



International
Co-operative
Alliance

Co-operative Law Committee



WHY Co-operative LAW?

LEGAL AND POLITICAL RATIONALE

Co-operatives of all types around the world have been guided by a set of identity-shaping principles ever since the foundation of the International Co-operative Alliance (Alliance) in 1895. Today, these are laid out in the 1995 Alliance Statement on the Co-operative Identity (Alliance Statement). The fact that such a set of principles exists sets co-operatives apart from other types of enterprises.

This brief answers the question of why and how legislators are bound by these principles, and for which legal and political reasons legislators ought to translate these principles into law.

CO-OPERATIVE PRINCIPLES AND CO-OPERATIVE LAW

For the purpose of this brief, the term “Co-operative Principles” comprises the definition of co-operatives, the co-operative values and the co-operative principles as laid out in the Alliance Statement. After defining co-operatives, the Statement says,

“[c]o-operatives are based on [the enumerated] values [and] co-operative members believe in [enumerated] ethical values” and that “[t]he co-operative principles are guidelines by which co-operatives put their values [both ethical and the others] into practice”.

The Alliance Statement links Co-operative Principles and co-operative law as it addresses the identity of co-operatives. Identity is what distinguishes a person, thing or an entity from another person, thing or entity. The purpose of law is to bring out this identity and, in the case of entities, to protect it in the interest of stakeholders, third parties and the public at large. It is therefore not surprising that co-operative legislation, beginning in the mid-1850s in the United Kingdom, has respected co-operative principles, despite reticence from lawyers and legislators to accept their legal character. Today a great number of national constitutions confer a special status upon co-operatives through the lens of the Co-operative Principles, and many co-operative laws refer to the Co-operative Principles in their various national and cultural interpretations.

However, not all law has contributed to clarifying co-operative identity. As early as the 1970s, some law-makers began approximating the features of co-operatives with those of investor-owned companies, particularly with regard to issues on the nature and structure of capital, management and control mechanisms. These have put the co-operative identity at risk.

Although it may not be entirely clear what exactly constitutes the identity of co-operatives, there are elements of guidance. The background report to the Alliance Statement clarifies the relationship between the co-operative values and the co-operative principles. It states that the principles, while being independent from each other, have to be interpreted together and in line with their “spirit”, i.e. in line with the co-operative values, and are the criteria by which to evaluate the behavior and decisions of cooperators and co-operatives. In addition, there is consensus on the “non-negotiable” characteristics of co-operatives. Co-operatives operationalize joint self-help in response to otherwise unmet needs. These needs are determined by those who control the enterprise. Co-operatives transform into a different type of enterprise when (member) user control turns into investor control and

when financial return, in terms of dividends/interests or growth in value of the enterprise, is put ahead of human needs.

LEGAL JUSTIFICATION

ASSESSING CO-OPERATIVE LAWS BY THE CRITERION OF THEIR COMPLIANCE WITH THE CO-OPERATIVE PRINCIPLES

The nature of the validity of the Co-operative Principles has evolved over time. Up until 2001, the Co-operative Principles did not bind legislators, as they were solely the principles of the Alliance, an international non-governmental organization. This changed with the following developments:

- 2001: The United Nations General Assembly adopts **“Guidelines aimed at creating a supportive environment for the development of co-operatives”** which refers to the Alliance Statement in para. 11.ⁱ
- 2002: The International Labour Conference (ILC) adopts the **International Labour Organization Recommendation No. 193 (ILO R.193) concerning the promotion of co-operatives** which integrates the content of the Alliance Statement (definition of co-operatives in para. 2, and the values and the principles in para. 3 and Annex).ⁱⁱ

Once ILO R.193 was adopted, the Co-operative Principles became part of a legal instrument of an international governmental organization and its contents became legally binding for all subjects of public international law dealing with co-operatives. The ILC explicitly stipulated that ILO R.193 addresses governments, employers’ and workers’ organizations, as well as the co-operative organizations of all Member States of the ILO. This means that co-operatives too have a legal obligation to reflect the Co-operative Principles in their statutes, bye-laws and operations.

More specifically, the ILO R.193:

- takes an adequate legal framework for co-operatives for granted or underlines the importance of such frameworks for the development of co-operatives and, similar to the Alliance Statement, builds their foundation.
- calls on legislators to provide for adequate co-operative law “guided by the co-operative values and principles” (para 6.) in order to establish, reestablish or maintain, as the case may be, the co-operative identity (paras 3.; 6.; 8.(2) (a) and (b); 9., 10.(1); 18. (c), (d)).
- establishes the equal treatment principle (para 7 (2)), the logic of which presupposes that co-operatives be distinct entities, i.e. have their own identity.
- implies the obligation to maintain the distinct character of co-operatives, not only through the co-operative law proper, but also through other laws (para 7 (2)), including labour, tax and competition law, as well as (international) accounting standards and book-keeping rules, especially those elaborated by the International Accounting Standards Board (IASB), the Financial Accounting Standards Board (FASB) and the Basel Committee on Banking Supervision.
- calls for the institutionalization of co-operatives and suggests that co-operatives be formalized, thus carrying a notion that co-operatives have legal personality.

Neither ILO R. 193 nor the Alliance Statement spells out the specifics of a co-operative law. This was not their aim nor would this have respected the need for diversity of co-operative

ⁱ UN General Assembly Resolution A/56/73; E/2001/68

ⁱⁱ International Labour Conference. ILC 90-PR23-285-En-Doc. ILO Recommendation No.193. www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R193

laws. However, the legislator must derive guidance from the Alliance Statement as contained in and specified by the ILO R. 193. Further guidance can be obtained from the “predecessor” of ILO R. 193, ILO R. 127, which has not lost its legal validity and whose chapter III contains a rather detailed list of matters to be considered and recalls the systemic of co-operative law.

In addition to having integrated all of the content of the Alliance Statement and making it obligatory, the ILO R. 193 emphasizes and details some elements of the Statement. This concerns especially the following:

1. The definition of co-operatives: The definition of co-operatives in ILO R. 193 (para 2) is a textual transposition from the Alliance Statement. It makes it clear that the three aspects of the objective of co-operatives contained in the definition - economic, social and cultural - are complementary and of equal legal weight. Accordingly, legislators must strike an appropriate balance between these aspects, as well as between the two elements of the nature of co-operatives, namely associations of persons and enterprises, in order to avoid inefficiencies. ILO R. 193 underlines the enterprise character of co-operatives numerous times.

ILO R. 193 defines the scope of application of a co-operative law by calling on legislators to allow co-operatives to be active in whatever form and in all sectors. Persisting limitations, more often than not due to missing or failing prudential mechanisms, must be lifted by addressing shortcomings rather than by barring co-operatives from activity in these sectors. In this regard, ILO R. 193 refers specifically to the financial sector (para 12(c)). It further separates the activity a co-operative might exercise, and which the government might decide to promote, from the form in which this activity is organized (para 7(2)).

2. Values: ILO R. 193 includes the co-operative values (para 3) and refers to them several times, but does not provide further information on them.

3. Principles: ILO R. 193 includes the seven Co-operative Principles (para 3 and Annex) and provides further specific guidance for the following:

1st Principle: Voluntary and Open Membership

ILO R. 193 emphasizes that, “National policies should notably: [...] promote gender equality in co-operatives and in their work” (para 8 (1) (c) and para 7(3)).

4th Principle: Autonomy and Independence

ILO R. 193 emphasizes the autonomy of co-operatives and underlines the principle of equal treatment in connection with the control of co-operatives (para 6 (c) (e)).

It suggests a specific finality of the co-operative law in line with the 4th Principle. This finality may be derived from the way the ILO R. 193 is written; it concerns the “promotion of co-operatives”, while also containing a number of paragraphs which deal with the control of co-operatives. The title of ILO R. 193 is therefore programmatic. Control is to be designed and exercised in view of promotion, and promotion in view of (less) control.

5th Principle: Education, Training and Information

ILO R.193 refers to the principle of equal treatment (para.7.(2)), which requires, if it is to be realized, that those obliged to treat co-operatives equally know what co-operatives are. As such, ILO R. 193 calls for the inclusion of the subject of co-operatives into the education and training curricula at all levels (paras 8. (1)(f);18.(b)(i) and (ii)).

6th Principle: Cooperation among Co-operatives

ILO R. 193 directs governments to “facilitate the membership of co-operatives in co-operative structures responding to the needs of co-operative members [...]” (para 6 (d),

17(e)). Federating in the interest of the co-operative members at primary level is a genuine co-operative way to reach economies of scope and scale, to have representation and to establish co-operative-specific value chains which link the producer to the consumer, while maintaining member autonomy (a core principle). Cooperation in these forms is preferred over the concentration of enterprises. Federating co-operatives also contributes to strengthening the 4th Principle.

7th Principle: Concern for Community

ILO R. 193 recognizes “the significance of co-operatives for the attainment of sustainable development goals” (para 14). The contribution that co-operatives and co-operative law can make to sustainable development is at the heart of political arguments and the reason why law-makers should respect the Co-operative Principles.

POLITICAL JUSTIFICATION

CO-OPERATIVE PRINCIPLES AND LAW AS A CATALYST FOR PUBLIC POLICY

Like any other form of enterprise, co-operatives require laws and policies that facilitate their development. The legal framework plays a critical role for the viability and existence of co-operatives and their ability to contribute to public policy.

The purpose of legislation is to regulate the organization and operations of business entities, but it also educates or informs and more specifically,

- provides a template for those who want to organize their business
- informs third parties who might find it impossible to protect their interests if they were obliged to scrutinize the statutes or bye-laws of every business partner with which they engage and
- enables parties to constitute a public policy instrument in the form of law.

In enterprise organizational laws, the expression of public policy concerns is found in the objectives of enterprise types. The law establishes functional relationships between the financial and organizational structure of specific types of enterprises and their objectives.

Co-operatives, as defined by the Alliance Statement, the ILO R. 193 and other international legal instruments, pursue a convergence between economic, social, and environmental interests and thereby contribute to addressing global challenges and public policy concerns. Co-operatives contribute to the economic, social and cultural development of countries in which they operate. They can create jobs, create and maintain livelihoods, provide key services not otherwise available (market failures), and bring balance to the global economy. Their effectiveness to do so depends on the adequacy of the law to protect the co-operative identity.

The International Co-operative Alliance in its *Blueprint for a Co-operative Decade*,ⁱⁱⁱ identifies specific public policy concerns that provide political reasons for the translation of the Co-operative Principles into law, namely:

Sustainability

Sustainable development has become the overall development paradigm as evidenced by the adoption of the Sustainable Development Goals (SDGs).

iii ivica.coop/sites/default/files/media_items/ICA%20Blueprint%20%20Final%20version%20issued%207%20Feb%2013.pdf

Sustainable development has been recognized by the International Court of Justice as a concept of public international law since 1997. The concept forms part of resolutions of regional and international organizations, as well as of treaties and national constitutions. The 7th Principle of the Alliance Statement, the UN Guidelines (para 2) and the ILO R. 193 (para 3, 14, Annex) all deal with the subject matter. The final declaration of the 2012 Rio Conference, "The Future we want", also refers several times to the relevance of co-operatives for sustainable development (para. 70, 110 and 154)).

Sustainable development is seen as having at least three aspects: economic security, social justice and ecological balance. The basis of sustainable development is diversity, namely diversity in the biosphere and in the noosphere. The diversity of enterprise types is not only required by law, for example in ILO R. 193 (para 4 (h) and 6), but also recognized as a factor for resilience during economic crises.

Although all types of enterprises already assume greater social and societal responsibility than in the past, they do so on the basis of soft law and only to the extent that their operational outcomes/profit margins allow. Co-operative laws which establish the co-operative identity go further. They lay out in a legal context the functional relationships between the aspects of sustainable development and the structural features of co-operatives - i.e. the legal structure of co-operatives complements 'Corporate Social Responsibility (CSR)' with 'Co-operative Social Responsibility'. This is a distinctive feature of co-operatives. It allows them to contribute to sustainable development, which is increasingly a criterion for measuring the competitiveness of enterprises.

Furthermore, such co-operative laws concretize the juridical link between the objective of co-operatives (economic, social and cultural) with the economic, social and cultural human rights as per the International Covenant on Economic, Social and Cultural Rights.

Participation

The central aspect of sustainability is social justice, as social justice is a prerequisite for political stability; political stability is a prerequisite for economic security; and without economic security there is no concern for the biosphere. The main mechanism to (re) produce social justice is democratic participation in making decisions about what to produce, how to produce it and how to distribute the resulting wealth. Participation is also a human right according to the International Covenant on Civil and Political Rights.

Participation in and through enterprises becomes ever more important, as the knowledge economy dissolves the unity of economic and political spaces, which in turn makes it increasingly difficult to organize democratic participation at the political level. The participation of stakeholders is probably one of the most distinguishing features of co-operative enterprises.

Participation is not limited to the members' exercise of their democratic rights according to the 2nd Principle of 'one member, one vote' and independent of economic or financial involvement. Participation can also be based on deliberative and collaborative democracy, as well as on new technologies which enhance active participation of the members.

Furthermore, effective participation by co-operative members (member control of their enterprise) means that there exists a real possibility to participate in the activities of the co-operative. It requires limitations on the financial participation of individual members as well as a regular co-operative-specific audit to provide members with needed information. It further requires education, training and information of the members in order to narrow the information and knowledge gap between them and management. It may also require

other measures, including allowing for the attribution of plural voting rights, but these may not be proportionate to financial contributions.

Co-operative law, therefore, has a sustainable development and human rights functionality by means of legally determining the participation of stakeholders in the governance and control structure of the co-operatives.

Capital

Capital must serve the satisfaction of economic, social and cultural needs in a co-operative. As stated in the Blueprint, whatever forms of capitalization are introduced in co-operatives, member control must be guaranteed. Laws must not allow investor interests to take precedence over user needs. However, nothing in the Co-operative Principles prevents legislators from going beyond the traditional way of financing co-operatives through their members.

CONCLUSION

LEGAL PRINCIPLES SERVE AS BRIDGE OVER WHICH ETHICAL VALUES AND PRINCIPLES FIND THEIR WAY INTO LAW

The body of knowledge on the Co-operative Principles has grown over the decades, but little has been published on their translation into law. For this to be done, Co-operative Principles should be interpreted to meet modern requirements and be specified as legal principles. Policy- and law-makers have a number of resources to assist them in understanding these Principles and turning them into law. For example, the International Co-operative Alliance has issued Guidance Notes to the Co-operative Principles^{iv} and the ILO has published a number of guides.

Translation of the Co-operative Principles into law will provide not only opportunities for people to have enterprise form options, but also an additional way for policy-makers to address numerous public policy challenges and move for societal changes, given that legal principles serve as bridge over which ethical values and principles find their way into law.

Further material published by the ILO

- The Story of the ILO's Promotion of Co-operatives Recommendation, 2002 (No.193) A review of the process of making ILO Recommendation No. 193, its implementation and its impact, Geneva: ILO 2015.
http://www.ilo.org/empent/units/cooperatives/WCMS_371631/lang--en/index.htm
- Promoting co-operatives: An information guide to ILO Recommendation No. 193, prepared by Stirling Smith, Geneva: ILO 2014.
http://www.ilo.org/empent/Publications/WCMS_311447/lang--en/index.htm
- Henry, Hagen, Guidelines for co-operative legislation, third revised edition, Geneva: ILO 2012, http://www.ilo.org/empent/Publications/WCMS_195533/lang--en/index.htm
Also available in French, Greek, Spanish and Russian

^{iv} <http://ica.coop/sites/default/files/publication-files/ica-guidance-notes-en-310629900.pdf>



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