burkina Faso, Cambodia, Cameroon. Canada, Commonwealth of Independent States, Croatia, Egypt, Estonia, Ethiopia, European Union, Finland, France, Georgia, Germany, Guinée (Conakry), Hungary, India, Italy, Japan, Jordan, Kirgisia, Madagascar, Malawi, Mali, Mexico, Mongolia, Morocco, Namibia, Nepal, Niger, Norway, Panamá, Paraguay, Philippines, Portugal, Puerto Rico, Ruanda, Rumania, Russian Federation, South Africa, Spain, Tanzania, Tchad, Trinidad and Tobago, Turkey, Vietnam, Yugoslovia, Zambia

# Annex 1

# 1995 International Co-operative Alliance Statement on the cooperative identity

# Statement on the Co-operative Identity

### Definition

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.

### Values

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

### Principles

The co-operative principles are guidelines by which co-operatives put their values into practice.

**1st Principle: Voluntary and Open Membership**

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

**2nd Principle: Democratic Member Control**

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

**3rd Principle: Member Economic Participation**

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

**4th Principle: Autonomy and Independence**

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter to agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

**5th Principle: Education, Training and Information**

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

**6th Principle: Co-operation among Co-operatives**

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

**7th Principle: Concern for Community**

Co-operatives work for the sustainable development of their communities through policies approved by their members.

Adopted in Manchester (UK), 23 September 1995

# Annex 2

# 2001 UN Guidelines aimed at creating a supportive environment for the development of cooperatives

A/56/73
E/2001/68

# Annex

## Draft guidelines aimed at creating a supportive environment for the development of cooperatives

### Objectives

1. Within the General Assembly and the Economic and Social Council, and at major recent international conferences, Governments have acknowledged the significance of cooperatives as associations and enterprises through which citizens can effectively improve their lives while contributing to the economic, social, cultural and political advancement of their community and nation. They have recognized the cooperative movement as a distinct and major stakeholder in both national and international affairs.

2. Governments recognize that the cooperative movement is highly democratic, locally autonomous but internationally integrated, and a form of organization of associations and enterprises whereby citizens themselves rely on self-help and their own responsibility to meet goals that include not only economic but social and environmental objectives, such as overcoming poverty, securing productive employment and encouraging social integration.

3. Consequently, Governments seek to create an environment in which cooperatives can participate on an equal footing with other forms of enterprise and develop an effective partnership to achieve their respective goals. Policies should protect and advance the potential of cooperatives to help members achieve their individual goals and, by so doing, to contribute to society's broader aspirations.

4. However, such policies can be effective only if they take into account the special character of cooperatives and the cooperative movement, which differs significantly from that of associations and enterprises that are not organized according to cooperative values and principles.

5. The objective of the present guidelines is to provide advice to Governments and set out broad principles on which national cooperative policy might best be based, recognizing that more specific and detailed national policies fall within the responsibility of each Government. Because of the governmental expectations regarding the cooperative movement and the rapidly changing global conditions and changes in the cooperative movement itself, many policies in most of the Member States of the United Nations might benefit from review, and in some cases from substantial revision.

### Policy regarding cooperatives and the cooperative movement

6. The objective of the policy is to enable recognition of cooperatives as legal entities and to assure them and all organizations and institutions set up by the cooperative movement real equality with other associations and entities. In order to ensure equality, the special values and principles of cooperatives must receive full recognition as being desirable and beneficial to society and that appropriate measures are taken to ensure that their special qualities and practices are not the cause of discrimination and disadvantage of any kind.

7. To achieve this objective, Governments are concerned with creating, and with maintaining as conditions change, an enabling environment for cooperative development. As part of such an environment, an effective partnership between Governments and the cooperative movement could be sought.

#### Public recognition

8. It is appropriate and useful for Governments to acknowledge publicly the special contribution, in both quantitative and qualitative terms, made by the cooperative movement to the national economy and society. The joint observance of the observance of the International Day of Cooperatives and the International Cooperative Day organized by the International Cooperative Alliance, pursuant to General Assembly resolutions 47/90, 49/155 and 51/58, may provide an occasion on which information on the cooperative movement is publicly disseminated.

#### Legal, judicial and administrative provisions

9. Appropriate provision is necessary within legal, judicial and administrative practice if cooperatives are

to contribute positively to improving the lives of their members and the communities in which they operate. Legal provisions may take various forms appropriate to individual national legal systems. The status, rights and responsibilities of cooperatives, the cooperative movement in general, and, if appropriate special categories of cooperatives or distinct aspects of cooperation should be addressed.

10. **National constitutions**: The legitimacy of cooperatives and the cooperative movement could be acknowledged in these instruments, if appropriate. Provisions that limit the establishment and operations of cooperatives should be appropriately amended.

11. **General law on cooperatives or the general section of a single law on cooperatives**: A general law on cooperatives or laws specific to cooperatives or under which cooperatives fall should ensure that cooperatives enjoy real equality with other types of associations and enterprises and not be discriminated against because of their special character. Laws should include the following basic set of acknowledgements, definitions and provisions: acknowledgement that the organization of associations and enterprises on the basis of cooperative values and principles is legitimate; acknowledgement of the utility of the cooperative approach to association and enterprise, its contribution to national life and the status of the cooperative movement as a significant stakeholder within society; definition of cooperatives, using the "Statement on the cooperative identity", adopted by the International Cooperative Alliance in 1995; recognition of the unique nature of the values and principles of cooperation, and hence the need for their separate and distinct treatment in law and practice; commitment that neither their unique nature nor their separate and distinct treatment in law and practice should be the cause of discrimination, intended or not; undertaking that no law or practice should restrict the rights of citizens to full participation in the cooperative movement in any capacity consistent with its values and principles and should not restrict the operation of that movement; provision that a general law apply to all categories of cooperatives but that, in order to respond to the situation of certain categories of cooperatives, special laws might be enacted, consistent with the general law; stipulation that all judicial and administrative regulations and practices be based only on the general or special laws on cooperatives; that all regulations clearly identify the provision of the law on which they are based and the purpose for which they are made; recognition of the full autonomy and capacity for self-regulation of the cooperative movement; acknowledgement that intervention by Governments in the internal affairs of the movement should be strictly limited to measures applied generally to all associations and enterprises equally in order to ensure their conformity with the law. Adjustments may be made only to ensure: real equality in treatment; definition of the responsibilities of the cooperative movement for self-regulation in all matters distinctive to it; provision that the texts of laws and regulations be made available to all cooperative members and employees; provision that representatives of the cooperative movement participate fully in drafting special laws or judicial or administrative regulations and guidelines concerning practice; provision for the maintenance of a public register of cooperatives as a part of procedures for registration of all associations and enterprises; provision for procedures for continuous monitoring and regular review of law and practice which would include the full and equal participation of representatives of the cooperative movement and for encouragement of research on the effect of law and practice on the environment for cooperatives; establishment of the responsibility of Governments to formulate and carry out a policy in respect to cooperatives that would seek to establish a supportive and enabling environment while avoiding any infringement of the autonomy of the movement and any diminution of its capacity for responsible self-regulation and would seek also to engage in an effective and equal partnership with the movement in all matters where it is able to contribute significantly to the formulation and carrying out of public policy; recognition of the value of governmental support for the international cooperative movement, including through intergovernmental activities; and definition of the responsibilities of the cooperative movement as a major stakeholder in society, to the extent these responsibilities are consistent with its full autonomy.

12. **Special laws on certain categories of cooperatives**: Consistent with the basic provisions of general cooperative legislation, and recognizing the distinctive nature of the business of some cooperatives, it may be appropriate to make special provisions in law for certain types of categories of cooperatives to safeguard their ability to enjoy real equality with other types of associations and enterprises and not be discriminated against because of their special character.

13. **Judicial and administrative practice concerned explicitly with cooperatives**: These must be consistent with the general law on cooperatives and, specifically, with its provisions concerning such practice.

14. **Other laws and practices that may have an effect on cooperatives**: Governments should seek to exclude or eliminate provisions of any law that discriminate against, or are specifically prejudicial to cooperatives. Governments should create an environment that enables cooperatives to identify and communicate cases needing revision.

15. **Monitoring, review and revision of laws and judicial and administrative practices**: This is necessary to ensure that the impact of laws and judicial and administrative practices on the cooperative movement is entirely positive. If identified, discriminatory provisions should be rendered inoperative as quickly as possible pending enactment of revised laws or the issuance of revised regulations and guidelines concerning practice. This process should have as its purpose the early and complete disengagement by Governments from the internal affairs of cooperatives and the cooperative movement, where this still exists, and full operational realization of the principles that cooperatives, although different, are equal to other business enterprises and civil associations.

16. For these purposes, formal procedures for consultation and collaboration should be set up and should include regular and full participation by the cooperative movement. Advantage may be taken also of the special programmes and guidelines offered by specialized international cooperative organizations and intergovernmental organizations.

### Research, statistics and information

17. **Research**: Given the significance of the cooperative movement, it may be appropriate to envisage collaboration between governmental and cooperative movement research on matters relevant to public policy; publication and wide diffusion of research results, including those produced by the international cooperative movement, intergovernmental organizations and the United Nations. Emphasis should be on applied research of immediate utility in improving the efficiency of cooperatives, extending benefits to society and improving partnerships between the cooperative movement and Governments.

18. **Statistics**: Several measures may be undertaken to improve statistics for and about cooperatives in view of integrating statistics on cooperatives in regular programmes of the national statistical service and participate in international efforts to improve cooperative statistics, including the establishment of a uniform set of definitions for use by national statistical services.

19. **Information**: Given that Governments regulate and broadly influence information diffusion, a number of measures may be useful in expanding knowledge of the cooperative movement and overcoming prejudices and misconceptions: extension of technical and financial assistance to an extent equal to that made available to other stakeholders; ensuring that no discrimination exists because of the distinctive nature of cooperatives; equal and non-discriminatory access by the cooperative movement to all public media commensurate with its contribution to national life; use of affirmative action to overcome prejudice and misinformation where the term cooperative is associated with a previous and inappropriate usage; diffusion through public media of material on intergovernmental activities undertaken in partnership with or in support of cooperatives; dissemination of printed and computer-based information prepared by governmental or intergovernmental bodies with the same priority and resources as allocated to information on other stakeholders.

### Education

20. Given the important contributions of the cooperative movement to education, a number of enabling measures might be useful including the provision of public funds if they are made available to other forms of enterprise for educational programmes. Governments may also consider the inclusion within the national curricula at all levels of the study of the values principles, history, current and potential contribution of the cooperative movement to national society; and encouragement and support of specialized studies in cooperatives at the tertiary level.

### Provision of public funds

21. Financial self-reliance, total responsibility and full independence are vital for an effective cooperative enterprise. The best policy approach is one where cooperatives receive the same treatment as any other form of enterprise. A number of other measures are

valuable: acknowledgement and protection of the special character of cooperatives and avoidance in law or practice of any discrimination arising from the special financial status, organization and management of cooperatives; avoidance of any direct or indirect engagement in the internal financial affairs of cooperatives or of the cooperative movement and recognition of the full responsibility of the movement for its own financial affairs; and the development of partnerships with cooperative financial institutions in such matters as community and regional development, drawing on their experience of mobilizing and managing capital in a manner and for purposes conducive to the public good.

**Institutional arrangements for collaboration and partnership**

22. All Government departments and bodies that have contact with the cooperative movement should be aware of, and act consistently with, national policy on cooperatives. In order to ensure consistency, certain coordinating functions within government, as well as liaison with the cooperative movement, will be useful.

23. It is advisable that a single department or office assume central coordinating, focal and liaison functions, of which the following might be most important: elaboration of a single national comprehensive policy in respect of cooperatives, formulation of guidelines for consistent execution throughout government, including monitoring and review of that execution; collaboration with legal departments in drafting the general and any special laws; and liaison, consultation and collaboration with the cooperative movement.

24. The most effective organizational location for the responsible entity would be within a department already charged with broad strategic and coordinating functions, such as the office of a prime minister or president, or that responsible for economic management of development planning.

25. An institutional arrangement which enables regular consultation and effective collaboration between Governments and the cooperative movement would be valuable.

26. Liaison between intergovernmental programmes and the international cooperative movement should be supported.

# Annex 3

# 2002 ILO Recommendation No. 193 on the promotion of cooperatives

INTERNATIONAL LABOUR CONFERENCE

## Recommendation 193

### RECOMMENDATION CONCERNING
### THE PROMOTION OF COOPERATIVES

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 90th Session on 3 June 2002, and

Recognizing the importance of cooperatives in job creation, mobilizing resources, generating investment and their contribution to the economy, and

Recognizing that cooperatives in their various forms promote the fullest participation in the economic and social development of all people, and

Recognizing that globalization has created new and different pressures, problems, challenges and opportunities for cooperatives, and that stronger forms of human solidarity at national and international levels are required to facilitate a more equitable distribution of the benefits of globalization, and

Noting the ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference at its 86th Session (1998), and

Noting the rights and principles embodied in international labour Conventions and Recommendations, in particular the Forced Labour Convention, 1930; the Freedom of Association and Protection of the Right to Organise Convention, 1948; the Right to Organise and Collective Bargaining Convention, 1949; the Equal Remuneration Convention, 1951; the Social Security (Minimum Standards) Convention, 1952; the Abolition of Forced Labour Convention, 1957; the Discrimination (Employment and Occupation) Convention, 1958; the Employment Policy Convention, 1964; the Minimum Age Convention, 1973; the Rural Workers' Organisations Convention and Recommendation, 1975; the Human Resources Development Convention and Recommendation, 1975; the Employment Policy (Supplementary Provisions) Recommendation, 1984; the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998; and the Worst Forms of Child Labour Convention, 1999, and

Recalling the principle embodied in the Declaration of Philadelphia that "labour is not a commodity", and

Recalling that the realization of decent work for workers everywhere is a primary objective of the International Labour Organization, and

Having decided upon the adoption of certain proposals with regard to the promotion of cooperatives, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation;

adopts this twentieth day of June of the year two thousand and two the following Recommendation, which may be cited as the Promotion of Cooperatives Recommendation, 2002.

## I. SCOPE, DEFINITION AND OBJECTIVES

1. It is recognized that cooperatives operate in all sectors of the economy. This Recommendation applies to all types and forms of cooperatives.

2. For the purposes of this Recommendation, the term "cooperative" means an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.

3. The promotion and strengthening of the identity of cooperatives should be encouraged on the basis of:

(a) cooperative values of self-help, self-responsibility, democracy, equality, equity and solidarity; as well as ethical values of honesty, openness, social responsibility and caring for others; and

(b) cooperative principles as developed by the international cooperative movement and as referred to in the Annex hereto. These principles are: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information;

cooperation among cooperatives; and concern for community.

4. Measures should be adopted to promote the potential of cooperatives in all countries, irrespective of their level of development, in order to assist them and their membership to:

(a) create and develop income-generating activities and sustainable decent employment;

(b) develop human resource capacities and knowledge of the values, advantages and benefits of the cooperative movement through education and training;

(c) develop their business potential, including entrepreneurial and managerial capacities;

(d) strengthen their competitiveness as well as gain access to markets and to institutional finance;

(e) increase savings and investment;

(f) improve social and economic well-being, taking into account the need to eliminate all forms of discrimination;

(g) contribute to sustainable human development; and

(h) establish and expand a viable and dynamic distinctive sector of the economy, which includes cooperatives, that responds to the social and economic needs of the community.

5. The adoption of special measures should be encouraged to enable cooperatives, as enterprises and organizations inspired by solidarity, to respond to their members' needs and the needs of society, including those of disadvantaged groups in order to achieve their social inclusion.

## II. POLICY FRAMEWORK AND ROLE OF GOVERNMENTS

6. A balanced society necessitates the existence of strong public and private sectors, as well as a strong cooperative, mutual and the other social and non-governmental sector. It is in this context that Governments should provide a supportive policy and legal framework consistent with the nature and function of cooperatives and guided by the cooperative values and principles set out in Paragraph 3, which would:

(a) establish an institutional framework with the purpose of allowing for the registration of cooperatives in as rapid, simple, affordable and efficient a manner as possible;

(b) promote policies aimed at allowing the creation of appropriate reserves, part of which at least could be indivisible, and solidarity funds within cooperatives;

(c) provide for the adoption of measures for the oversight of cooperatives, on terms appropriate to their nature and functions, which respect their autonomy, and are in accordance with national law and practice, and which are no less favourable than those applicable to other forms of enterprise and social organization;

(d) facilitate the membership of cooperatives in cooperative structures responding to the needs of cooperative members; and

(e) encourage the development of cooperatives as autonomous and self-managed enterprises, particularly in areas where cooperatives have an important role to play or provide services that are not otherwise provided.

7. (1) The promotion of cooperatives guided by the values and principles set out in Paragraph 3 should be considered as one of the pillars of national and international economic and social development.

(2) Cooperatives should be treated in accordance with national law and practice and on terms no less favourable than those accorded to other forms of enterprise and social organization. Governments should introduce support measures, where appropriate, for the activities of cooperatives that meet specific social and public policy outcomes, such as employment promotion or the development of activities benefiting disadvantaged groups or regions. Such measures could include, among others and in so far as possible, tax benefits, loans, grants, access to public works programmes, and special procurement provisions.

(3) Special consideration should be given to increasing women's participation in the cooperative movement at all levels, particularly at management and leadership levels.

8. (1) National policies should notably:

(a) promote the ILO fundamental labour standards and the ILO Declaration on Fundamental Principles and Rights at Work, for all workers in cooperatives without

distinction whatsoever;

(b) ensure that cooperatives are not set up for, or used for, non-compliance with labour law or used to establish disguised employment relationships, and combat pseudo cooperatives violating workers' rights, by ensuring that labour legislation is applied in all enterprises;

(c) promote gender equality in cooperatives and in their work;

(d) promote measures to ensure that best labour practices are followed in cooperatives, including access to relevant information;

(e) develop the technical and vocational skills, entrepreneurial and managerial abilities, knowledge of business potential, and general economic and social policy skills, of members, workers and managers, and improve their access to information and communication technologies;

(f) promote education and training in cooperative principles and practices, at all appropriate levels of the national education and training systems, and in the wider society;

(g) promote the adoption of measures that provide for safety and health in the workplace;

(h) provide for training and other forms of assistance to improve the level of productivity and competitiveness of cooperatives and the quality of goods and services they produce;

(i) facilitate access of cooperatives to credit;

(j) facilitate access of cooperatives to markets;

(k) promote the dissemination of information on cooperatives; and

(l) seek to improve national statistics on cooperatives with a view to the formulation and implementation of development policies.

(2) Such policies should:

(a) decentralize to the regional and local levels, where appropriate, the formulation and implementation of policies and regulations regarding cooperatives;

(b) define legal obligations of cooperatives in areas such as registration, financial and social audits, and the obtaining of licences; and

(c) promote best practice on corporate governance in cooperatives.

9. Governments should promote the important role of cooperatives in transforming what are often marginal survival activities (sometimes referred to as the "informal economy") into legally protected work, fully integrated into mainstream economic life.

## III. IMPLEMENTATION OF PUBLIC POLICIES FOR THE PROMOTION OF COOPERATIVES

10. (1) Member States should adopt specific legislation and regulations on cooperatives, which are guided by the cooperative values and principles set out in Paragraph 3, and revise such legislation and regulations when appropriate.

(2) Governments should consult cooperative organizations, as well as the employers' and workers' organizations concerned, in the formulation and revision of legislation, policies and regulations applicable to cooperatives.

11. (1) Governments should facilitate access of cooperatives to support services in order to strengthen them, their business viability and their capacity to create employment and income.

(2) These services should include, wherever possible:

(a) human resource development programmes;

(b) research and management consultancy services;

(c) access to finance and investment;

(d) accountancy and audit services;

(e) management information services;

(f) information and public relations services;

(g) consultancy services on technology and innovation;

(h) legal and taxation services;

(i) support services for marketing; and

(j) other support services where appropriate.

(3) Governments should facilitate the establishment of these support services. Cooperatives and their organizations should be encouraged to participate in the organization and management of these services and, wherever feasible and appropriate, to finance them.

(4) Governments should recognize the role of cooperatives and their organizations by developing appropriate instruments aimed at creating and strengthening cooperatives at national and local levels.

12. Governments should, where appropriate, adopt measures to facilitate the access of cooperatives to investment finance and credit. Such measures should notably:

(a) allow loans and other financial facilities to be offered;

(b) simplify administrative procedures, remedy any inadequate level of cooperative assets, and reduce the cost of loan transactions;

(c) facilitate an autonomous system of finance for cooperatives, including savings and credit, banking and insurance cooperatives; and

(d) include special provisions for disadvantaged groups.

13. For the promotion of the cooperative movement, governments should encourage conditions favouring the development of technical, commercial and financial linkages among all forms of cooperatives so as to facilitate an exchange of experience and the sharing of risks and benefits.

## IV. ROLE OF EMPLOYERS' AND WORKERS' ORGANIZATIONS AND COOPERATIVE ORGANIZATIONS, AND RELATIONSHIPS BETWEEN THEM

14. Employers' and workers' organizations, recognizing the significance of cooperatives for the attainment of sustainable development goals, should seek, together with cooperative organizations, ways and means of cooperative promotion.

15. Employers' organizations should consider, where appropriate, the extension of membership to cooperatives wishing to join them and provide appropriate support services on the same terms and conditions applying to other members.

16. Workers' organizations should be encouraged to:

(a) advise and assist workers in cooperatives to join workers' organizations;

(b) assist their members to establish cooperatives, including with the aim of facilitating access to basic goods and services;

(c) participate in committees and working groups at the local, national and international levels that consider economic and social issues having an impact on cooperatives;

(d) assist and participate in the setting up of new cooperatives with a view to the creation or maintenance of employment, including in cases of proposed closures of enterprises;

(e) assist and participate in programmes for cooperatives aimed at improving their productivity;

(f) promote equality of opportunity in cooperatives;

(g) promote the exercise of the rights of worker-members of cooperatives; and

(h) undertake any other activities for the promotion of cooperatives, including education and training.

17. Cooperatives and organizations representing them should be encouraged to:

(a) establish an active relationship with employers' and workers' organizations and concerned governmental and non-governmental agencies with a view to creating a favourable climate for the development of cooperatives;

(b) manage their own support services and contribute to their financing;

(c) provide commercial and financial services to affiliated cooperatives;

(d) invest in, and further, human resource development of their members, workers

and managers;

(e) further the development of and affiliation with national and international cooperative organizations;

(f) represent the national cooperative movement at the international level;

and

(g) undertake any other activities for the promotion of cooperatives.

## V. INTERNATIONAL COOPERATION

18. International cooperation should be facilitated through:

(a) exchanging information on policies and programmes that have proved to be effective in employment creation and income generation for members of cooperatives;

(b) encouraging and promoting relationships between national and international bodies and institutions involved in the development of cooperatives in order to permit:

(i) the exchange of personnel and ideas, of educational and training materials, methodologies and reference materials;

(ii) the compilation and utilization of research material and other data on cooperatives and their development;

(iii) the establishment of alliances and international partnerships between cooperatives;

(iv) the promotion and protection of cooperative values and principles; and

(v) the establishment of commercial relations between cooperatives;

(c) access of cooperatives to national and international data, such as market information, legislation, training methods and techniques, technology and product standards; and

(d) developing, where it is warranted and possible, and in consultation with cooperatives, employers' and workers' organizations concerned, common regional and international guidelines and legislation to support cooperatives.

## VI. FINAL PROVISION

19. The present Recommendation revises and replaces the Co-operatives (Developing Countries) Recommendation, 1966.

# Index

# Endnotes

[I] (p.iii)...2001 UN "Guidelines aimed at creating a supportive environment for the development of cooperatives", UN doc. A/RES/54/123 and doc. A/RES/56/114; A/56/73-E/2001/68; Res./56; 2002 ILO Recommendation No. 193 on the promotion of cooperatives, ILC 90-PR23-285-En-Doc, June 20, 2002

[II] (p.iii)...COPAC is an inter-agency committee whose members include the Food and Agriculture Organisation (FAO), ICA, the International Federation of Agricultural Producers (IFAP), ILO, and the UN

[III] (p.vii)…The 1996 ILO working paper, on which the Guidelines are based, has been widely distributed and discussed. Apart from numerous valuable comments on the occasion of several gatherings, whose authors unfortunately remain anonymous, ILO and/or the author received written comments from the governments of Ghana, Jamaica, the Seychelles Islands and South Korea. The French (Mme. Chantal Chomel), the Italian (Avv. Pietro Moro) and the Bulgarian (Mr. Kuzman Georgiev) cooperative movements also reacted in writing. The ICA Europe Legislative Expert Group of cooperative lawyers discussed the paper and forwarded helpful suggestions. The author gratefully acknowledges all of these contributions.

[IV] (p.1)…In its 1997 World Development Report the World Bank suggests a two-fold strategy which well describes the wide consensus on the role of the state in today's development endeavours: Seek congruency of development goals with capabilities and focus on core public activities which are crucial to development, and for the exercise of which public institutions must be build and/or strengthened

[V] (p.1)…The ILO recognises the importance of cooperatives in article 12 of its Constitution. An ICA publication (Review of International Co-operation, Vol. 87, no. 1/1994, p. 50) lists a series of 28 United Nations (UN) Resolutions and Decisions since 1950 in which the General Assembly and the Economic and Social Council recognise the important contribution that cooperatives have made and are capable of continuing to make.

In special reports to the General Assembly on the status and role of cooperatives in the light of new economic and social trends, the Secretary-General of the UN repeatedly (doc. A47/216 E/1992, 43, para.46(a) and (f); doc. A49/213-1994, para.72 (a) and (f)) emphasised that cooperative enterprises are a means to create productive employment, to overcome poverty and to achieve social integration and that they are an important means to mobilize and allocate societal resources effectively.

The World Summit for Social Development in 1995 endorsed the last-mentioned report by committing itself to utilise and fully develop the potential of cooperatives for the creation of full and productive employment through the establishment of legal frameworks that would encourage cooperatives to mobilise capital and promote entrepreneurship.

Specialised UN organisations and UN programmes, such as UNESCO, UNHCR, FAO, WHO, UNFPA, UNRISD, HABITAT, UNDP, WFP, IFAD, UNIDO, refer to cooperatives as vital organisations in the pursuit of their goals, cf .von Muralt, op.cit.

Cooperative policy issues have been on the agenda of innumerable regional and international meetings, for example:

- Ministerial meetings organised by the International Co-operative Alliance for different regions of the world (Gaborone 1984, Lusaka 1987, Nairobi 1990, Sydney 1990, Arusha 1993, Colombo 1994, Chiangmai 1997)
- meetings of the member states of the SAARC region, especially in 1997
- FAO sponsored meeting at Gödöllö, Hungary on cooperative issues in Central and Eastern Europe
- ILO and DSE sponsored regional conference for Anglophone Africa 1996 at Diessen, Germany (results in Cooperative Development and Adjustment …, op.cit.
- meetings of the Conférence Panafricaine Coopérative, especially its 11th and 12th meetings in 1996 and 1998
- two ILO Expert Meetings in 1993 and 1995 on cooperatives and cooperative law respectively (results published in ILO, Meeting of Experts …, op.cit.)
- series of ILO commissioned studies and co-sponsored colloquia on different aspects of cooperative policy and law, cf. ILO Creating a favourable climate and conditions for cooperative development in Africa; Creating a favourable climate and conditions for cooperative development in Asia.; Creating a favourable climate and conditions for cooperative development in Latin America; Creating a favourable climate and conditions for cooperative development in Central and Eastern Europe; Structural changes …; The relationship between …; Cooperative organisation and Competition Law

[VI] (p.2)…A number of regional organizations have passed uniform laws, others have elaborated model cooperative laws or at least guidelines in view of harmonization:

- under a 1989 project for harmonizing cooperative legislations in Latin America (Proyecto de Ley Marco para las Cooperativas de América Latina), the Organización de las Cooperativas de América (OCA) elaborated a model law (Ley Marco) which was to be used as a guideline by national lawmakers. It has become an important stimulus for the modernisation of cooperative legislations in several South American countries. Its promoters are currently contemplating to review this model framework law in the light of recent socio-economic and political developments. The Member States of Mercosur have already begun work in this direction
- in 1997 the Inter-Parliamentary Assembly of the Community of Independent States (CIS) adopted a "Model Law on Cooperatives and their Associations and Unions". It is currently under review
- the Member States of the West African Monetary Union (UEAO) have adopted a uniform law on savings and credit cooperatives, which has been transformed into national legislation by several West African States
- similarly, the "Organisation pour l'harmonisation en Afrique du droit des affaires" (OHADA) is currently elaborating a uniform cooperative law
- the 1997 "Referential Cooperative Act" of India is influencing the harmonisation process among the Indian States
- the Member States of the South Asian Association of Regional Cooperation (SAARC) entertain permanent, quasi institutionalised consultations on

cooperative law matters which have already had a harmonising effect on the cooperative laws in the region

- the Organisation of East Caribbean States and CARICOM elaborated a credit union legislation, which has been translated into national laws by seven Caribbean States
- the Arab Cooperative Federation decided in 1999 to develop a model cooperative law to guide national legislators
- after almost four decades of discussions the European Union adopted in 2003 the Regulation on the Statute for a European Cooperative Society (SCE), Council Regulation (EC) No. 1435/2003 of 22nd July 2003 on the Statute for a European Society, and Council Directive 2003/72/EC of 22nd July supplementing the Statute with regard to the involvement of employees, O.J. No. L 207 of 18/8/03

[VII] (p.6)…- the right to assemble, associate and federate, and the right not to do so, without negative legal or administrative consequences

- the right to freely choose one's economic activity and business partner, be it at home or abroad
- the right to property
- the right to self-determination
- the right to free access to competitive national and international markets
- the rule of law, i.e., inter alia: all acts of public authorities must be based on a law, all basic matters must be regulated in the law and cannot be left to the administration, discretional powers of the administration must be kept to a minimum
- the right to positive and negative non-discrimination
- the right to free access to ordinary courts of law.

cf. Henrÿ, Co-operative Law and Human Rights, op.cit.; Penn, op.cit.

[VIII] (p.12)…Recent cooperative laws (cf. 1992 Cooperatives Act of Cameroon ("common initiative groups"); 1997 Italian cooperative law ("small cooperatives"); 1999 cooperative law of Madagascar ("groupements à vocation économique"); 1982 Cooperative Act of South Africa; 1999 cooperative law of Burkina Faso ("groupements"); 2000 cooperative law of Mali). A number of general cooperative laws (Austria, Belgium, Finland, France, Germany) include exemptions for "smaller" cooperatives from certain requirements

[IX] (p.13)…M ore concretely, this situation has often been characterized by:

- the obligation of cooperatives to limit their activities to a specified territory, coinciding more often than not with administrative boundaries. This obligation, allegedly for the sake of cooperatives' economic efficiency, not only contravened the freedom of the cooperatives, but it also contributed to their politicization. By the same token, the positive effects of competition on economic efficiency were excluded
- compulsory membership which infringed upon the freedom of association
- intervention in the management of cooperatives, more or less directly. For

example, the state organized meetings to establish cooperatives; sometimes it simply created cooperatives ex nihilo, called for ordinary or extraordinary general meetings of cooperative members, meetings of the board of directors or of other organs of the cooperative and/or delegated state representatives to sit in these meetings, took decisions in lieu of the organs of the cooperative and selected, remunerated, closely supervised and at times replaced the personnel of cooperatives by state commissioners

- excluding cooperatives from certain sectors, assigned pre-determined objectives, and prescribed the services to be provided to their members and users
- controlling the disposal of the resources of cooperatives. At times, loans, investments, and even decisions on the distribution of a surplus had to be submitted for approval by the government
- sanctioning supposedly inefficient management by freezing cooperative bank accounts
- creating and running secondary and tertiary cooperative organizations
- merging/amalgamating or dividing such structures and by
- settling disputes without there being any possibility of an appeal to ordinary tribunals.

For more details cf. Münkner who in many of his writings criticized these deviations from the cooperative principles

[X] (p.13)...The legal categorizing of cooperatives as belonging to the private sector must not be construed as an underestimation of the socio-political and economic categorizations, whereby cooperatives might be classified as part of the social economy or a third sector

[XI] (p.53)…The French GIE dates from 1967, respective legislations from 1984 and 1985. Cf., also the 1999 Cooperative Law of Burkina Faso (“groupements”), the 1992 Cooperatives Act of Cameroon ("common initiative groups"), the 1997 Italian cooperative law ("small cooperatives"), the 1999 Cooperative law of Madagascar (“groupements à vocation économique”), the 2000 Cooperative Law of Mali, and the 1982 Cooperative Act of South Africa. A number of general cooperative laws (Austria, Belgium. Finland, France, Germany) exempt “smaller” cooperatives from certain requirements or under certain circumstances